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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–0667; Special Conditions No. 25–569–SC]

Special Conditions: Boeing Model 777–300ER, Single-Occupant, Oblique (Side-Facing) Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special condition; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 777–300ER airplanes with single-occupant, oblique (side-facing) seats equipped with inflatable lapbelts. This installation is novel or unusual, and the applicable airworthiness regulations do not contain adequate or appropriate safety standards for occupants of seats installed at an oblique angle of 30 degrees to the centerline of the airplane or for inflatable restraint systems. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 25, 2014. We must receive your comments by November 10, 2014.

ADDRESSES: Send comments identified by docket number FAA–2014–0667 using any of the following methods:

Federal eRegulations Portal: Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.

Mail: Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

Hand Delivery or Courier: Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

Fax: Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov./*

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: John Shelden, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1232; email *john.shelden@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because such procedures would significantly delay issuance of the design approval and thus the delivery of the affected airplane, and such impracticability was not of the applicant's creation. The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On July 18, 2014, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a type certificate design change to type certificate no. T00001SE to install single-occupant seats installed at an oblique angle to the centerline of the airplane, and which are equipped with inflatable lapbelts, in Boeing Model 777–300ER airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered, transport-category airplane.

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25–20, dated April 23, 1969, clarified the definition of sideward-facing seats to require that each occupant of a seat that is positioned at more than an 18-degree angle to the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy-absorbing rest that supports the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that prevents the head from contacting injurious objects. The FAA concluded that a maximum 18-degree angle would provide an adequate level of safety based on tests that were performed at that time, and thus adopted that standard.

Part 25 was amended June 16, 1988, by Amendment 25–64, to revise the emergency-landing conditions that must be considered in the design of the airplane. Amendment 25–64 revised the static-load conditions in § 25.561, and added a new § 25.562 that required

dynamic testing for all seats approved for occupancy during takeoff and landing. The intent of Amendment 25–64 is to provide an improved level of safety for occupants on transport-category airplanes. Because most seating is forward-facing on transport-category airplanes, the pass/fail criteria developed in Amendment 25–64 focused primarily on these seats. As a result, the FAA issued Policy Memorandums ANM–03–115–30 and PS–ANM–100–2000–00123 to provide additional guidance to demonstrate the level of safety required by the regulations for side-facing seats.

To address more recent research findings, the FAA developed a methodology to address all fully side-facing seats (i.e, seats oriented in the airplane with the occupant facing 90 degrees to the direction of airplane travel) and has documented those requirements in a set of proposed new special conditions. In this regard, the FAA has issued Policy Statement PS–ANM–25–03–R1, which conveys revised injury criteria associated with neck and leg injuries.

The Model 777–300ER China Airlines business-class seat installation is novel or unusual in that the current airworthiness standards, and the current Model 777 side-facing-seat special conditions, do not contain adequate or appropriate safety standards, regarding occupants' neck and spine, for oblique (side-facing) seat installation that restricts the occupant's knees/legs from aligning with both the upper torso and the impact vector during a forward event. As such, the Boeing Company proposes a revised seating configuration that requires new special conditions.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the 777–300ER meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–128, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into type certificate no. T00001SE after type certification approval of the 777–300ER. The regulations incorporated by reference in T00001SE are as follows:

The type-certification basis for the Model 777–300ER airplane is 14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98, including special conditions 25–295–SC and 25–187A–SC. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–300ER airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–300ER airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777–300ER airplane will incorporate the following novel or unusual design features:

The seating configuration proposed by Boeing in Certification Plan No. 13668, ''Installation of B/E Aerospace Business Class Seats on China Airlines (CHI) WE501,'' which consists of Super Diamond model, oblique (side-facing), business-class passenger seats, manufactured by B/E Aerospace, in a Boeing Model 777–300ER airplane. These seats will also incorporate inflatable restraints.

The applicable airworthiness regulations do not contain adequate or appropriate safety standards for occupants of seats installed in the proposed configuration. To provide a level of safety equivalent to that afforded to occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary.

Although special conditions 25–295–SC and 25–187A–SC already apply to the 777–300ER, these do not directly address the complex occupant-loading conditions introduced by this oblique (side-facing) seat configuration. In addition, this seat-angle configuration is not specifically addressed in Policy Statement PS–ANM–25–03–R1, which is intended to address fully side-facing seats, i.e., 90-degree installation angle.

Discussion

Boeing's proposed seating configuration could introduce complex loading of the occupant. In conjunction with the 30-degree oblique (side-facing) orientation of the seats, surrounding structure restricts the occupant's knees and legs, in a forward event, from aligning with both the upper torso and the impact vector. In addition, the inflatable lapbelt design, intended to provide occupant restraint and injury prevention, introduces a significant rebound flail of the head and neck.

The level of safety intended by current rules is that aircraft seating configurations protect the occupant from serious injury. Development testing of the proposed seating configuration has shown that the inflatable restraint contributes to loading of the head and neck in the fore and aft directions, and has also produced significant head twisting. National Highway Traffic Safety Administration (NHTSA) regulations specify neck injury criteria for the 50th percentile male as part of the FMVSS No. 208 alternative test, S13.2. Therefore, we find that it is appropriate to adopt the same neck-injury criteria used in the FMVSS 571.208, and measure it using the FAA Hybrid III anthropomorphic test dummy (ATD). The neck injury criteria, called ''N_{ij}'', imposes critical limits for all four possible modes of neck loading; tension or compression combined with either flexion (forward) or extension (rearward) bending moment. The N_{ij} is defined as the sum of the normalized loads and moments of the neck load cells installed in the ATD. We will also limit the head rotation based on existing relevant research literature. Impact of the neck with any surface could cause serious neck injury from concentrated loading; therefore these special conditions do not allow such contact.

Preliminary results from FAA-sponsored oblique-seat research indicate that unrestricted flailing of the upper torso during forward impacts can produce significant injuries. Although specific injury criteria to predict these injuries is not yet available, limiting the amount of forward flailing has been observed to reduce the magnitude and duration of spinal loading. Therefore, these special conditions require that seat designs limit the forward flail of the upper body to reduce the risk of these injuries.

These special conditions contain the additional safety standards that the Administrator considers necessary to

establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777–300ER airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

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

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 777–300ER airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing Model 777–300ER airplanes.

Inflatable Lapbelt Special Conditions

The inflatable lapbelts must meet the criteria of Special Conditions 25–187A–SC.

Single-Occupant, Oblique (side-facing) Seats Special Conditions

1. Longitudinal (16g) occupant injury test(s), must be performed with the FAA Hybrid III ATD, undeformed floor, most critical yaw case(s) for injury, and with all lateral structural supports (armrests/walls). The criteria for the pass/fail injury assessments are listed in special conditions 2 through 5 in this section.

2. Existing Criteria: All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of an oblique (side-facing) seat. Head injury criterion (HIC) assessments are only required for head contact with the seat and/or adjacent structures. If there is no apparent contact with seat/structure but there is contact with an inflatable restraint, the HIC15 score for that contact must be less than 700.

3. Body-to-Wall/Furnishing Contact Criteria: If an oblique (side-facing) seat is installed aft of structure (e.g., an interior wall or furnishing) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area which an occupant could contact. For example, if difference yaw angles could result in different inflatable restraint performance then additional analysis or separate test(s) may be necessary to evaluate.

4. Neck-Injury Criteria:

a. In demonstrating that the design meets the criteria of FMVSS 571.208, the applicant must show the N_{ij} to be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and N_{ij} intercepts limited to:

i. F_{zc} = 1530 lb for tension

ii. F_{zc} = 1385 lb for compression

iii. M_{yc} = 229 lb-ft in flexion

iv. M_{yc} = 100 lb-ft in extension

b. In addition, peak F_z must be below 937 lb in tension and 899 lb in compression.

c. Rotation of the head about its vertical axis relative to the torso is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface.

5. Spine and Torso Injury Criteria:

a. The shoulders must remain aligned with the hips throughout the impact sequence, or support for the upper torso must be provided to prevent forward or lateral flailing beyond 45 degrees from the vertical during significant spinal loading.

b. Occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

6. One longitudinal (16g) structural test must be performed with the Hybrid II ATD or FAA Hybrid III, deformed floor, with 10 degrees yaw, and with all lateral structural supports (armrests/walls). Use existing structural pass/fail criteria from § 25.562.

7. One vertical (14g) test must be conducted with Hybrid II ATDs or FAA Hybrid III. Use existing pass/fail structural and injury criteria from § 25.562.

Note: The applicant must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS–ANM–100–2000–00123, dated February 2, 2000, titled ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' is acceptable to the FAA.

Issued in Renton, Washington September 19, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–22781 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2014–0458; Amendment No. 91–333]

RIN 2120–AA66

Airports/Locations: Special Operating Restrictions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action amends the Appendix listing airports/locations with special operating restrictions in FAA's general operating and flight rules. Specifically, this action adds an additional entry for Houston, TX (William P. Hobby Airport), and San Diego, CA (Marine Corps Air Station Miramar), to the Appendix, which lists the airports where aircraft operating within 30 nautical miles (NM) of the listed airports, from the surface upward to 10,000 feet mean sea level (MSL) must be equipped with an altitude encoding transponder. The FAA is taking this action to correctly identify applicable airports under the appropriate sections in the Appendix.

DATES: *Effective Date:* November 13, 2014.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and Regulations Group, AJV–113, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783, email *colby.abbott@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Title 14 of the Code of Federal Regulations, part 91, appendix D, section 1, lists the airports where special operating restrictions apply. Specifically, this section lists the locations at which aircraft operating within 30 NM of the listed airports,

from the surface upward to 10,000 feet MSL, must be equipped with an altitude encoding transponder. The locations listed in the section are intended to be the Class B airspace area primary airports.

On June 21, 1988, the FAA published the ATC Transponder with Automatic Altitude Reporting Capability Requirement final rule (the ''Mode C rule'') (53 FR 23356). The rule established the requirement for a transponder with automatic altitude reporting capability for aircraft operating within certain airspace. Effective July 1, 1989, all aircraft were required to have a transponder with Mode C when operating within 30 miles of any designated Terminal Control Area (TCA) primary airport from the surface upward to 10,000 feet MSL (the Mode C ''veil''). Exclusion provisions were established for aircraft which were not originally certificated with an engine-driven electrical system or which have not subsequently been certified with such a system installed, balloons, and gliders. This requirement was also to apply on the effective date of any future TCA primary airport designated by rulemaking actions associated with the establishment or modification of a TCA.

On August 18, 1989, the FAA published the Revision of General Operating and Flight Rules final rule (54 FR 34284). That rule reorganized and realigned the general operating and flight rules to make them more understandable and easier to use. The Mode C veil requirements for aircraft operating in all airspace within 30 NM of any designated TCA primary airport from the surface upward to 10,000 feet MSL, as well as the exclusion provisions, were retained as established in 1988. The rule simply realigned the part 91 Mode C veil requirements previously contained in Title 14 of the Code of Federal Regulations (14 CFR) § 91.24 to become 14 CFR 91.215.

On December 17, 1991, the FAA published the Airspace Reclassification final rule (56 FR 65638). The rule reclassified TCA airspace to become Class B airspace, effective September 16, 1993. The FAA did not modify any Mode C veil requirements under the airspace reclassification final rule. The rule did amend the regulatory text in 14 CFR 91.215(b)(2) by changing the text from applying to all all aircraft in all airspace within 30 nautical miles of a terminal control area primary airport from the surface upward to 10,000 feet MSL, to applying to all aircraft in all airspace within 30 nautical miles of an airport listed in appendix D, section 1 of the part from the surface upward to 10,000 feet MSL. The airports listed in appendix D, section 1 were intended to be the Class B airspace (previously TCA airspace) primary airports consistent with the guidance published in the Revision of General Operating and Flight Rules final rule published in 1989, as noted above.

On November 13, 1973, the FAA issued a final rule (38 FR 31286) which established the Houston TCA and listed the Houston Intercontinental Airport as the primary airport. In 1992, the FAA issued a final rule (57 FR 30818) and a final rule; correction (57 FR 40095) which amended the Houston TCA and listed the Houston Intercontinental Airport (later renamed the George Bush Intercontinental Airport) and William P. Hobby Airport as primary airports, which they remain today, to the Houston Class B airspace area. Similarly, on March 20, 1980, the FAA published the final rule (45 FR 18336) that established the San Diego, CA, TCA and listed San Diego (Lindbergh Field), CA, and Miramar Naval Air Station (NAS), Miramar, CA, as primary airports. Miramar NAS was renamed Marine Corps Air Station (MCAS) Miramar effective October 1, 1997, but both airports have remained primary airports to the San Diego, CA, Class B airspace area.

When the Airspace Reclassification final rule amended the regulatory text in 14 CFR 91.215(b)(2) by changing the text to applying to all aircraft in all airspace within 30 nautical miles of an airport listed in appendix D, section 1 of the part, the airports listed in appendix D, section 1 inadvertently overlooked including MCAS Miramar (formerly Miramar NAS) as one of the primary airports of the San Diego Class B airspace area when the list was established. Subsequently, when William P. Hobby Airport became a primary airport of the Houston Class B airspace area, the regulatory action to list the airport in appendix D, section 1 was also inadvertently overlooked.

This action corrects those unintentional errors by adding MCAS Miramar and William P. Hobby Airport to the part 91, appendix D, section 1 list of locations for which the requirements of §§ 91.215(b)(2) and 91.225(d)(2) apply below 10,000 feet MSL within a 30 NM radius of each location.

List of Subjects in 14 CFR Part 91

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

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Title 14 of the Code of Federal Regulations part 91, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

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

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 2. Appendix D to Part 91, Section 1, is amended by adding entries for ''Houston, TX'' and ''San Diego, CA'' in alphabetical order to read as follows:

Appendix D to Part 91—Airports/Locations: Special Operating Restrictions (Amended)

Section 1. Locations at which the requirements of § 91.215(b)(2) and § 91.225(d)(2) apply. The requirements of §§ 91.215(b)(2) and 91.225(d)(2) apply below 10,000 feet MSL within a 30-nautical-mile radius of each location in the following list.

* * * * *

Houston, TX (William P. Hobby Airport)

* * * * *

San Diego, CA (Marine Corps Air Station Miramar)

* * * * *

Issued in Washington, DC, on September 4, 2014.

Mark W. Bury,

Assistant Chief Counsel for International Law, Legislation and Regulations.

[FR Doc. 2014–22507 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30975; Amdt. No. 3606]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria,

or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 25, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2014.

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

For Examination —

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on August 15, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No,	FDC date	Subject
18-Sep-14	AK	Cold Bay	Cold Bay	4/4404	07/17/14	This NOTAM, published in TL 14–19, is hereby rescinded in its entirety.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0336	08/07/14	VOR RWY 31L, Orig-B.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0337	08/07/14	CONVERGING ILS RWY 36R, Amdt 3.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0339	08/07/14	ILS OR LOC RWY 35L, Amdt 5.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0340	08/07/14	CONVERGING ILS RWY 35L, Amdt 4.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0345	08/07/14	ILS OR LOC RWY 36L, Amdt 2.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0347	08/07/14	ILS OR LOC RWY 31R, Amdt 14A.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0348	08/07/14	CONVERGING ILS RWY 31R, Amdt 8.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0349	08/07/14	CONVERGING ILS RWY 36L, Amdt 2.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/0350	08/07/14	ILS OR LOC RWY 36R, Amdt 5.
18-Sep-14	IN	Kendallville	Kendallville Muni	4/0907	08/08/14	RNAV (GPS) RWY 28, Amdt 1.
18-Sep-14	IN	Kendallville	Kendallville Muni	4/0962	08/08/14	RNAV (GPS) RWY 10, Orig.
18-Sep-14	IN	Frankfort	Frankfort Muni	4/0979	08/08/14	NDB RWY 9, Amdt 3A.
18-Sep-14	IN	Frankfort	Frankfort Muni	4/0980	08/08/14	RNAV (GPS) RWY 9, Amdt 1.
18-Sep-14	IN	Indianapolis	Indianapolis Executive	4/1006	08/08/14	VOR/DME RWY 18, Amdt 1.
18-Sep-14	IN	Indianapolis	Indianapolis Executive	4/1009	08/08/14	RNAV (GPS) RWY 18, Amdt 1.
18-Sep-14	IN	Indianapolis	Indianapolis Executive	4/1011	08/08/14	VOR/DME RWY 36, Amdt 9A.
18-Sep-14	CO	Denver	Rocky Mountain Metropolitan.	4/1170	08/01/14	RNAV (GPS) RWY 29L, Amdt 1A.
18-Sep-14	CO	Denver	Rocky Mountain Metropolitan.	4/1171	08/01/14	RNAV (GPS) RWY 29R, Amdt 1A.
18-Sep-14	CO	Denver	Rocky Mountain Metropolitan.	4/1180	08/01/14	ILS OR LOC Y RWY 29R, Amdt 14A.
18-Sep-14	CO	Denver	Rocky Mountain Metropolitan.	4/1181	08/01/14	ILS OR LOC Z RWY 29R, Orig-A.
18-Sep-14	RI	Providence	Theodore Francis Green State.	4/1769	08/04/14	VOR/DME RWY 16, Amdt 4C.
18-Sep-14	AK	Iliamna	Iliamna	4/2479	08/04/14	RNAV (GPS) RWY 35, Amdt 2.
18-Sep-14	AZ	Phoenix	Phoenix Sky Harbor Intl	4/2639	08/04/14	ILS OR LOC/DME RWY 7L, Amdt 11.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2697	08/11/14	VOR OR TACAN RWY 17, Amdt 7.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2701	08/11/14	RNAV (GPS) RWY 10, Amdt 1.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2702	08/11/14	RNAV (GPS) RWY 35, Orig.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2703	08/11/14	RNAV (GPS) RWY 17, Amdt 1.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2704	08/11/14	VOR/DME OR TACAN RWY 10, Amdt 6.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2705	08/11/14	RNAV (GPS) RWY 28, Amdt 1.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2706	08/11/14	RNAV (GPS) RWY 4, Amdt 1.
18-Sep-14	VA	Wallops Island	Wallops Flight Facility	4/2707	08/11/14	RNAV (GPS) RWY 22, Amdt 1.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2834	08/08/14	RNAV (GPS) RWY 16, Orig.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2835	08/08/14	RNAV (RNP) Y RWY 6, Orig-A.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2836	08/08/14	NDB RWY 6, Amdt 7.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2837	08/08/14	RNAV (GPS) Z RWY 6, Orig.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2839	08/08/14	RNAV (RNP) Y RWY 24, Orig.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2840	08/08/14	RNAV (GPS) Z RWY 24, Amdt 1.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2841	08/08/14	RNAV (GPS) RWY 34, Orig.
18-Sep-14	NJ	Trenton	Trenton Mercer	4/2842	08/08/14	ILS OR LOC RWY 6, Amdt 10.
18-Sep-14	SC	Moncks Corner	Berkeley County	4/3382	08/07/14	VOR/DME A, Orig.
18-Sep-14	VA	Galax Hillsville	Twin County	4/3583	08/11/14	RNAV (GPS) RWY 19, Amdt 1.
18-Sep-14	VA	Galax Hillsville	Twin County	4/3585	08/11/14	RNAV (GPS) RWY 1, Amdt 1A.
18-Sep-14	AZ	Phoenix	Phoenix Sky Harbor Intl	4/3858	08/04/14	ILS OR LOC RWY 7R, Amdt 2A.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4238	08/08/14	ILS OR LOC RWY 6, ILS RWY 6 (SA CAT I), ILS RWY 6 (CAT II & III), Amdt 37.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4240	08/08/14	RNAV (GPS) Y RWY 24, Amdt 3A.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4241	08/08/14	RNAV (GPS) RWY 33, Amdt 2A.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4242	08/08/14	RNAV (RNP) Z RWY 24, Orig-A
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4243	08/08/14	RNAV (RNP) Z RWY 6, Orig.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4244	08/08/14	RNAV (GPS) Y RWY 6, Amdt 2.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4245	08/08/14	COPTER ILS OR LOC RWY 6, Amdt 1.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4246	08/08/14	ILS OR LOC RWY 33, Amdt 10.
18-Sep-14	CT	Windsor Locks	Bradley Intl	4/4256	08/08/14	ILS OR LOC RWY 24, ILS RWY 24 (SA CAT I & II), Amdt 12A.
18-Sep-14	WV	Spencer	Boggs Field	4/4453	08/08/14	RNAV (GPS) RWY 28, Amdt 1.

AIRAC date	State	City	Airport	FDC No,	FDC date	Subject
18-Sep-14	WV	Spencer	Boggs Field	4/4456	08/08/14	RNAV (GPS) RWY 10, Amdt 2.
18-Sep-14	KY	Lexington	Blue Grass	4/4459	08/08/14	RNAV (GPS) RWY 22, Amdt 1A.
18-Sep-14	ID	Burley	Burley Muni	4/4951	08/04/14	RNAV (GPS) RWY 20, Orig-B.
18-Sep-14	ID	Burley	Burley Muni	4/4953	08/04/14	VOR A, Amdt 4C.
18-Sep-14	ID	Burley	Burley Muni	4/4954	08/04/14	VOR/DME B, Amdt 4C.
18-Sep-14	NC	Statesville	Statesville Rgnl	4/5224	08/08/14	VOR/DME RWY 10, Amdt 9.
18-Sep-14	AK	Cordova	Merle K (Mudhole) Smith	4/5327	08/04/14	ILS OR LOC/DME RWY 27, Amdt 11A.
18-Sep-14	NY	Buffalo	Buffalo Niagara Intl	4/5703	08/08/14	RNAV (GPS) RWY 14, Amdt 2.
18-Sep-14	NY	Buffalo	Buffalo Niagara Intl	4/5704	08/08/14	RNAV (GPS) RWY 32, Amdt 2.
18-Sep-14	NY	Buffalo	Buffalo Niagara Intl	4/5706	08/08/14	ILS OR LOC RWY 5, Amdt 16.
18-Sep-14	NY	Buffalo	Buffalo Niagara Intl	4/5707	08/08/14	ILS OR LOC RWY 23, Amdt 31.
18-Sep-14	NY	Buffalo	Buffalo Niagara Intl	4/5708	08/08/14	ILS OR LOC/DME RWY 32, Amdt 1.
18-Sep-14	WV	Charleston	Yeager	4/5917	08/08/14	RNAV (RNP) Z RWY 5, Orig.
18-Sep-14	WV	Charleston	Yeager	4/5922	08/08/14	RNAV (RNP) Z RWY 23, Orig.
18-Sep-14	WV	Charleston	Yeager	4/5931	08/08/14	RNAV (GPS) Y RWY 23, Amdt 1.
18-Sep-14	WV	Charleston	Yeager	4/5933	08/08/14	RNAV (GPS) Y RWY 5, Amdt 1.
18-Sep-14	KY	Paducah	Barkley Rgnl	4/5935	08/07/14	RNAV (GPS) RWY 32, Orig.
18-Sep-14	KY	Paducah	Barkley Rgnl	4/5937	08/07/14	RNAV (GPS) RWY 14, Orig.
18-Sep-14	KY	Paducah	Barkley Rgnl	4/5942	08/07/14	RNAV (GPS) RWY 22, Orig-C.
18-Sep-14	KY	Paducah	Barkley Rgnl	4/5944	08/07/14	VOR/DME RWY 22, Amdt 6A.
18-Sep-14	KY	Paducah	Barkley Rgnl	4/5945	08/07/14	ILS OR LOC RWY 4, Amdt 10A.
18-Sep-14	NY	Newburgh	Stewart Intl	4/6094	08/07/14	ILS RWY 9 (SA CAT I), Amdt 13.
18-Sep-14	NY	Newburgh	Stewart Intl	4/6095	08/07/14	ILS RWY 9 (CAT II & III), Amdt 13.
18-Sep-14	NY	Newburgh	Stewart Intl	4/6107	08/07/14	ILS OR LOC RWY 9, Amdt 13.
18-Sep-14	NM	Albuquerque	Albuquerque Intl Sunport	4/6132	08/04/14	RNAV (RNP) Z RWY 26, Amdt 1.
18-Sep-14	ME	Bar Harbor	Hancock County-Bar Harbor.	4/6767	08/08/14	RNAV (GPS) RWY 4, Amdt 1A.
18-Sep-14	DE	Wilmington	New Castle	4/6783	08/08/14	ILS OR LOC RWY 1, Amdt 23A.
18-Sep-14	DE	Wilmington	New Castle	4/6784	08/08/14	VOR RWY 9, Amdt 7.
18-Sep-14	DE	Wilmington	New Castle	4/6786	08/08/14	VOR RWY 27, Amdt 4
18-Sep-14	TN	Nashville	Nashville Intl	4/6813	08/04/14	RNAV (GPS) RWY 20C, Orig-A.
18-Sep-14	TX	Bay City	Bay City Muni	4/7290	08/07/14	RNAV (GPS) RWY 31, Orig.
18-Sep-14	TX	Bay City	Bay City Muni	4/7299	08/07/14	RNAV (GPS) RWY 13, Orig.
18-Sep-14	TX	Alpine	Alpine-Casparis Muni	4/7300	08/08/14	NDB RWY 19, Amdt 5B.
18-Sep-14	TX	Alpine	Alpine-Casparis Muni	4/7302	08/08/14	RNAV (GPS) RWY 19, Orig.
18-Sep-14	GA	Albany	Southwest Georgia Rgnl	4/7423	08/08/14	NDB RWY 4, Amdt 13.
18-Sep-14	AZ	Tucson	Tucson Intl	4/7434	08/04/14	RNAV (RNP) Y RWY 29R, Orig-C.
18-Sep-14	KS	Larned	Larned-Pawnee County	4/7581	08/08/14	NDB RWY 17, Amdt 4.
18-Sep-14	KS	Larned	Larned-Pawnee County	4/7582	08/08/14	RNAV (GPS) RWY 17, Orig.
18-Sep-14	KS	Iola	Allen County	4/7591	08/08/14	RNAV (GPS) RWY 1, Amdt 1.
18-Sep-14	KS	Iola	Allen County	4/7592	08/08/14	NDB RWY 1, Amdt 2A.
18-Sep-14	OH	Columbus	Ohio State University	4/7600	08/08/14	RNAV (GPS) RWY 27L, Orig.
18-Sep-14	OH	Columbus	Ohio State University	4/7601	08/08/14	RNAV (GPS) RWY 9R, Amdt 1.
18-Sep-14	OH	Columbus	Ohio State University	4/7602	08/08/14	NDB RWY 9R, Amdt 3.
18-Sep-14	OH	Columbus	Ohio State University	4/7603	08/08/14	ILS OR LOC RWY 9R, Amdt 5.
18-Sep-14	TN	Pulaski	Abernathy Field	4/7730	08/08/14	RNAV (GPS) RWY 34, Amdt 2.
18-Sep-14	TN	Pulaski	Abernathy Field	4/7731	08/08/14	RNAV (GPS) RWY 16, Amdt 2
18-Sep-14.	TN	Pulaski	Abernathy Field	4/7732	08/08/14	VOR/DME RWY 34, Amdt 2.
18-Sep-14	VA	Norfolk	Chesapeake Rgnl	4/7815	08/08/14	RNAV (GPS) RWY 5, Amdt 1.
18-Sep-14	VA	Norfolk	Chesapeake Rgnl	4/7816	08/08/14	ILS OR LOC RWY 5, Amdt 1.
18-Sep-14	VA	Norfolk	Chesapeake Rgnl	4/7817	08/08/14	RNAV (GPS) RWY 23, Orig.
18-Sep-14	VA	Norfolk	Chesapeake Rgnl	4/7818	08/08/14	VOR/DME RWY 23, Amdt 1.
18-Sep-14	VA	Chase City	Chase City Muni	4/7906	08/08/14	RNAV (GPS) RWY 36, Amdt 1.
18-Sep-14	VA	Chase City	Chase City Muni	4/7907	08/08/14	RNAV (GPS) RWY 18, Amdt 1A.
18-Sep-14	MS	Grenada	Grenada Muni	4/8280	08/08/14	ILS OR LOC/DME RWY 13, Amdt 2.
18-Sep-14	NY	Monticello	Sullivan County Intl	4/8453	08/11/14	RNAV (GPS) RWY 15, Orig-A.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8472	08/07/14	ILS RWY 18R (SA CAT I), Amdt 8.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8473	08/07/14	ILS OR LOC RWY 18R, Amdt 8.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8474	08/07/14	CONVERGING ILS RWY 13R, Amdt 7.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8475	08/07/14	ILS RWY 18R (CAT II & III), Amdt 8.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8476	08/07/14	ILS RWY 35R (CAT II & III), Amdt 4A.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8477	08/07/14	ILS OR LOC RWY 18L, Amdt 2.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8478	08/07/14	ILS RWY 17R (SA CAT I & CAT II), Amdt 23A.

AIRAC date	State	City	Airport	FDC No,	FDC date	Subject
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8479	08/07/14	ILS OR LOC RWY 13R, Amdt 9.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8480	08/07/14	VOR RWY 13R, Amdt 1B.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8481	08/07/14	CONVERGING ILS RWY 18R, Amdt 6.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8482	08/07/14	CONVERGING ILS RWY 18L, Amdt 2.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8483	08/07/14	ILS OR LOC RWY 35R, Amdt 4A.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8484	08/07/14	ILS RWY 35R (SA CAT I), Amdt 4A.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8485	08/07/14	ILS OR LOC RWY 17R, Amdt 23A.
18-Sep-14	TX	Dallas-Fort Worth	Dallas/Fort Worth Intl	4/8486	08/07/14	ILS RWY 13R (SA CAT I & CAT II), Amdt 9.
18-Sep-14	NY	New York	John F Kennedy Intl	4/9051	08/08/14	ILS OR LOC RWY 31L, Amdt 10C.
18-Sep-14	NY	New York	John F Kennedy Intl	4/9052	08/08/14	ILS OR LOC RWY 31R, Amdt 15C.
18-Sep-14	CA	Santa Maria	Santa Maria Pub/Capt G Allan Hancock Fld.	4/9118	08/08/14	RNAV (GPS) RWY 30, Orig-A
18-Sep-14	AL	Huntsville	Madison County Executive/Tom Sharp Jr Fld.	4/9395	08/11/14	RNAV (GPS) RWY 18, Amdt 2.
18-Sep-14	AL	Huntsville	Madison County Executive/Tom Sharp Jr Fld.	4/9426	08/11/14	VOR/DME B, Amdt 7.
18-Sep-14	AL	Huntsville	Madison County Executive/Tom Sharp Jr Fld.	4/9428	08/11/14	RNAV (GPS) RWY 36, Amdt 1.
18-Sep-14	AL	Huntsville	Madison County Executive/Tom Sharp Jr Fld.	4/9429	08/11/14	Takeoff Minimums and (Obstacle) DP, Amdt 4.
18-Sep-14	AL	Huntsville	Madison County Executive/Tom Sharp Jr Fld.	4/9431	08/11/14	ILS OR LOC/DME RWY 18, Amdt 1.
18-Sep-14	NJ	Belmar/Farmingdale	Monmouth Executive	4/9787	08/08/14	RNAV (GPS) RWY 14, Orig-A.
18-Sep-14	NJ	Belmar/Farmingdale	Monmouth Executive	4/9788	08/08/14	RNAV (GPS) RWY 32, Orig.
18-Sep-14	NJ	Belmar/Farmingdale	Monmouth Executive	4/9791	08/08/14	VOR A, Amdt 3A

[FR Doc. 2014–22378 Filed 9–24–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30974 Amdt. No. 3605]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective September 25, 2014. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 25, 2014.

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

For Examination—

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

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

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

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its

associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97: Air Traffic Control, Airports, Incorporation by Reference, and Navigation (Air)

Issued in Washington, DC on August 15, 2014.

John Duncan,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 18 SEPTEMBER 2014*

St Paul Island, AK, St Paul Island, ILS OR LOC/DME RWY 36, Amdt 3B
Sylacauga, AL, Merkel Field Sylacauga Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Conway, AR, Cantrell Field, RNAV (GPS) RWY 4, Orig
Conway, AR, Cantrell Field, RNAV (GPS) RWY 22, Orig
Conway, AR, Cantrell Field, Takeoff Minimums and Obstacle DP, Orig
Little Rock, AR, Bill and Hillary Clinton National/Adams Field, ILS OR LOC RWY 4L, Amdt 26
Chandler, AZ, Chandler Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Phoenix, AZ, Phoenix Sky Harbor Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Long Beach, CA, Long Beach/Daugherty Field, Takeoff Minimums and Obstacle DP, Amdt 5
Oakland, CA, Metropolitan Oakland Intl, ILS OR LOC RWY 30, ILS RWY 30 (CAT II), ILS RWY 30 (CAT III), ILS RWY 30 (SA CAT I), Amdt 28
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 10L, Amdt 2
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) RWY 10R, Amdt 2
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 12, Amdt 3
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 30, Amdt 4
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 12, Amdt 1C
Oakland, CA, Metropolitan Oakland Intl, RNAV (RNP) Z RWY 30, Amdt 2
Oakland, CA, Metropolitan Oakland Intl, VOR RWY 10R, Amdt 10
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 34L, Orig-B
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 34R, Orig-C
Santa Ana, CA, John Wayne Airport-Orange County, ILS OR LOC RWY 20R, Amdt 13
Santa Ana, CA, John Wayne Airport-Orange County, LOC BC RWY 2L, Amdt 12
Santa Ana, CA, John Wayne Airport-Orange County, LDA/DME RWY 20R, Amdt 2
Santa Ana, CA, John Wayne Airport-Orange County, RNAV (GPS) RWY 2L, Amdt 1
Santa Ana, CA, John Wayne Airport-Orange County, RNAV (GPS) Y RWY 20R, Amdt 2
Santa Ana, CA, John Wayne Airport-Orange County, RNAV (RNP) Z RWY 20R, Amdt 1
Georgetown, DE, Sussex County, RNAV (GPS) RWY 4, Amdt 2
Georgetown, DE, Sussex County, RNAV (GPS) RWY 22, Amdt 2
Georgetown, DE, Sussex County, Takeoff Minimums and Obstacle DP, Amdt 4
Georgetown, DE, Sussex County, VOR RWY 22, Amdt 7
Daytona Beach, FL, Daytona Beach Intl, ILS OR LOC RWY 7L, Amdt 32
Daytona Beach, FL, Daytona Beach Intl, ILS OR LOC RWY 25R, Amdt 1
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) RWY 25R, Amdt 4
Fort Lauderdale, FL, Fort Lauderdale Executive, ILS OR LOC RWY 8, Amdt 5
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 8, Amdt 2
Fort Lauderdale, FL, Fort Lauderdale Executive, RNAV (GPS) RWY 26, Amdt 2
Fort Lauderdale, FL, Fort Lauderdale Executive, Takeoff Minimums and Obstacle DP, Amdt 4
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 10L, Amdt 24
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 10R, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 28L, Orig

Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, ILS OR LOC RWY 28R, Amdt 11
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) RWY 10R, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) RWY 28L, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Y RWY 28R, Amdt 4
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) Z RWY 10L, Amdt 4
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Marco Island, FL, Marco Island, RNAV (GPS) RWY 35, Orig-A
Pompano Beach, FL, Pompano Beach Airpark, LOC RWY 15, Amdt 4
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 6, Orig-B
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 15, Amdt 1
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 24, Orig-A
Pompano Beach, FL, Pompano Beach Airpark, RNAV (GPS) RWY 33, Amdt 1
Pompano Beach, FL, Pompano Beach Airpark, Takeoff Minimums and Obstacle DP, Amdt 5
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 1, Amdt 1
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 5, Orig
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 19, Amdt 1
Zephyrhills, FL, Zephyrhills Muni, RNAV (GPS) RWY 23, Orig
Zephyrhills, FL, Zephyrhills Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 8L, ILS RWY 8L (SA CAT I), ILS RWY 8L (CAT II), ILS RWY 8L (CAT III), Amdt 5
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 8R, Amdt 61
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 9L, Amdt 10
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 9R, ILS RWY 9R (SA CAT I), ILS RWY 9R (CAT II), ILS RWY 9R (CAT III), Amdt 19
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 10, ILS RWY 10 (SA CAT I), ILS RWY 10 (CAT II), ILS RWY 10 (CAT III), Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 26L, Amdt 21
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 26R, ILS RWY 26R (SA CAT I), ILS RWY 26R (SA CAT II), Amdt 7
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 27L, ILS RWY 27L (SA CAT I), ILS RWY 27L (CAT II), Amdt 18
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 27R, Amdt 6
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS OR LOC RWY 28, ILS RWY 28 (SA CAT I), ILS RWY 28 (CAT II), Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 8L, ILS PRM RWY 8L (SA CAT I), ILS PRM RWY 8L (CAT II), ILS PRM RWY 8L (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 8R (SIMULTANEOUS CLOSE PARALLEL), Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 9L (SIMULTANEOUS CLOSE PARALLEL), Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 9R, ILS PRM RWY 9R (SA CAT I), ILS PRM RWY 9R (CAT II), ILS PRM RWY 9R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 10, ILS PRM RWY 10 (SA CAT I), ILS PRM RWY 10 (CAT II), ILS PRM RWY 10 (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 26L (SIMULTANEOUS CLOSE PARALLEL), Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 26R, ILS PRM RWY 26R (SA CAT I), ILS PRM RWY 26R (SA CAT II) (SIMULTANEOUS CLOSE PARALLEL), Amdt 3
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 27L, ILS PRM RWY 27L (SA CAT I), ILS PRM RWY 27L (CAT II) (SIMULTANEOUS CLOSE PARALLEL), Amdt 3
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 27R, (SIMULTANEOUS CLOSE PARALLEL), Amdt 2
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, ILS PRM RWY 28, ILS PRM RWY 28 (SA CAT I), ILS PRM RWY 28 (CAT II) (SIMULTANEOUS CLOSE PARALLEL), Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) RWY 8R, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) RWY 9R, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) RWY 26L, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) RWY 27L, Amdt 5
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) RWY 27R, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM RWY 8R (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM RWY 9R (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM RWY 26L (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM RWY 27L (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM RWY 27R (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM Y RWY 8L (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM Y RWY 10 (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM Y RWY 26R (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) PRM Y RWY 28 (SIMULTANEOUS CLOSE PARALLEL), Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) Y RWY 8L, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) Y RWY 10, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) Y RWY 26R, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (GPS) Y RWY 28, Amdt 4
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (RNP) Z RWY 8L, Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (RNP) Z RWY 10, Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (RNP) Z RWY 26R, Orig
Atlanta, GA, Hartsfield—Jackson Atlanta Intl, RNAV (RNP) Z RWY 28, Orig
St Marys, GA, St Marys, RNAV (GPS) RWY 31, Amdt 1A
Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC/DME RWY 28R, Orig, CANCELED
Evansville, IN, Evansville Rgnl, ILS OR LOC RWY 4, Amdt 3
Evansville, IN, Evansville Rgnl, ILS OR LOC RWY 22, Amdt 22
Evansville, IN, Evansville Rgnl, NDB RWY 22, Amdt 14
Evansville, IN, Evansville Rgnl, RADAR–1, Amdt 7
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 4, Amdt 1
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 18, Amdt 2
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 22, Amdt 1
Evansville, IN, Evansville Rgnl, RNAV (GPS) RWY 36, Amdt 2
Evansville, IN, Evansville Rgnl, VOR RWY 4, Amdt 7
Olathe, KS, Johnson County Executive, LOC RWY 18, Amdt 8
Olathe, KS, Johnson County Executive, LOC RWY 36, Amdt 2
Jamestown, KY, Russell County, RNAV (GPS) RWY 17, Amdt 2
Jamestown, KY, Russell County, RNAV (GPS) RWY 35, Amdt 2
Falmouth, MA, Cape Cod Coast Guard Air Station, COPTER ILS OR LOC RWY 23, Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 3R, ILS RWY 3R (SA CAT I), ILS RWY 3R (CAT II), ILS RWY 3R (CAT III), Amdt 16
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 4R, ILS RWY 4R (SA CAT I), ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 17
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (SA CAT II), Amdt 30A
Detroit, MI, Detroit Metropolitan Wayne County, ILS OR LOC RWY 27L, ILS RWY 27L (SA CAT I), ILS RWY 27L (SA CAT II), Amdt 4
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 3R, ILS PRM RWY 3R (SA CAT I), ILS PRM RWY 3R (CAT II),

ILS PRM RWY 3R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 4R, ILS PRM RWY 4R (SA CAT I), ILS PRM RWY 4R (CAT II), ILS PRM RWY 4R (CAT III) (SIMULTANEOUS CLOSE PARALLEL), Amdt 1
Detroit, MI, Detroit Metropolitan Wayne County, ILS PRM RWY 22L (SIMULTANEOUS CLOSE PARALLEL), Orig-D
Detroit, MI, Detroit Metropolitan Wayne County, ILS Z OR LOC RWY 22R, ILS Z RWY 22R (SA CAT I), ILS Z RWY 22R (SA CAT II), Amdt 3
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 3R, Amdt 2
Detroit, MI, Detroit Metropolitan Wayne County, RNAV (GPS) RWY 22R, Amdt 2
Port Huron, MI, St Clair County Intl, ILS OR LOC RWY 4, Amdt 4
Port Huron, MI, St Clair County Intl, NDB RWY 4, Amdt 5
Port Huron, MI, St Clair County Intl, RNAV (GPS) RWY 22, Amdt 1
Port Huron, MI, St Clair County Intl, VOR/DME–A, Amdt 8, CANCELED
Brookfield, MO, North Central Missouri Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Asheboro, NC, Asheboro Rgnl, RNAV (GPS) RWY 3, Orig-A
Mocksville, NC, Twin Lakes, RNAV (GPS) RWY 9, Amdt 1
Star, NC, Montgomery County, RNAV (GPS) RWY 3, Orig
Star, NC, Montgomery County, RNAV (GPS) RWY 21, Orig
Star, NC, Montgomery County, Takeoff Minimums and Obstacle DP, Orig
Newark, NJ, Newark Liberty Intl, ILS OR LOC RWY 4R, ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 13
Albuquerque, NM, Albuquerque Intl Sunport, ILS OR LOC RWY 8, Amdt 5H
Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) Y RWY 5, Amdt 2B
Buffalo, NY, Buffalo Niagara Intl, RNAV (GPS) Y RWY 23, Amdt 2B
White Plains, NY, Westchester County, ILS OR LOC RWY 16, Amdt 24
Norman, OK, University of Oklahoma Westheimer, Takeoff Minimums and Obstacle DP, Amdt 1
Oklahoma City, OK, Wiley Post, Takeoff Minimums and Obstacle DP, Amdt 5
Hazelton, PA, Hazelton Regional, LOC RWY 28, Amdt 7
Georgetown, SC, Georgetown County, NDB RWY 5, Amdt 6
Georgetown, SC, Georgetown County, RNAV (GPS) RWY 5, Orig
Georgetown, SC, Georgetown County, RNAV (GPS) RWY 23, Amdt 2
Georgetown, SC, Georgetown County, Takeoff Minimums and Obstacle DP, Amdt 1
Brookings, SD, Brookings Rgnl, RNAV (GPS) RWY 12, Amdt 1
Brookings, SD, Brookings Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Dallas, TX, Dallas Love Field, RNAV (RNP) Z RWY 31R, Orig
Moneta, VA, Smith Mountain Lake, Takeoff Minimums and Obstacle DP, Amdt 1
Norfolk, VA, Hampton Roads Executive, RNAV (GPS) RWY 10, Orig
Norfolk, VA, Hampton Roads Executive, RNAV (GPS) RWY 10, Amdt 1, CANCELED
Norfolk, VA, Hampton Roads Executive, Takeoff Minimums and Obstacle DP, Orig
Norfolk, VA, Hampton Roads Executive, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELED
Point Pleasant, WV, Mason County, Takeoff Minimums and Obstacle DP, Amdt 4

RESCINDED: On August 11, 2014 (79 FR 46672), the FAA published an Amendment in Docket No. 30968, Amdt No. 3599, to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.29. The following entries for Grand Rapids, MI., Hastings, MI., Holland, MI., and Sparta, MI., effective September 18, 2014 are hereby rescinded in their entirety:

Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 8R, Amdt 6A
Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 26L, Amdt 21A
Grand Rapids, MI, Gerald R. Ford Intl, ILS OR LOC RWY 35, Amdt 1B
Grand Rapids, MI, Gerald R. Ford Intl, VOR RWY 17, Orig-D
Grand Rapids, MI, Gerald R. Ford Intl, VOR RWY 35, Amdt 1A
Hastings, MI, Hastings, VOR RWY 12, Orig-E
Holland, MI, West Michigan Rgnl, VOR–A, Amdt 10D
Sparta, MI, Paul C. Miller-Sparta, VOR–A, Amdt 4A

[FR Doc. 2014–22380 Filed 9–24–14; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2014–0851]

Special Local Regulations; Recurring Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the regulation pertaining to the Charleston Parade of Boats from 4:00 p.m. through 8:00 p.m. on December 13, 2014. This action is necessary to ensure safety of life on navigable waters of the United States during the Charleston Parade of Boats. During the enforcement period, the special local regulation establishes a regulated area which will prohibit all people and vessels from entering. Vessels may enter, transit through, anchor in, or remain within the area if authorized by the Captain of the Port Charleston or a designated representative.

DATES: The regulation in 33 CFR 100.701 Table 1 will be enforced from 4:00 p.m. through 8:00 p.m. December 13, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO Christopher Ruleman, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843–740–3184, email *christopher.l.ruleman@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the Charleston Parade of Boats in 33 CFR 100.701 Table 1 from 4:00 p.m. through 8:00 p.m. on December 13, 2014.

Under the provisions of 33 CFR 100.701 no vessels or people may enter the regulated area, unless it receives permission to do so from the Captain of the Port. Only event sponsors, designated participants, and official patrol vessels are allowed to enter the regulated area. This rule creates a regulated area that will encompass a portion of the waterways during the parade transit from Charleston Harbor Anchorage A through Bennis Reach, Horse Reach, Hog Island Reach, Town Creek Lower Reach, Ashley River, and finishing at City Marina. Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter in, or impede the transit of parade participants or official patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552 (a).

The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated Representatives.

Dated: September 16, 2014.

R.R. Rodriguez,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2014–22899 Filed 9–24–14; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0737]

RIN 1625–AA87

Security Zones; Dignitary Arrival/ Departure and United Nations Meetings, New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary security zones on the waters of the East River and Bronx Kill in the vicinity of Randalls and Wards Island, the Wall Street Heliport, and the United Nations Headquarters. These security zones are necessary to ensure the safety of the President of the United States, members of his official party, and other senior government officials. In addition, this action is necessary to protect visiting dignitaries and the Port of New York/ New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. The zones will restrict vessels from a portion of the East River and Bronx Kill when public officials are scheduled to arrive and depart the area. Persons or vessels will not be allowed to enter these security zones without permission from the Captain of the Port New York (COTP) or the COTP's designated on-scene representative.

DATES: This rule is effective without actual notice from September 25, 2014 until September 29, 2014 at 8:00 p.m. For the purposes of enforcement, actual notice will be used from the date the rule was signed, September 8, 2014, until September 25, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0737]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Hannah Eko, Waterways Management Division, Coast Guard Sector New York; telephone 718–354–4114, email *Hannah.O.Eko@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port New York
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule
VTSNY Vessel Traffic Service New York

A. Regulatory History and Information

On four previous occasions, the Coast Guard established similar temporary security zones on the waters of the East River and Bronx Kill in the vicinity of Randalls Island and Wards Island, Wall Street Heliport, and the United Nations Headquarters. Those four security zones were effective on the following dates: March 11, 2014, April 11, 2014, June 17, 2014, and July 17, 2014. In each of those instances, the Coast Guard was unable to publish the temporary security zone in the **Federal Register** prior to enforcing the zone due to receiving late notifications regarding the arrival dates of the visiting dignitaries.

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because the specifics associated with the Presidential and dignitary visits were not received in time to publish an NPRM and seek comments before the subject visits. Publishing an NPRM and delaying the effective date of this rule to await public comments would be impracticable and contrary to the public interest since it would inhibit the Coast Guard's ability to fulfill its statutory missions and jeopardize the safety of the President of the United States, members of his official party, other senior government officials, and visiting dignitaries.

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

B. Basis and Purpose

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

The United States Secret Service has requested that the Coast Guard establish a temporary security zone on the waters of the East River and Bronx Kill during the arrival and departure of the President of the United States to and from Randalls and Wards Islands or Wall Street Heliport, New York. Additionally, the Coast Guard anticipates that various dignitaries will visit the United Nations Headquarters between September 17, 2014 and September 29, 2014. These visits by the President of the United States, members of his official party, senior government officials, and visiting dignitaries may incite terrorism, sabotage, or other subversive acts. Accordingly, the Captain of the Port, Sector New York, has determined that these security zones are necessary to protect said individuals.

C. Discussion of the Final Rule

For the reasons discussed above, the Captain of the Port, Sector New York, is establishing three temporary security zones. These temporary security zones will be in effect from September 17 to September 29, 2014. The security zones are located on a portion of the East River and Bronx Kill. The East River and Bronx Kill security zones cover waters in the vicinity of Wall Street Heliport, Randalls and Wards Island, and the United Nations Headquarters. Specific geographic locations for each security zone are specified in the regulatory text.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of

potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This determination is based on the limited time that vessels will be restricted from the zones. The temporary security zones will only be enforced for a limited duration from 6:00 a.m. on September 17, 2014 until 8:00 p.m. on September 29, 2014. Thus, the Coast Guard expects minimal adverse impact on mariners from the zones' enforcement based on the limited duration of the enforcement period. Moreover, the Coast Guard also expects minimal adverse impact on mariners in light of the limited geographic area affected and because mariners may request authorization from the COTP or a designated on-scene representative to transit each zone. In addition, before and during the enforcement period, the Coast Guard will issue maritime advisories widely available to users of the waterway, including verbal broadcast notice to mariners and distribute a written notice to waterway users online at *http://homeport.uscg.mil/newyork.*

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the East River and Bronx Kill in the vicinity of Wall Street Heliport, Randalls and Wards Island, and the United Nations Headquarters.

These temporary security zones will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the *Regulatory Planning and Review* section above.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of three temporary security zones and thus, is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead

to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0737 to read as follows:

§ 165.T01–0737 Security Zone, East River; Wall Street Heliport, Manhattan, NY.

(a) *Location.* Each of the three following areas is a temporary security zone:

(1) All waters of the East River within the following boundaries; east of a line drawn between approximate position 40°42′01″ N, 074°00′39″ W (east of The Battery) to 40°41′36″ N, 074°00′52″ W (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between 40°42′14.8″ N, 074°00′20.3″ W (Wall Street, Manhattan), and the northwest corner of Pier 2 North, Brooklyn (NAD 1983).

(2) All waters of the East River between the Hell Gate Rail Road Bridge (mile 8.2), and a line drawn from a point at approximate position 40°47′27.12″ N, 073°54′35.14″ W (Lawrence Point, Queens) to a point at approximate position 40° 47′52.55″ N, 073°54′35.25″ W (Port Morris Stacks), and all waters of the Bronx Kill southeast of the Bronx Kill Rail Road Bridge (mile 0.6).

(3) All waters of the East River north of a line drawn from approximate position 40°44′37″ N, 073°58′16.5″ W (the base of East 35th Street, Manhattan), to approximate position 40°44′23″ N, 073°57′44.5″ W (Hunters Point, Long Island City), and south of the Queensboro Bridge (NAD 1983).

(b) *Definitions.* For purposes of this section, ''Designated on-scene representative'' is any Coast Guard VTSNY (Vessel Traffic Service New York) watchstander or any commissioned, warrant, or petty officer who has been designated by the COTP to act on the COTP's behalf. A designated on-scene representative may be on a Coast Guard vessel, or onboard a federal, state, or local agency vessel that is authorized to act in support of the Coast Guard. ''Dignitary'' means the President or Vice President of the United States, or visiting heads of foreign states or governments.

(c) *Effective and enforcement period.* This section is effective and will be subject to enforcement from 6:00 a.m. on September 17, 2014 until 8:00 p.m. on September 29, 2014.

(d) *Regulations.* In accordance with the general regulations in 33 CFR 165.33, no person or vessel may enter or move within the security zone created by this section unless granted permission to do so by the COTP or a designated on-scene representative. Entry, transit, or anchoring within the security zone described in paragraph (a) of this section is prohibited unless authorized by the COTP.

(e) *Notice.* The COTP will provide notice of the establishment and enforcement of these security zones in accordance with 33 CFR 165.7.

(f) Vessel operators given permission to enter or operate in a security zone must comply with all directions given to them by the COTP or a designated on-scene representative. Those vessels may be required to anchor or moor up to a waterfront facility.

(g) Vessel operators desiring to enter or operate within a security zone shall telephone the COTP at 718–354–4356 or a designated on-scene representative via VHF channel 16 to obtain permission to do so.

(h) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: September 8, 2014.

G. Loebl,

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

[FR Doc. 2014–22850 Filed 9–24–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0512; FRL–9915–35–Region 9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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 South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from boilers, steam generators, and process heaters. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on November 24, 2014 without further notice, unless EPA receives adverse comments by October 27, 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–2014–0512, 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: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resource Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended	Submitted
SCAQMD	1146	Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	11/01/13	05/13/14
SCAQMD	1146.1	Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	11/01/13	05/13/14

On June 18, 2014, EPA determined that the submittal for SCAQMD Rules 1146 and 1146.1 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved earlier versions of Rule 1146 and 1146.1 into the SIP on April 8, 2002 (67 FR 16640) and September 6, 1995 (60 FR 46220). The SCAQMD adopted revisions to the SIP-approved versions on September 5, 2008, CARB submitted them to us on July 20, 2010, and we proposed a simultaneous limited approval and limited disapproval of the two rules on July 8, 2011 (76 FR 40303). The proposed rulemaking was never finalized; therefore the current rule versions in the SIP are those approved on April 8, 2002 and September 6, 1995. SCAQMD has since revised their rules to address the deficiencies identified in our proposed limited approval/disapproval and CARB submitted the rule revisions to EPA on May 13, 2014.

C. What is the purpose of the submitted rule revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 1146 limits NO_X and carbon monoxide (CO) emissions from boilers, steam generators, and process heaters with a total rated heat input larger than 5 MMBtu/hour. Rule 1146.1 limits NO_X and CO from boilers, steam generators, and process heaters with a total rated heat input larger than 2 MMBtu/hour. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each NO_X or VOC major source in ozone nonattainment areas classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area classified as extreme for the 8-hour ozone NAAQS (see 40 CFR Part 81.305), so RACT is required for the area.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
3. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
4. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
5. ''NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' EPA–453/R–94–022, March 1994.
6. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' CARB, July 18, 1991.

Section 172(c)(1) of the Act requires implementation of all reasonably available control measures (RACM) as expeditiously as practicable in nonattainment areas. Because the South Coast Air Basin area is designated nonattainment for the 1997 and 2006 fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) (see 40 CFR Part 81.305), the RACM requirement in CAA section 172(c)(1) applies to this area.[1]

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, RACM, and SIP relaxations. The TSD has more information on our evaluation.

[1] EPA generally takes action on a RACM demonstration as part of our action on the State's attainment demonstration for the relevant NAAQS, based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment date in the area. *See, e.g.,* 76 FR 69928 (November 9, 2011) (final rule partially approving and partially disapproving $PM_{2.5}$ attainment plan for South Coast).

C. EPA Recommendations To Further Improve the Rules

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant 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 rules. If we receive adverse comments by October 27, 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 rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

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 law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

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

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

Dated: July 25, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(441) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(441) New and amended regulations for the following APCDs were submitted on May 13, 2014 by the Governor's Designee.

(i) Incorporation by Reference.

(A) South Coast Air Quality Management District.

(1) Rule 1146, ''Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' amended November 1, 2013.

(2) Rule 1146.1, ''Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers,

Steam Generators, and Process Heaters,'' amended November 1, 2013.

* * * * *

[FR Doc. 2014–22482 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0297; FRL–9912–69–Region 9]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). This revision concerns particulate matter (PM) emissions from incinerators, burn-off ovens and crematories. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on November 24, 2014 without further notice, unless EPA receives adverse comments by October 27, 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–2013–0297, 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: Idalia Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov*.

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

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I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
MCAQD	313	Incinerators, Burn-Off Ovens and Crematories	05/09/12	08/27/12

On February 27, 2013, the submittal for MCAQD Rule 313 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

The MCAQD adopted an earlier version of Rule 313 on July 13, 1988 and ADEQ submitted it to us on January 4, 1990. EPA never took action on this version of the rule. While we can only act on the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rule?

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. Rule 313 limits PM emissions from incinerators, burn-off ovens and crematories through a combination of emission standards and work practices. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, areas designated and classified as moderate nonattainment for PM–10 must implement Reasonably Available Control Measures (RACM), and areas designated and classified as serious nonattainment for PM–10 must implement Best Available Control

Measures (BACM) (see CAA sections 189(a)(1) and 189(b)(1)). The MCAQD regulates a PM–10 nonattainment area classified as serious (see 40 CFR Part 81.303).

Guidance and policy documents that we used to evaluate this rule include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).
5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant requirements and policy regarding enforceability, BACM and SIP revisions. The TSD has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rule

The TSD describes additional revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant 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 rule. If we receive adverse comments by October 27, 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 the rule 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 law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 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.

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 adding paragraph (c)(163) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(163) The following plan was submitted on August 27, 2012 by the Governor's Designee.

(i) Incorporation by Reference.

(A) Maricopa County Air Quality Department.

(*1*) Rule 313, ''Incinerators, Burn-Off Ovens and Crematories,'' revised May 9, 2012.

* * * * *

[FR Doc. 2014–22743 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2009–0596; FRL–9916–62–OW]

RIN 2040–AF50

Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Withdrawal

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its withdrawal of federal water quality standards applicable to waters of the state of Florida now that Florida has adopted and EPA has approved relevant state standards. On December 6, 2010, EPA published a rule finalizing numeric nutrient standards for Florida's lakes, springs, and flowing waters outside of the South Florida Nutrient Watershed Region. The EPA established these water quality standards to protect Florida's Class I and III freshwaters from nitrogen and phosphorus pollution. On November 30, 2012, June 27, 2013, and September 26, 2013, EPA approved numeric nutrient standards adopted by the state of Florida for certain waters in the state.

Some of the water body types and provisions covered by state-adopted water quality standards were also included in EPA's final inland waters rule (criteria for Florida's lakes and springs, approaches to protect downstream lakes, and a provision for developing Site-Specific Alternative Criteria). The EPA is now withdrawing the overlapping federally-promulgated water quality standards to allow Florida to implement its state-adopted, EPA-approved water quality standards to address nutrient pollution in Florida's waters. Additionally, this rule serves as final notice that EPA is not finalizing three 2012 federal proposed rules related to nutrient pollution in Florida.

DATES: This final rule is effective on October 27, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–OW–2009–0596. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information of which disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, Attention: Docket ID No. EPA–HQ–OW–2009–0596. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202–566–1744. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Erica Fleisig, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number 202–566–1057; email address: *fleisig.erica@epa.gov.*

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

I. General Information
- A. Which water bodies are affected by this action?
- B. What entities may be affected by this action?
- C. How can I get copies of this document and other related information?

II. Background
- A. Background on EPA's Inland Rule, Amended Determinations, and Approval of State Criteria
- B. 2014 District Court Ruling and Modification of Consent Decree
- C. Summary of and Response to Public Comments on the Proposed Rule
- D. Withdrawal of Federal Criteria for Lakes, Springs, and DPVs

III. Statutory and Executive Order Reviews
- A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132 (Federalism)
- F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
- G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
- H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
- I. National Technology Transfer Advancement Act of 1995
- J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)
- K. Congressional Review Act

I. General Information

A. Which water bodies are affected by this action?

In this final rule, EPA is withdrawing federally promulgated water quality standards (WQS) from a group of inland waters of the United States within Florida. Specifically, as defined below and in EPA's December 6, 2010 final inland waters rule (40 CFR 131.43), EPA is withdrawing the federal criteria for Florida's Class I and III [1] freshwater lakes and springs, as well as downstream protection values (DPVs) to protect downstream lakes and a provision for developing site-specific alternative criteria (SSAC) in all water bodies.

The EPA's final inland waters rule defined ''Predominantly fresh waters'' to mean surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter (mg/L). The EPA defined ''Lake'' as a slow-moving or standing body of freshwater that occupies an inland basin that is not a stream, spring, or wetland. Finally, EPA defined ''Spring'' as a site at which ground water flows through a natural

[1] According to Subsection 62–302.400(1), Florida Administrative Code (F.A.C.):

Class I Potable Water Supplies.

Class III Fish Consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife.

opening in the ground onto the land surface or into a body of surface water.

B. What entities may be affected by this action?

This action withdraws federal WQS applicable to certain waters in Florida for which the state has adopted criteria that EPA has determined are consistent with the Clean Water Act (CWA) and EPA's implementing regulations. Citizens concerned with water quality, as well as the state of Florida, may be interested in this rulemaking. Also, entities discharging nitrogen or phosphorus to waters of Florida may be interested in this rulemaking because WQS are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

C. How can I get copies of this document and other related information?

1. *Docket.* The EPA has established an official public docket for this action under Docket Id. No. EPA–HQ–OW–2009–0596. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OW Docket, William Jefferson Clinton West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.regulations.gov* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.C(1).

II. Background

A. Background on EPA's Inland Rule, Amended Determinations, and Approval of State Criteria

On December 6, 2010, pursuant to a January 14, 2009 EPA determination and December 30, 2009 consent decree, EPA published the inland waters rule to establish numeric nutrient criteria for Florida's lakes, springs, and flowing waters outside of the South Florida Nutrient Watershed Region [2]. These criteria also included three approaches for deriving DPVs, applicable to flowing waters at the point where they enter downstream lakes, which would ensure protection of downstream lakes as required by EPA's implementing regulations (40 CFR 131.10(b)).

On November 30, 2012, EPA amended its January 14, 2009 determination stating that numeric criteria for downstream protection are not necessary to meet CWA requirements in Florida. With the additional clarification provided in Florida's ''Implementation of Florida's Numeric Nutrient Standards'' rule-referenced document on the scope of waters covered by state-adopted numeric nutrient criteria, EPA amended its January 2009 determination for a second time on June 28, 2013, concluding that numeric nutrient criteria are not necessary for a limited number of waters in the state of Florida (specifically, flowing waters in the South Florida Region, marine lakes, tidally-influenced flowing waters, and conveyances primarily used for water management purposes with marginal or poor stream habitat components).

These actions, coupled with EPA's November 30, 2012, June 27, 2013, and September 26, 2013 approvals of Florida's numeric nutrient criteria, result in Florida having EPA-approved numeric nutrient criteria for all fresh water lakes, springs, estuaries and coastal waters, and the majority of flowing waters in the state.

B. 2014 District Court Ruling and Modification of Consent Decree

On January 7, 2014, the U.S. District Court for the Northern District of Florida granted an EPA motion to modify the consent decree (Case No. 4:08-cv-324–RH, *Florida Wildlife Fed'n* v. *McCarthy,* 2014 WL 51360 (N.D. Fla. Jan. 7, 2014)). As a result of this ruling, EPA is no longer obligated to promulgate numeric nutrient criteria for any of Florida's waters, and will, therefore, not be finalizing its November 30, 2012 federal proposed rules addressing Florida's estuaries and coastal waters, inland waters in the South Florida Nutrient Watershed Region, and the remanded portions of the inland waters rule (77 FR 74923 and 77 FR 74985, December 18, 2012). In addition, EPA will no longer be finalizing its December 14, 2012 proposal to temporarily stay portions of the inland waters rule. The EPA can now withdraw already promulgated federal criteria so Florida's nutrient criteria can take effect.

For more specifics on the Agency and court actions leading to this rule, refer to the following:

EPA Determination Regarding Florida and Consent Decree: http://water.epa.gov/lawsregs/rulesregs/florida_consent.cfm
Florida Adoption of Numeric Nutrient Criteria in 2012 and EPA Approval: http://www2.epa.gov/aboutepa/epa-florida
EPA's 2012 Proposed Rulemaking: http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm
2013 EPA and FDEP Agreement in Principle and Path Forward: http://content.govdelivery.com/bulletins/gd/FLDEP–713cfb

C. Summary of and Response to Public Comments on the Proposed Rule

The EPA received 12 comments on the proposed withdrawal of federal criteria for lakes, springs, and downstream protection values for the state of Florida (79 FR 18494, April 2, 2014). Eight of the commenters supported the proposal to withdraw federal water quality standards in Florida, arguing: (a) The primacy for establishing water quality standards lies with the states, (b) EPA's approval of Florida's water quality standards eliminates the need for federal standards, and (c) the U.S. District Court's January 7, 2014 order relieves EPA of the obligation to finalize numeric nutrient criteria within the state of Florida.

The EPA agrees that the basis to withdraw (and not finalize) federal numeric nutrient criteria in the state of Florida is justified by the following: (1) EPA's November 30, 2012, June 27, 2013, and September 26, 2013 approvals of Florida-adopted numeric nutrient criteria and other water quality standards, (2) EPA's November 30, 2012

[2] EPA defined the South Florida Nutrient Watershed Region as the area south of Lake Okeechobee, the Caloosahatchee River watershed (including Estero Bay) to the west of Lake Okeechobee, and the St. Lucie watershed to the east of Lake Okeechobee.

and June 28, 2013 amended Clean Water Act section 303(c)(4)(B) determinations, and (3) the U.S. District Court's January 7, 2014 order modifying the consent decree to relieve EPA of the obligation to finalize numeric nutrient criteria for various waters in Florida. These three items are described in more detail in sections II.A and II.B of this rule.

The EPA received four comments requesting that federal water quality standards for nutrients remain in effect in the state of Florida, stating that aquatic resources in the state have experienced detrimental effects resulting from nitrogen and phosphorus pollution and Florida's water quality standards will be insufficient to address the problem. The EPA disagrees that federal numeric nutrient standards are necessary now that Florida has adopted and EPA has approved state standards to address nitrogen and phosphorus pollution. The Clean Water Act assigns to the states the primary authority for setting water quality standards. The EPA's role is largely one of oversight, in which it reviews and approves or disapproves a state's new or revised water quality standards as they are adopted and submitted to EPA. Florida now has state-adopted, EPA-approved criteria for lakes and springs that are applicable for Clean Water Act purposes. Thus there is no need for overlapping federal criteria for such waters.

One comment requested that EPA not relinquish oversight authority of Florida's water quality standards. Withdrawal of EPA's federal water quality standards does not mean that EPA is relinquishing its Clean Water Act oversight authority in Florida. Under section 303(d) of the Clean Water Act, monitoring data as well as other information must be used by the states every two years to develop a list of waters that will not meet water quality standards for a particular pollutant. The EPA reviews and approves or disapproves state 303(d) lists, and tracks impaired waters nationally. Similarly, Florida controls water pollution by issuing National Pollutant Discharge Elimination System (NPDES) permits to point sources that discharge pollutants into waters of the United States. The EPA retains oversight authority for such permits, pursuant to section 402(d) of the CWA and 40 CFR 123.44(a), including the authority to review and comment on the permits before they are finalized.

One commenter argued that EPA should not withdraw its federal standards because the U.S. District Court's January 7, 2014 ruling on the modification of the 2009 consent decree has been appealed to the U.S. Circuit Court for the 11th Circuit. The EPA recognizes that a decision from the Court of Appeals may affect that District Court decision and may make it necessary for the Agency to reconsider its obligations pursuant to the original January 14, 2009 necessity determination and ensuing consent decree entered by the U.S. District Court on December 30, 2009.

Finally, several of the 12 comment letters that EPA received on this rule included comments and attachments that addressed the content, scope, or protectiveness of Florida's water quality standards. These comments are directed at whether EPA should have reached the decisions that serve, in part, as the basis for EPA withdrawing its federal water quality standards in Florida. The EPA considered substantially similar issues as those raised in the comments in deciding to approve Florida's new or revised water quality standards and to amend its Clean Water Act section 303(c)(4)(B) determination. Since these comments address EPA's underlying decisions, rather than whether EPA should withdraw its federal standards in light of those decisions, the comments are outside the scope of this action and, therefore, EPA did not address them.

D. Withdrawal of Federal Criteria for Lakes, Springs, and DPVs

Florida now has state-adopted, EPA-approved criteria for lakes and springs that are applicable for CWA purposes. Thus there is no need for overlapping federal criteria for such waters. With respect to federal DPVs, EPA determined on November 30, 2012 that numeric criteria for downstream protection are not necessary in Florida and that same day approved Florida's quantitative downstream protection approach. Finally, since Florida has its own process for developing SSAC, a federal SSAC process is unnecessary. Thus, EPA is withdrawing the federal criteria for lakes and springs and federal DPVs that took effect on January 6, 2013, and the federal SSAC provision that went into effect on February 4, 2011.

III. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is, therefore, not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This rule does not impose any new information-collection burden because it is administratively withdrawing federal requirements that are no longer needed in Florida. It does not include any information-collection, reporting, or recordkeeping requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201 (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule removes federally-promulgated water quality standards addressing nutrient pollution in Florida in order to allow Florida to implement its state-

adopted, EPA-approved water quality standards.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule removes federally-promulgated water quality standards addressing nutrient pollution in Florida in order to allow Florida to implement its state-adopted, EPA-approved water quality standards. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule imposes no regulatory requirements or costs on any tribal government. It does not have substantial direct effects on tribal governments, the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

This rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because: (1) Florida's WQS apply to waters across the state, and thus this action will not disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science, that Florida's adopted and EPA-approved criteria are protective of human health and aquatic life.

K. Congressional Review Act

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. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. 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). This rule will be effective on October 27, 2014.

List of Subjects in 40 CFR Part 131

Environmental protection, Florida, Nitrogen and phosphorus pollution, Numeric nutrient criteria, Nutrients, Water quality standards.

Dated: September 17, 2014.

Gina McCarthy,

Administrator.

For the reasons set out in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

§ 131.43 [Removed]

■ 2. Remove § 131.43.

[FR Doc. 2014–22835 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0268; FRL–9915–78]

Thiabendazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of thiabendazole in or on multiple commodities which are identified and discussed later in this document. Syngenta Crop Protection, LLC., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 25, 2014. Objections and requests for hearings must be received on or before November 24, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0268, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs

Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2013–0268 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 24, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2013–0268, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of August 1, 2014 (79 FR 44729) (FRL–9911–67), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3F8166) by Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300. The petition requested that 40 CFR 180.242 be amended by establishing tolerances for residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) and its metabolite benzimidazole, in or on vegetable, root (except sugar beet), subgroup 1B at 0.02 ppm; radish, tops at 0.02 ppm; onion, bulb, subgroup 3–07A at 0.02 ppm; *Brassica,* head and stem, subgroup 5–A at 0.02 ppm; vegetable, cucurbit group 9 at 0.02 ppm; barley, grain at 0.05 ppm; barley, hay at 0.30 ppm; barley, straw at 0.30 ppm; wheat, grain at 0.05 ppm; wheat, straw at 0.30 ppm; wheat, hay at 0.30 ppm; wheat, forage 0.30 ppm; oats, grain at 0.05 ppm; oats, hay at 0.30 ppm; oats, straw at 0.30 ppm; oats, forage at 0.30 ppm; rye, grain at 0.05 ppm; rye, straw at 0.30 ppm; rye, forage at 0.30 ppm; triticale, grain at 0.05 ppm; triticale, hay at 0.30 ppm; triticale, straw at 0.30 ppm; triticale, forage at 0.30 ppm; alfalfa, forage at 0.02 ppm; alfalfa, hay at 0.02 ppm; and spinach at 0.02 ppm. That document referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

The Notice of Filing (NOF) published on August 1, 2014 (79 FR 44729) supersedes an earlier NOF for the same petition for thiabendazole that was issued in the **Federal Register** of June 5, 2013 (78 FR 33785) (FRL–9386–2).

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

The thyroid and liver (centrilobular hypertrophy) are the primary target organs of thiabendazole toxicity. Thiabendazole produced a treatment-related increase in absolute and relative liver weights in both sexes in a chronic dog study. Other treatment related effects reported were histopathological changes in kidneys (hyperplasia of transitional epithelium, tubular degeneration) and spleen (congested and pigmented) in rats. Additional toxic effects observed in these studies included decreases in body weight and/or food consumption. The available database indicates that thiabendazole is not neurotoxic. In an acute neurotoxicity rat study (ACN), decreases in the Functional Observation Battery (FOB) (reduced body temperature in males, reduced rearing in females, and reduced locomotor activity in males and females at time of peak effect (approximately 3 hours post-dose) were seen without morphological or histopathological effects on the brain. Thiabendazole was not neurotoxic in rats in a subchronic neurotoxicity study. In a 21-day dermal toxicity study in rats, no systemic or dermal effects were seen at the limit dose (1,000 milligram/kilogram/day (mg/kg/day)). In prenatal developmental toxicity studies in rats, rabbits, and mice and in the 2-generation reproduction study in rats, effects in the fetuses or neonates occurred at or above doses that caused maternal or parental toxicity.

In the adult animal, effects on the thyroid following thiabendazole exposure were observed at a dose lower than the neurotoxicity dose observed in the ACN. There are no thiabendazole data with which to determine whether this is also the case in the fetus/postnatal animal. Based on a weight of evidence (WOE) approach considering all the available hazard and exposure information for thiabendazole, the Agency concluded that a developmental thyroid toxicity study is required since there is clear evidence of thyroid toxicity in adult animals and thus a concern for potential toxicity during pregnancy, infancy and childhood. The developmental thyroid toxicity study will better address this concern than a developmental neurotoxicity study.

In an immunotoxicity study, thiabendazole produced significant decreased spleen activity at the highest dose tested (5,000 ppm equivalent to 1,027 mg/kg/day) which also produced significant increased liver weight.

The genetic toxicology studies on thiabendazole indicate that it is not genotoxic in *in vivo* and *in vitro* assays. Review of literature studies indicated that thiabendazole has weak aneugenic activity in both somatic and germinal cells. In a chronic rat study, thiabendazole induced thyroid tumors in males only. Thiabendazole did not induce tumors in mice. Thiabendazole has been classified by the Agency as ''likely to be carcinogenic at doses high enough to cause a disturbance of the thyroid hormonal balance but not likely to be carcinogenic at doses lower than those which could cause a disturbance of this hormonal balance.'' Taking into account all of this information, the Agency has determined that quantification of risk using a non-linear approach (i.e., chronic population adjusted dose (cPAD)) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to thiabendazole.

Specific information on the studies received and the nature of the adverse effects caused by thiabendazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''Thiabendazole: Human Health Risk Assessment for the Requested Increase in the Currently Registered Seed Treatment Use Rate on Soybeans and the New Section 3 Uses of Thiabendazole for Seed Treatment on Assorted Vegetables and Small Grains Including: Vegetable, Root (Except Sugar Beet), Subgroup 1B; Radish Tops; Onion, Bulb, Subgroup 3–07A; *Brassica,* Head and Stem, Subgroup 5A; Vegetable, Cucurbit Group 9; Alfalfa; Spinach; and a Number of Small Grains (Barley, Oats, Rye, and Triticale)'' on pages 45–53 in docket ID number EPA–HQ–OPP–2013–0268.

B. Toxicological Points of Departure/Levels of Concern

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

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

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIABENDAZOLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (general population including females 13–49 years of age and children).	NOAEL = 50 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = UF_{DB} 10x	Acute RfD = 0.05 mg/kg/day. aPAD = 0.05 mg/kg/day	Acute neurotoxicity study. LOAEL = 200 mg/kg based decreases in the FOB (reduced body temperature in males, and reduced rearing in females, reduced locomotor activity in males and females, at time of peak effect (approximately 3 hours post-dose). Reduced body weight gain and food consumption occurred on day 1.
Chronic dietary (all populations)	NOAEL= 10 mg/kg/day UF_A = 3x UF_H = 10x FQPA SF = UF_{DB} 10x	Chronic RfD = 0.033 mg/kg/day. cPAD = 0.033 mg/kg/day	2-year chronic carcinogenicity in the rat. Chronic LOAEL = 30 mg/kg/day based on decreased body weight gains and liver hypertrophy. Thiabendazole induced thyroid adenomas in male rats at dosages of ≥30 mg/kg/day. Supported by subchronic toxicity rat study. Subchronic LOAEL = 40 mg/kg/based on reduced body weight and body weight gains and histopathological changes in the bone marrow (erythroid hyperplasia), liver (centrilobular hypertrophy), thyroid (follicular cell hypertrophy) and spleen (pigmented).
Incidental oral short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL= 10 mg/kg/day UF_A = 3x UF_H = 10x FQPA SF = 10x UF_{DB}	LOC for MOE = 300	Subchronic oral toxicity study—rat. LOAEL = 40 mg/kg/day based on reduced body weight gains and histopathological changes in the bone marrow, liver and thyroid.
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	Dermal (or oral) study ... NOAEL = 10 mg/kg/day (dermal absorption rate = 0.5%. UF_A = 3x UF_H = 10x FQPA SF = 10x UF_{DB}	LOC for MOE = 300	Subchronic oral toxicity study—rat. LOAEL = 40 mg/kg/day based on reduced body weight gains and histopathological changes in the bone marrow, liver and thyroid.
Inhalation short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL= 10 mg/kg/day UF_A = 3x UF_H = 10x FQPA SF = 10x UF_{DB}	LOC for MOE = 300	Subchronic oral toxicity study—rat. LOAEL = 40 mg/kg/day based on reduced body weight gains and histopathological changes in the bone marrow, liver and thyroid.
Cancer (oral, dermal, inhalation)	Likely to be carcinogenic at doses high enough to cause a disturbance of the thyroid hormonal balance but not likely to be carcinogenic at doses lower that those which could cause a disturbance of this hormonal balance. Quantification of risk using a non-linear approach (i.e., cPAD) will adequately account for all chronic toxicity, including carcinogenicity that could result from exposure to thiabendazole.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_{DB} = to account for the absence of data or other data deficiency. UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thiabendazole, EPA considered exposure under the petitioned-for tolerances as well as all existing thiabendazole tolerances in 40 CFR 180.242. EPA assessed dietary exposures from thiabendazole in food as follows:

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

Such effects were identified for thiabendazole. In estimating acute dietary exposure, EPA used food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA used a refined acute probabilistic dietary exposure assessment for thiabendazole using both anticipated residue estimates based on USDA Pesticide Data Program (PDP) monitoring data and percent crop treated (PCT) information for soybean and wheat and assumed 100 PCT for all other commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used food consumption data from the USDA NHANES/WWEIA. As to residue levels in food, EPA used a refined chronic probabilistic dietary exposure assessment for thiabendazole using both anticipated residue estimates based on USDA PDP monitoring data and PCT information for soybean and wheat and assumed 100 PCT for all other commodities.

iii. *Cancer.* EPA determines whether quantitative cancer exposure and risk assessments are appropriate for a food-use pesticide based on the weight of the evidence from cancer studies and other relevant data. Cancer risk is quantified using a linear or nonlinear approach. If sufficient information on the carcinogenic mode of action is available, a threshold or nonlinear approach is used and a cancer RfD is calculated based on an earlier noncancer key event. If carcinogenic mode of action data are not available, or if the mode of action

data determines a mutagenic mode of action, a default linear cancer slope factor approach is utilized. Based on the data summarized in Unit III.A., EPA has concluded that a nonlinear RfD approach is appropriate for assessing cancer risk to thiabendazole. Cancer risk was assessed using the same exposure estimates as discussed in Unit III.C.1.ii.

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

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Acute dietary risk assessment: soybeans 2.5%; wheat 2.5%.

Chronic dietary risk assessment: soybeans 1%; wheat 1%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which thiabendazole may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiabendazole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiabendazole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the FQPA Index Reservoir Screening Tool (FIRST) and Pesticide Root Zone Model Ground Water (PRZM GW), the estimated drinking water concentrations (EDWCs) of thiabendazole for acute exposures are estimated to be 3.80 parts per billion (ppb) for surface water and 0.62 ppb for ground water and for chronic exposures are estimated to be 0.47 ppb for surface water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 3.80 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 0.47 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Thiabendazole is currently registered for use as antimicrobial ingredient in paint, sponges, carpet backing, canvas textiles, wallboard and ceiling tiles, polyurethane foam, plastics and rubber, paper, and coatings and filters used in HVAC systems. There are two antimicrobial exposure scenarios that were assessed for residential exposures: Treated paint and impregnated sponges. The other antimicrobial uses of thiabendazole (carpet backing, canvas textiles, wallboard and ceiling tiles, polyurethane foam, plastics and rubber, paper, and coatings and filters used in HVAC systems) are not expected to cause exposure in residential settings because there is no direct contact to the treated articles, the vapor pressure of thiabendazole is very low, and the unlikelihood that the treated plastics and rubbers would be used in toys.

EPA assessed residential exposure to treated paint and impregnated sponges using the following assumptions: For treated paint, residential short-term dermal and inhalation exposure to residential handlers using brush/roller application and airless sprayer application; for the impregnated sponge use, short- and intermediate-term incidental oral exposure. Thiabendazole treated sponges are limited to 600 ppm thiabendazole on a sponge. Various residue amounts may be transferred from the sponge to food contact surfaces, such as countertops and utensils/glassware, and then to food and subsequently ingested. An assessment was conducted for incidental oral exposure assuming that 100% of the thiabendazole on a treated sponge is transferred to surfaces over 20 days and that each 20 days the user would use a new sponge (5% released per day). This assumption is considered conservative because (1) sponges will generally be used much longer than 20 days; (2) it is

unlikely that 100% of the thiabendazole would be released from the sponge in such a short period; and (3) it is very unlikely that 100% of any released thiabendazole would be transferred to countertops because this assumption does not account any thiabendazole that is washed down the sink or that normally degrades. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* No evidence of increased quantitative or qualitative susceptibility was seen following *in utero* exposure to thiabendazole with rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study. There is no evidence for neurotoxicity following oral exposures to thiabendazole. Thyroid toxicity was seen following subchronic and chronic exposures to adult rats in multiple studies. There is, however, no data regarding the potential effects of thiabendazole on thyroid homeostasis in the young animals. This lack of characterization creates uncertainty with regards to potential life stage sensitivities due to exposure to thiabendazole. Therefore, the Agency is requiring a developmental thyroid assay in rats with thiabendazole. This study will better address the concern for potential thyroid toxicity in the young. Although the Agency is asking for the developmental thyroid study, EPA does not expect it to result in a lower point of departure than what the Agency is regulating from and therefore the 10X is protective. There are no residual uncertainties in the thiabendazole residue database with regards to dietary or occupational exposure. Therefore, the FQPA SF is retained at 10X in the form of a database uncertainty factor (UF_{DB}). For the acute dietary endpoint the total UF is 1,000 (an interspecies scaling factor of 10X, an intraspecies variability factor of 10X, a FQPA database uncertainty factor of 10X for lack of a developmental thyroid study). For the remaining endpoints, the combined total UF is 300 (an interspecies scaling factor of 3X, lowered from 10X for toxicodynamic reasons (rats eliminate thyroxine (a thyroid hormone) at a higher rate than humans), an intraspecies variability factor of 10X, an FQPA database uncertainty factor of 10X for lack of a developmental thyroid study was applied).

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF is retained at 10X in the form of a database uncertainty factor (UF_{DB}). That decision is based on the following findings:

i. The toxicology database for thiabendazole is complete with the exception of a developmental thyroid toxicity study. Based on a WOE approach considering all the available hazard and exposure information for thiabendazole, the Agency concluded that a developmental thyroid toxicity study is required since there is clear evidence of thyroid toxicity in adult animals and thus a concern for potential toxicity during pregnancy, infancy and childhood. The developmental thyroid toxicity study will better address this concern than a developmental neurotoxicity study. Acceptable studies are available for developmental, reproduction, chronic, subchronic, subchronic neurotoxicity and immunotoxicity.

ii. There is no indication that thiabendazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. The data submitted to the Agency, as well as those from published literature, demonstrate no increased susceptibility in rats, rabbits, or mice to *in utero* and/or early postnatal exposure to thiabendazole. In the prenatal developmental toxicity studies in rats, rabbits, and mice and in the 2-generations reproduction study in rats, developmental effects in the fetuses or neonates occurred at or above doses that caused maternal or parental toxicity. A developmental neurotoxicity study with thiabendazole was deemed not required by the Agency.

There is evidence of thyroid toxicity following subchronic and chronic exposures to rats characterized as histopathological changes in the thyroid in multiple studies in rats. Disruption of thyroid homeostasis is the initial, critical effect that may lead to adverse effects on the developing nervous system. Thus, as noted above, a developmental thyroid study is required.

iv. There are no residual uncertainties in the exposure database. The dietary risk assessment is conservative and will not underestimate dietary and/or non-dietary occupational exposure to thiabendazole. The acute and chronic dietary assessments conducted with the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM–FCID) were refined analyses. The assessments utilized anticipated residues, default processing factors, and available percent crop treated data. The DEEM analysis also used Tier 1 drinking water estimates. For these reasons it can be concluded that the DEEM–FCID analysis does not underestimate risk from acute or chronic exposure to thiabendazole. Similarly, EPA does not believe that the non-dietary occupational exposures are underestimated because they are also based on conservative assumptions, including maximum application rates, and standard values for unit exposures and acreage treated/amount handled. These assessments will not underestimate the exposure and risks posed by thiabendazole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thiabendazole will occupy 69% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiabendazole from food and water will utilize 4.7% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of thiabendazole is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Thiabendazole is currently registered for uses that could result in short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to thiabendazole.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs from the paint use of 2,000 for all population subgroups and aggregate MOEs from the sponge use of 1,400 for children 1–2 years old and 7,300 for the general population. Because EPA's level of concern for thiabendazole is a MOE of 300 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Since thiabendazole is classified as likely to be carcinogenic at doses high enough to cause a disturbance of the thyroid hormonal balance but not likely to be carcinogenic at doses lower than those which could cause a disturbance of this hormonal balance, a cancer dietary exposure assessment is not required. EPA is currently regulating chronic dietary risk with a chronic RfD that reflects a dose level below dose levels at which thyroid hormone balance is impacted and consequently is also being protective of potential carcinogenic effects.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Acceptable enforcement analytical methods are available for thiabendazole and benzimidazole in plant commodities. Four spectrophotofluorometric methods for the determination of thiabendazole are published in the Pesticide Analytical Manual (PAM) Vol. II, and a high performance liquid chromatography (HPLC) method with fluorescence detection (FLD) for the determination of benzimidazole (free and conjugated) is identified in the U.S. EPA Index of Residue Analytical Methods under thiabendazole as Study No. 93020.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for thiabendazole on any of the commodities cited in this document.

C. Revisions to Petitioned-For Tolerances

Finally, EPA has revised the tolerance expression to clarify (1) that, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of thiabendazole not specifically mentioned; and (2) that compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

V. Conclusion

Therefore, tolerances are established for residues of thiabendazole, [2-(4-thiazolyl) benzimidazole] and its metabolite benzimidazole (free and conjugated), in or on alfalfa, forage at 0.02 ppm; alfalfa, hay at 0.02 ppm; barley, grain at 0.05 ppm; barley, hay at 0.30 ppm; barley, straw at 0.30 ppm; B*rassica,* head and stem, subgroup 5A at 0.02 ppm; oat, forage at 0.30 ppm; oat, grain at 0.05 ppm; oat, hay at 0.30 ppm; oat, straw at 0.30 ppm; onion, bulb, subgroup 3–07A at 0.02 ppm; radish, tops at 0.02 ppm; rye, forage at 0.30 ppm; rye, grain at 0.05 ppm; rye, straw at 0.30 ppm; spinach at 0.02 ppm; triticale, forage at 0.30 ppm; triticale, grain at 0.05 ppm; triticale, hay at 0.30 ppm; triticale, straw at 0.30 ppm; vegetable, cucurbit, group 9 at 0.02 ppm; vegetable, root (except sugarbeet), subgroup 1B at 0.02 ppm; wheat, forage at 0.30 ppm; and wheat, hay at 0.30 ppm. In addition, the following existing tolerances are modified: wheat, grain from 1.0 ppm to 0.05 ppm; and wheat straw from 1.0 ppm to 0.30 ppm.

Also, the time-limited tolerances for beet, sugar, dried pulp; beet, sugar, roots; and beet, sugar, tops, are removed because they expired on 12/25/10.

VI. Statutory and Executive Order Reviews

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

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 18, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.242, revise paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of thiabendazole, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of thiabendazole (2-(4-thiazolyl)benzimidazole) and its metabolite benzimidazole (free and conjugated), calculated as the stoichiometric equivalent of thiabendazole, in or on the commodity.

Commodity	Parts per million
Alfalfa, forage	0.02
Alfalfa, hay	0.02
Apple, wet pomace	12.0
Avocado [1]	10.0
Banana, postharvest	3.0
Barley, grain	0.05
Barley, hay	0.30
Barley, straw	0.30
Bean, dry, seed	0.1
Brassica, head and stem, subgroup 5A	0.02
Cantaloupe [1]	15.0
Carrot, roots, postharvest	10.0
Citrus, oil	15.0
Corn, field, forage	0.01
Corn, field, grain	0.01
Corn, field, stover	0.01
Corn, pop, forage	0.01
Corn, pop, grain	0.01
Corn, pop, stover	0.01
Corn, sweet, forage	0.01
Corn, sweet, kernels plus cop with husks removed	0.01
Corn, sweet, stover	0.01
Fruit, citrus, group 10, postharvest	10.0
Fruit, pome, group 11, postharvest	5.0
Mango	10.0
Mushroom	40.0
Oats, forage	0.30
Oats, grain	0.05
Oats, hay	0.30
Oats, straw	0.30
Onion, bulb, subgroup 3–07A	0.02
Papaya, postharvest	5.0

Commodity	Parts per million
Potato, postharvest	10.0
Radish, tops	0.02
Rye, forage	0.30
Rye, grain	0.05
Rye, straw	0.30
Soybean	0.1
Spinach	0.02
Strawberry [1]	5.0
Sweet potato (postharvest to sweet potato intended only for use as seed)	0.05
Triticale, forage	0.30
Triticale, grain	0.05
Triticale, hay	0.30
Triticale, straw	0.30
Vegetable, cucurbit, group 9	0.02
Vegetable, root (except sugarbeet), subgroup 1B	0.02
Wheat, forage	0.30
Wheat, grain	0.05
Wheat, hay	0.30
Wheat, straw	0.30

[1]There are no U.S. registrations on the indicated commodity.

(2) Tolerances are established for residues of thiabendazole, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only the sum of thiabendazole (2-(4-thiazolyl)benzimidazole) and its metabolites 5-hydroxythiabendazole (free and conjugated) and benzimidazole (free and conjugated), calculated as the stoichiometric equivalent of thiabendazole, in or on the commodity.

* * * * *

[FR Doc. 2014–22833 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–9916–83–Region 6]

Withdrawal of Direct Final Rule; National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Direct Deletion of the Monroe Auto Equipment (Paragould Pit) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: On August 14, 2014, Environmental Protection Agency (EPA) published a direct final rule (79 FR 47586) and a proposed rule; notice of intent to delete (79 FR 47610) that deleted the Monroe Auto Equipment Company (Paragould Pit) site from the Superfund National Priorities List (NPL). EPA stated in the direct final rule that if EPA received adverse comments by September 15, 2014, EPA would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, EPA discovered scribal errors in the supporting documentation of the final direct rule. EPA will correct those errors in a subsequent final action based on the parallel proposal which published on August 14, 2014. EPA will not institute a second comment period on this final action. Unless adverse comments are received by September 15, 2014, the effective date of the final rule will be September 29, 2014.

DATES: *Effective:* The direct final rule published at 79 FR 47586 on August 14, 2014, is withdrawn effective September 25, 2014.

FOR FURTHER INFORMATION CONTACT: Brian Mueller, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RL); 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–7167; email address: *mueller.brian@epa.gov,*

SUPPLEMENTARY INFORMATION: The EPA Region 6 published a direct final Notice of Deletion of the Monroe Auto Equipment (Paragould Pit) Superfund Site located in Paragould, Greene County, Arkansas, from the National Priorities List (NPL) on August 14, 2014. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The NPL constitutes Appendix B of 40 CFR Part 300 as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions. The direct final deletion was published by EPA with the concurrence of the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed. EPA subsequently discovered scribal errors in the supporting documentation of the final direct rule. EPA will correct those errors in a subsequent final action based on the parallel proposal which published on August 14, 2014. We will not institute a second comment period on this final action unless adverse comments are received by September 15, 2014. If no adverse comments are received the effective date of the subsequent action will be September 29, 2014.

Dated: September 9, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014–22639 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0011; FRL–9916–84–Region 6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Direct Deletion of the Monroe Auto Equipment (Paragould Pit) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a final Notice of Deletion of the Monroe Auto Equipment (Paragould Pit) Superfund Site located in Paragould, Greene County, Arkansas, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This final deletion is being published by EPA with the concurrence of the State of Arkansas, through the Arkansas Department of Environmental Quality (ADEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This final deletion is effective September 29, 2014.

ADDRESSES: *Docket:* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. Environmental Protection Agency, Region 6; 1445 Ross Avenue, Suite 700; Dallas, Texas 75202–2733; hours of operation: Monday through Friday, 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. Contact: Brian W. Mueller (214) 665–7167.

Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118; Hours of Operation: Monday through Friday 8:00 a.m. until 4:30 p.m.

Northeast Arkansas Regional Library, located at 120 North 12th Street, Paragould, Arkansas 72450; Hours of operation: Monday through Thursday day 8:00 a.m. until 6:00 p.m., Friday 8:00 a.m. until 4:00 p.m., and Saturday 8:00 a.m. until 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Brian W. Mueller, Remedial Project Manager; U.S. Environmental Protection Agency, Region 6; Superfund Division (6SF–RL); 1445 Ross Avenue, Suite 1200; Dallas, Texas 75202–2733, (214) 665–7167; email:*mueller.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

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V. Deletion Action

I. Introduction

EPA Region 6 is publishing this final Notice of Deletion of the Monroe Auto Pit. Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR Part 300 which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 29, 2014.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Monroe Auto Pit Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to the deletion of the Site:

(1) EPA has consulted with the state of Arkansas prior to developing this direct final Notice of Deletion and the Notice of Intent for Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Arkansas Department of Environmental Quality, has concurred on this deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent for Deletion is being published in a major local newspaper, the *Paragould Daily Press.* The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Deletion of the Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

Site Background and History

The Monroe Auto Equipment (Paragould Pit) Superfund Site (CERCLIS ID ARD980864110) is located in northeastern Arkansas in an unincorporated portion of Greene County, approximately three miles southwest of Paragould, Arkansas. The site lies immediately west of Arkansas Highway 358, approximately three miles west of its intersection with U.S. Highway 49. The site lies in the Northwest Quarter of the Northeast Quarter of Section 17, Township 16 North, Range 5 East, in the Paragould West 7.5-minute quadrangle. The southwestern comer of the site is at latitude 36°01′0″ and longitude 90°34′30″. The site occupies seven (7) acres of a former sand and gravel borrow pit. The area is rural and lightly populated with private residences located immediately south, north, and northeast of the site.

Monroe Auto Equipment Company (now Tenneco Automotive, Inc.) purchased the described property for disposal of alum and lime electroplating sludge that originated from settling ponds used for the treatment of wastewater from Monroe Auto Equipment's Paragould manufacturing plant. The waste material was placed on the site from 1973 to 1978, resulting in over 10,000 cubic yards (CY) of sludge at the site in the sand and gravel pit. In July 1987, the EPA conducted a Site Assessment inspection to assess the potential for public exposure to contaminants being released from the site. Principal pollutants in groundwater identified by the EPA included solvents and degreasing agents such as 1,1-Dichloroethane (1,1–DCA), 1,2-Dichloroethene (1,2–DCE), Xylenes, and metals. As an interim action, Tenneco initiated sampling of private residential wells located within one-half mile of the site beginning in July 1987. The EPA proposed that the Site be added to the National Priorities List (NPL) on October 26, 1989 and was finalized to the NPL on August 30, 1990. On-site monitoring wells and a private drinking water well 300 feet southeast (down-gradient) of the pit are contaminated with 1,1-dichloroethane and 1,2–DCE according to tests conducted in 1987–88 by the Arkansas Department of Health and a Monroe consultant. The consultant also found arsenic, nickel, and lead in the monitoring wells. An estimated 2,100 people obtain drinking water from private wells within 3 miles of the site.

Remedial Investigation and Feasibility Study

A Potentially Responsible Party (PRP) search conducted in 1990 under CERCLA Section 104 (e) 42 U.S.C. 9604(e), indicated that Monroe Auto Equipment (Paragould Pit) was the only PRP for the site. On March 14, 1991, the EPA issued notice of an impending Remedial Investigation and Feasibility Study (RI/FS) to the PRP. Monroe Auto Equipment (Paragould Pit), now Tenneco, responded to the notice with a good faith offer to perform the RI/FS. On June 28, 1991, Monroe Auto Equipment Company entered into an Administrative Order on Consent with the EPA to conduct a RI/FS under CERCLA. The RI was completed in August 1993, and the FS was completed in April 1995. The RI/FS identified the types, quantities, and locations of contaminants found at the Site and developed ways to address the contamination. A Human Health Risk Assessment and an Ecological Risk Assessment were performed to determine the current and future effects of contaminants on human health and the environment.

Remedial Action Objectives

Remedial Action Objectives (RAOs) were developed for Site to address the contaminated soils and ground water.

Soil/Sludge

- Prevent exposure to current and future human and ecological receptors through ingestion, dermal contact, and inhalation of contaminated soil/sludge containing trichloroethylene, vinyl chloride, antimony, arsenic, beryllium, chromium VI, and lead.

Groundwater

- Prevent exposure to current and future human and ecological receptors through ingestion, dermal contact, and inhalation of contaminated groundwater containing cis-1,2-Dichloroethylene, trans-1,2-Dichloroethylene, bis(2-Ethylhexyl)phthalate, beryllium, chromium, lead, manganese.

In order to achieve these RAOs, numerical risk-based cleanup levels were established for each environmental medium based on the residential scenario.

Selected Remedy

A proposed plan for the Site was issued on July 17, 1995, presenting the preferred alternative of capping the sludge disposal area, installing a groundwater interception system (french drain), and addressing the groundwater contamination through natural attenuation, degradation and monitoring. On September 26, 1996, the Record of Decision (ROD) was issued and signed for the Site.

Remedy Modification

In February 1998, the ADPC&E (current ADEQ) signed a Consent Administrative Order directing Tenneco to conduct the Remedial Design/Remedial Action (RD/RA) under ADPC&E oversight presenting the preferred alternative of excavation and offsite disposal for the waste, contaminated soil, and contaminated sediment at the Site.

In 1999, Tenneco submitted a petition to modify the ROD to change the method of contaminated soil remediation from containment of the contaminated soil and sludge, to excavation and treatment as required by the Resource Conservation and Recovery Act for removal and disposal of contaminated soil and sludge in an off-site permitted secure Subtitle D disposal facility. The amended ROD was signed by the ADEQ on September 15, 2000, and by the EPA on November 9, 2000. The amendment to the ROD did not alter the Remedial Action Objectives established by the 1996 ROD, or the Applicable or Relevant and Appropriate Requirements listed in the 1996 ROD. The revised soil remedy did not alter the previous requirement of monitored natural attenuation of constituents in the groundwater. The new remedy was consistent with the statements and expressed wishes regarding remediation activities from nearby residents. By treatment and removal of the waste from the site, the site is available for future development. The amended soil or source remedy included: excavation of sludge and stained soils; verifying removal of impacted materials from the sludge disposal area; transporting and disposing of stained soil in a Subtitle D landfill; solidifying and stabilizing sludge material; stockpiling stabilized sludge; applying for de-listing of stabilized sludge and transporting and disposing of stabilized sludge in accordance with the results of the delisting petition.

The final remedy is detailed in the Remedial Design Submittal Quality Assurance Project Plan, Remedial Action Workplan, Remedial Design Submittal Sampling and Analysis Plan (SAP), and Remedial Design Submittal Health and Safety Plan. The final remedy represents the culmination of activities that resulted from the preliminary site investigation completed

in 1988, the RI/FS, the ROD and Amended ROD.

Remedy Components

The remedy is comprised of the following major components as stipulated in the Remedial Action Workplan:

- Excavate, segregate and stage sludge, stained soils, and overburden (clean soil) and unstained soils;
- Stockpile overburden and unstained soils for use as backfill;
- Stabilize sludge material with 5 to 10 percent lime addition;
- Analyze stained soil and solidified sludge;
- Transport and dispose of stained soil that exhibits concentrations of constituents of concern (COC) below toxicity characteristic leaching procedure (TCLP) levels and EPA Region VI Medium Specific Health Based Screening Levels in a Subtitle D landfill;
- Stockpile stabilized sludge in an on-site lined containment cell;
- Apply for de-listing of stabilized sludge;
- Verify removal of impacted materials from the sludge pit through analytical testing of the bottom and sides of the excavation area;
- Restore the site by backfilling, grading and seeding;
- Transport and dispose of stabilized sludge in accordance with the results of the de-listing petition; and
- Conduct groundwater monitoring to ensure the effectiveness of the RA.

Response Actions

Tenneco began on-site Remedial Action construction in September 1999. The soil remedial action consisted of the excavation and segregation of 14,633 cubic yards of soil and started in September 1999. Based on field calculations, a total of 3,348 cubic yards of overburden (clean fill material), 8,553 cubic yards of stained soil and 2,732 yards of sludge (prior to stabilization and consolidation) were removed during the excavation activities.

The overburden was removed, stockpiled, sampled and confirmed to meet the RA goals for soil and used as backfill. In accordance with the SAP, one grab sample was collected for every 2,000 cubic yards of overburden, unstained soil or clean backfill. A total of 8,160 cubic yards of additional soil was imported for use as backfill, yielding a total of 11,508 yards of backfill used to replace the stained soil and sludge removed from the site. The site was recontoured to provide better drainage, enabling use of a smaller amount of soil required for backfill (11,508 cubic yards backfilled as compared to 14,633 cubic yards removed). A total of seven samples were collected from the overburden and imported backfill and confirmed the backfill material met the soil remedial clean-up requirements for the Site.

The 8,553 cubic yards of stained soil was stockpiled, sampled to confirm disposal in accordance with ADEQ requirements and disposed in two Subtitle D Landfills upon confirmation of soil constituent levels. In accordance with the SAP, at a minimum, one grab sample was collected for every 500 cubic yards of stained soil. A total of 26 samples were collected from the stained soil to confirm this material met the disposal requirements for the permitted landfill. The weigh tickets from the Subtitle D Landfills confirm the disposal of the 8,553 cubic yards or 14,599 tons (1.7 tons/cubic yard) of stained soil as part of the Soil RA. A total of 11,621 tons of stained soil was transported and disposed at the Butler County Landfill in Poplar Bluff, Missouri and 2,978 tons of stained soil were transported and disposed at the Waste Management-Two Pines Landfill in North Little Rock, Arkansas.

The 2,732 cubic yards of sludge removed was stabilized with approximately 241 tons of quicklime and stockpiled in an on-site lined containment cell. In accordance with the SAP, at a minimum, one grab sample was collected for every 500 cubic yards of stabilized sludge. A total of seven samples were collected from the stabilized sludge to provide the basis for preparation of a petition for de-listing of this material. The 2,723 cubic yards of sludge removed was based on field measurements prior to stabilization. Surveying of this material after stabilization and consolidation over several months after placement in the containment cell yielded a volume of 1,798 cubic yards. A De-listing Petition (Petition) was prepared by the PRP in August 2000. The Petition was approved by EPA and subsequently by the ADEQ in an August 27, 2001 letter entitled Exclusion of F006 Waste at the Tenneco/Monroe Facility from the Definition of Hazardous Waste. Upon approval of the Petition, the 1,798 cubic yards or 3,243 tons (1.8 tons/cubic yard) of stabilized sludge was transported and disposed of at the Waste Management-Two Pines Landfill in North Little Rock, Arkansas. The bottom and sidewalls of the sludge pit excavation were extended until the visually impacted material had been removed. Prior to the collection of verification samples, an additional 1-foot of material was removed and disposed as stained soil. In accordance with the SAP, a verification soil sample was collected for every 500 square feet of sidewall or floor. A total of 81 verification samples were collected which confirmed that the excavation activities met the RA Goals for Soil at the site. In accordance with oral field instructions by the EPA Remedial Project Manager (RPM), and later included in the amendment to the ROD, the PRP excavated all of the stained soil and sludge until levels were at or below the RA Goals for Soil at the site. The stained soil that had concentrations of the COCs below the TCLP levels and the EPA Region 6's Medium Specific Health Based Screening Levels was excavated and disposed in a Subtitle D Landfill. The final shipment of stained soil was on December 16, 1999. The contractor also stabilized all of the contaminated soil and sludge which exhibited contaminant levels above the TCLP levels. The final shipment of the stabilized material was on September 13, 2001. The final inspection was conducted on September 14, 2001, and the Preliminary Close Out Report was signed on September 19, 2001.

Demonstration That Remedial Activities Met Cleanup Criteria for Soils/Sludges

The soil/sludge remedial action at the Site consisted of the sampling, excavation, solidification, and proper disposal of contaminated soils/sludges. The EPA and ADEQ reviewed the remedial action report and the construction work for compliance with quality assurance and quality control (QA/QC) protocols. Construction activities at the Site were determined to be consistent with the ROD and ROD Amendment and adhered to the approved quality assurance plan which incorporated all EPA and State requirements. Confirmatory inspections, independent testing, audits, and evaluations of materials and workmanship were performed in accordance with the technical specifications and plans. The EPA Remedial Project Manager and State regulators visited the site during construction activities to review construction progress and evaluate and review the results of QA/QC activities. No deviations or non-adherence to QA/QC protocols, or specifications were identified.

The Remedial Design contained provisions for performing sampling during all remedial activities in order to verify that remedial objectives were met, to ensure quality control and assurance for all excavation and construction activity, and to ensure protection and safety of the public, the environment, and the onsite worker. Sampling was

conducted in accordance with the Site Field Sampling Plan and all analytical results are below the established cleanup levels for a residential reuse scenario. In addition, all backfill confirmation sample results met the established cleanup levels for a residential reuse scenario. All analytical data was independently validated, and the EPA and the State determined that analytical results were accurate to the degree needed to assure satisfactory execution of the RA.

Groundwater Remedial Implementation History

Natural attenuation and monitoring was the remedy selected in the ROD to address the groundwater contamination on and offsite. The ROD amendment did not change the groundwater remedy. The ROD required the PRP to develop and implement a Groundwater Monitoring Plan (GMP) and beginning in September 2001, semiannual monitoring of eighteen (18) wells began. The PRP conducted groundwater monitoring events through March 2009. The PRP has discontinued monitoring groundwater at the Site.

The Groundwater Remedy portion of the September 26, 1996 ROD and the 2000 ROD Amendment included conducting long-term groundwater monitoring of wells at the Site and local private wells located in the vicinity of the Site. As part of the Groundwater Remedy, a Groundwater Monitoring Plan (GMP) was prepared for the Site. The GMP specified procedures to be followed for long-term groundwater monitoring to ensure compliance with the requirements of the ROD and the ROD Amendment. Tenneco initiated GMP activities in September 2001. The GMP also specified quality assurance and quality control (QA/QC) protocols for ground water sampling. The EPA Remedial Project Manager and State regulators visited the site during ground water monitoring activities to observe ground water sampling. ADEQ also took independent samples to that confirmed the results of the samples taken by the PRP. No deviations or non-adherence to QA/QC protocols, or specifications were identified.

Based on analysis of semi-annual groundwater sampling results since March 2001, a request was made and approved to reduce the number of groundwater monitoring wells and COCs included in the Site GMP. The requested revised GMP focused only on volatile organic chemicals (VOCs) at six select groundwater monitoring well locations. A request to remove the requirements for sampling of the private wells was submitted to EPA and ADEQ on March 31, 2002. The request was approved following submittal of the Private Well Report in 2004. The Private Well Report provided a summary of available information for each of the twenty-nine (29) wells and presented a comparative analysis of the analytical results from over ten (10) years of sampling the private wells relative to the maximum contaminant levels (MCLs). Based on the findings presented in the report, no VOCs were detected in any of the private wells above the MCLs over the past ten (10) years. Select inorganics, primarily lead, were detected at varying concentrations, periodically exceeding the respective MCL in select samples collected prior to 1996. These detections of lead however were within background concentration levels for the surrounding area and not believed to have resulted from contamination at the site. Based on the data review presented in the Private Well Report, none of the private wells located within one-half mile of the site have been impacted by contamination from the site.

The results of the semi-annual/annual sampling events are presented in respective Semi-Annual/Annual Sampling Reports. Based on the most recent groundwater sampling results from the site groundwater monitoring wells, presented in the March 2009 Comprehensive Summary Report Annual Groundwater Sampling Event for the Monroe Superfund Site, the concentrations of VOCs continue to remain below the remedial goals for the Site in all of the groundwater monitoring wells sampled with the approved groundwater monitoring program. The concentrations in all of the Site groundwater monitoring wells have continued to exhibit concentrations of VOCs below the remedial goals established in the ROD over the past eight semi-annual and two annual sampling events. The results of the groundwater monitoring since July 2003 confirm the effectiveness of the completed soil remedy and demonstrates site RA goals for groundwater are maintained through natural degradation and attenuation.

Operation and Maintenance

The ROD specified monitored natural attenuation as the remedy for ground water remediation based on implementation of a containment onsite of contaminated soils. The soil remedy was modified in the ROD Amendment to include removal of stained soil and sludge from the site to below the Site RA Goals for Soil. The results of groundwater monitoring since removal of the stained soil and sludge demonstrate that the natural attenuation remedy was effective and that the remedial goals for the groundwater as stated in the ROD have been achieved. Groundwater monitoring at the Site was discontinued after the Second Five Year Review in 2009. The monitoring wells were properly plugged and abandoned in 2010. There are no operation and maintenance activities required at the Site.

Institutional Controls

The ROD required that restrictions on the use of ground water be placed on the Site. A deed notice/covenant identifying restrictions on the Site was filed by the PRP with the Greene County Clerk in November 2003. The covenant prohibited the installation of any private, commercial, industrial or other water well or other device for the removal or extraction of subsurface water. The only ground water allowed to be extracted from beneath the property is for the purpose or purposes associated with environmental sampling and testing of the property. The RA goals for the groundwater have been met and the monitor wells have been removed. No restrictions on the use or sale of the property are necessary and the existing restrictions may be removed by the PRP.

Five-Year Review

Five-Year Reviews were statutorily required because hazardous substances, pollutants, or contaminants remained at the Site above levels that allow for unlimited use and unrestricted exposure. There have been two five-year reviews conducted at the Site, with the last one in 2009. The United States Environmental Protection Agency (EPA) Region 6 and the ADEQ conducted the second five-year review for the response action implemented at the Monroe Auto Pit Superfund Site. Also participating in the five-year inspection were representatives of Tenneco.

The 2009 Five Year Review found that all hazardous substances in the groundwater had naturally attenuated at the Site below clean up levels. The remedial action of natural attenuation for the groundwater is completed and no hazardous substances, pollutants or contaminants remain above levels that could prevent unlimited use and unrestricted exposure. Per the 2009 Five Year Review, unlimited use and unrestricted exposure has been achieved: therefore, additional Five Year Reviews will not be required for the Site after its deletion from the NPL.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k) and CERCLA Section 117, 42 U.S.C. 9617. Throughout the Site's history, the community has been interested and involved with Site activity. The EPA has kept the community and other interested parties updated on Site activities through informational meetings, fact sheets, and public meetings. Documents in the deletion docket which the EPA relied on for recommendation for the deletion from the NPL are available to the public in the information repositories, and a notice of availability of the Notice of Intent for Deletion has been published in the *Paragould Daily Press* to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

Determination That the Criteria for Deletion Have Been Met

The implemented remedy achieves the degree of cleanup specified in the ROD and ROD Amendment for all pathways of exposure. All selected remedial action objectives and clean-up goals are consistent with agency policy and guidance. No further Superfund responses are needed to protect human health and the environment at the Site.

In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate

V. Deletion Action

The EPA, with concurrence of the State of Arkansas, through the ADEQ, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 29, 2014.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 6, 2014.

James McDonald,

Acting Regional Administrator, Region 6.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the entry ''AR'', ''Monroe Auto Equipment (Paragould Pit)'', ''Paragould''

[FR Doc. 2014–22638 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

41 CFR Parts 61–250 and 61–300

RIN 1293–AA20

Annual Report From Federal Contractors

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Final rule.

SUMMARY: The Veterans' Employment and Training Service (VETS or the Agency) is issuing this Final Rule to revise the regulations implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA). Generally, VEVRAA requires Federal contractors and subcontractors to annually report on the total number of their employees who belong to the categories of veterans protected under VEVRAA, and the total number of those protected veterans who were hired during the period covered by the report.

This Final Rule rescinds the regulations that prescribe the reporting requirements applicable to Government contracts and subcontracts entered into before December 1, 2003, because those regulations are now obsolete. In addition, this Final Rule revises the regulations that prescribe the reporting requirements applicable to Government contracts and subcontracts of $100,000 or more entered into or modified after December 1, 2003, by changing the manner in which Federal contractors report on their employment of veterans. The Final Rule renames the annual report required under those regulations the Federal Contractor Veterans' Employment Report VETS–4212. Further, the Final Rule revises regulations that address the definitions of terms used in the regulations, the text of the reporting requirements clause included in Government contracts and subcontracts, and the methods of filing the annual report on veterans' employment.

Contractors and subcontractors will have to comply with the reporting requirements in the Final Rule beginning with the annual report filed in 2015.

DATES: *Effective Date:* This rule is effective October 27, 2014.

FOR FURTHER INFORMATION CONTACT: Kenan Torrans, Deputy Director for Compliance and Investigations, Office of National Programs, Veterans' Employment and Training Service, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–1312, Washington, DC 20210, *torrans.william@dol.gov,* (202) 693–4731 (this is not a toll-free number).

For press inquiries, contact Egan Reich, Office of Public Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–1032, Washington, DC 20210, *reich.egan@dol.gov,* (202) 693–4960 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On February 24, 2014, the Department of Labor's Veterans' Employment and Training Service (VETS) issued a notice of proposed rulemaking (NPRM) to revise the regulations implementing the reporting requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212(d). VETS invited interested parties to provide written comments on the proposed regulations and related specific issues identified in the NPRM. The written comment period closed on April 25, 2014, and VETS considered all timely comments received in response to the proposed regulations.

VETS received timely comments from five sources. Commenters included: an organization representing human resource professionals, three organizations representing Federal contractors and subcontractors, and an organization representing human resource professionals and related groups in employment law compliance matters. The comments comprised several concerns addressed to approximately eight topics set forth in VETS' NPRM. Several comments were more general plaudits or criticisms; the majority specifically addressed discrete issues contained in VETS' proposed

rule. VETS appreciates the comments, ideas, and suggestions received.

II. Statutory Authority

VEVRAA authorizes the Secretary of Labor to prescribe regulations implementing the reporting requirements of the law that apply to Federal contractors and subcontractors.[1] 38 U.S.C. 4212(d)(1). VETS issues these regulations under that authority in order to guide contractors concerning their annual reporting obligations.

III. Background on the VEVRAA Reporting Requirement

VEVRAA obligates contractors that are subject to the statute's affirmative action provisions codified at 38 U.S.C. 4212(a) to report annually to the Secretary of Labor on the number of employees and new hires protected under the statute. In 2008, VETS promulgated two sets of regulations necessitated by the Jobs for Veterans Act (JVA) (Pub. L. 107–288), implementing statutory reporting requirements under VEVRAA.

Prior to the JVA amendments, VEVRAA required contractors to report annually the number of employees in their workforces, by job category and hiring location, and the number of new hires during the reporting period, who are special disabled veterans, veterans of the Vietnam era, recently separated veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. The part 61–250 regulations implement these reporting requirements and apply to contracts of $25,000 or more entered into before December 1, 2003, unless they were modified on or after that date and have a value of $100,000 or more. The existing part 61–250 regulations require covered contractors to use the VETS–100 Federal Contractor Veterans' Employment Report (VETS–100 Report), and provide data regarding veterans' employment in the four categories of veterans protected under VEVRAA pre-JVA and in the nine occupational categories used in the EEO–1 Standard Employer Information Report (EEO–1 Report), prior to the revision of the EEO–1 Report in 2007.

The JVA amendments increased the contract threshold amount that triggers the reporting requirement from $25,000 to $100,000, and changed the categories of veterans protected under the Act. As amended by the JVA, VEVRAA requires contractors to report the number of employees in their workforces, by job category and hiring location, and the number of new hires during the reporting period, who are ''qualified covered veterans.'' 38 U.S.C. 4212(d)(1). The statute defines ''covered veteran'' as any of the following veterans: (1) Disabled veterans; (2) Armed Forces service medal veterans; (3) veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized; and (4) recently separated veterans. 38 U.S.C. 4212(a)(3). The JVA reporting requirements are implemented by the regulations in part 61–300 and apply to Government contracts of $100,000 or more entered into on or after December 1, 2003. A contract that was entered into before December 1, 2003, is subject to the part 61–300 regulations if it was modified on or after December 1, 2003, and meets the contract dollar threshold of $100,000 or more.

The regulations in part 61–300 require contractors to use the Federal Contractor Veterans' Employment Report VETS–100A (VETS–100A Report) to provide the specified information on veterans' employment. Specifically, the VETS–100A Report, like the VETS–100 Report, requires contractors to report data on veterans' employment by the 10 occupational categories and subcategories found on the revised EEO–1 Report, and by each of the four categories of veterans protected under the JVA amendments.

This Final Rule eases the reporting burden on Federal contractors and subcontractors, standardizes definitional terminology with the existing EEO–1 Report, renames the required report the ''VETS–4212 Report'' and provides a more useful tool for employers to assess the effectiveness of their applicable affirmative action programs.

IV. Plain Language

VETS wrote the rule in the more personal style advocated by the Presidential Memorandum on Plain Language. ''Plain language'' encourages the use of:

- Personal pronouns (we and you);
- Sentences in the active voice; and
- A greater use of headings, lists, and questions.

V. Section-by-Section Summary of the Final Rule and Discussion of Comments

This preamble sets out VETS' interpretation of the reporting requirement under VEVRAA, section-by-section. The preamble generally follows the outline of the rule, which in turn follows the outline of the reporting requirements in VEVRAA. Within each section of the preamble, VETS has noted and responded to those comments that are addressed to that particular section of the rule. However, before setting out the section-by-section analysis, VETS will first acknowledge and respond to some broader comments that were not addressed to a specific proposal.

A. General Comments

VETS received one comment suggesting that it should publicly disclose aggregate protected veteran workforce data and related percentages of protected veterans in the Federal contractor workforce, using the data reported by Federal contractors under the VETS–4212 Report, so as to be useful to contractors when assessing the effectiveness of their veteran outreach programs, in accordance with the Office of Federal Contract Compliance Programs' (OFCCP) VEVRAA regulations at 41 CFR part 60–300, *et seq*. VETS acknowledges the comment, and intends for Federal contractors to use data showing the total number of protected veterans employed and newly hired during the reporting period to monitor the success of their recruitment and outreach efforts in attracting protected veterans. VETS also concurs with the suggestion of disclosure, and notes that information currently collected from the VETS–100 and the VETS–100A reports is available to the public on the Data.gov Web site at: *http://catalog.data.gov/dataset/vets-100,* and *http://catalog.data.gov/dataset/vets-100a*. Data collected through the VETS–4212 Report will similarly be made available to the public.

Three commenters requested VETS include the VETS–4212 Report in the Final Rule and make it subject to notice and comment rulemaking. VETS proposed removing the VETS–4212 Report from the regulations so that it would be easier to make future changes to the annual report that did not require notice and comment rulemaking. Accordingly, under the Final Rule, the VETS–4212 Report is not included in the regulatory text or as an appendix.

As VETS explained in the NPRM, the public still would have an opportunity to comment on any changes to the annual report under the Paperwork Reduction Act (PRA) clearance procedures. Thus, in the PRA section of the NPRM, VETS stated that the proposed VETS–4212 Report and instructions could be obtained from the RegInfo.gov Web site or by contacting VETS, and invited the public to provide comments to both VETS and the Office of Management and Budget (OMB) as to the specific format and content of the

[1] Hereinafter, we refer to Federal contractors and subcontractors collectively as ''contractors'' unless otherwise specified, given that obligations for contractors and subcontractors with qualifying contracts are identical.

proposed VETS–4212 Report. OMB received no such comments, and the comments received by VETS on the proposed VETS–4212 Report are addressed below. By taking the VETS–4212 Report out of the regulations, VETS can adopt changes that would not require formal rulemaking, which takes considerably more time, while still retaining the ability for interested parties to comment through PRA clearance. VETS' preferred course therefore ultimately makes it more responsive to future concerns from interested parties.

Four commenters recommended that the VETS–4212 Report be modified to reflect the same numbering system as the EEO–1 Report, to ease the burden on Federal contractors in meeting their reporting obligations for both reports. VETS agrees, and will renumber the job categories on the VETS–4212 Report to mirror the numbering system on the EEO–1 Report. The job categories on both the EEO–1 and the VETS–4212 Reports will be the same.

One commenter generally asserted that some of the fields on the VETS–4212 Report are not required by statute. For example, the commenter observed that VEVRAA requires contractors to report the total number of new hires during the reporting period who are protected veterans, but the statute does not require new hire data to be reported by job category. VETS has taken this comment under consideration, and has modified the VETS–4212 Report to indicate that providing data on new hires by job category is optional. In addition, VETS has included an instruction that ''answers to questions in all areas of the VETS–4212 Report are mandatory unless otherwise specified.''

VETS received one comment that its estimate of burden hours for the VETS–4212 Report is incorrect, and that the elimination of data fields will have no impact on the time necessary to complete the report. After careful reconsideration, VETS stands by its estimate. The VETS–4212 Report requires 50 percent fewer reportable items than the currently approved VETS–100A Report. Additionally, VETS expects that contractors' burden hours will be further reduced by the rescission of the part 61–250 regulations. As set forth in the NPRM, VETS calculates that as a result of these changes, over a ten-year period, the revisions should save Federal contractors about 804,300 burden hours and approximately $18.2 million in salary equivalent burden costs.

VETS established a base for calculating burden hours utilizing burden hours calculated in 2008 to assess the time and cost necessary to complete the VETS–100 and VETS–100A Reports. VETS conducted field testing and market research in conjunction with a number of employers and professional associations as part of its calculation of the burden associated with the VETS–100A Report; one of those associations, affiliated with the contractor community, commented on the NPRM, and did not object to VETS' calculus.

According to the commenter who objected to VETS' calculus for determining time and cost associated with completing the VETS–4212 Report, VETS underestimated the amount of time required to retrieve, review, correct, edit, and compile the information necessary for completing these reports. However, VETS notes that contractors may use the human resources information systems which are already in place for their existing VETS–100A reporting obligations to collect the information required in the Final Rule. Therefore, since the information to be collected has not materially changed, a contractor will have only a one-time modification of its systems which would not require the contractor to implement additional procedures to retrieve, review, correct, edit, and compile the report as the commenter suggested.

In addition, historical reporting information reinforces VETS position that minimal changes to the contractors' reporting method, combined with the reduction in the number of items reported annually, result in an estimated time required to complete a VETS–4212 Report that is consistent with what VETS estimated in the NPRM for the part 61–300 regulations.

VETS received one comment proposing to change the effective date of the reporting requirements from one year after the effective date of the Final Rule to ''one year after the effective date of the final rule, or at the start of the next Affirmative Action Program (AAP) cycle, whichever is later,'' in order to be as flexible as the new OFCCP regulations. VETS notes that the VETS–4212 and AAP reporting requirements are separate obligations, and the two obligations have never been connected. Accordingly, VETS respectfully declines to adopt this proposal. When VETS proposed in the NPRM that contractors begin complying with reporting requirements in the revised part 61–300 regulations one year after the effective date of the Final Rule, VETS contemplated that contractors would use the VETS–4212 Report for the first time in 2015. Accordingly, VETS has clarified that contractors will be required to comply with the revised regulations beginning with the VETS–4212 Report that is filed in 2015.

The existing instructions for completing the VETS–100/100A Reports give multi-establishment employers that have hiring locations employing fewer than 50 employees two options for reporting: (1) File a separate annual report for each hiring location employing fewer than 50 employees; or (2) file consolidated reports that cover multiple hiring locations within one State that have fewer than 50 employees. One commenter recommended that contractors with hiring locations employing fewer than 50 employees be allowed to report on their employment of protected veterans by providing a list showing the name, address, and total employment of each hiring location employing fewer than 50 employees and a data grid combining all employees working at those hiring locations by relevant job category, instead of being required to file consolidated reports that cover all hiring locations within one State. According to the commenter, this change would make the structure of VETS reporting identical to that of EEO–1 reporting. However, VETS believes that consolidated veterans' employment data at the State level would be more useful to contractors than aggregated data at a national level when evaluating their efforts to employ and promote protected veterans. Accordingly, the agency has not adopted this recommendation.

Finally, one commenter suggested that VETS should refer to ''establishments'' rather than ''hiring locations'' since those terms may have different meanings to different contractors. The term ''hiring location'' is set forth in the statute, and VETS respectfully declines to use or substitute the term ''establishments'' for ''hiring locations'' in that section.

B. Section-by-Section Analysis

41 CFR Part 61–250

In the NPRM, VETS proposed rescinding the regulations in part 61–250. Commenters to the NPRM were generally supportive of this rescission, and agreed that these regulations were obsolete. VETS did not receive any comments suggesting that contracts covered under the part 61–250 regulations were still active. This echoes comments OFCCP received during its 2013 rulemaking that rescinded the part 60–250 regulations, which indicate that no such contracts still exist.

The part 61–250 regulations apply only to contracts and subcontracts of

$25,000 or more entered into prior to December 1, 2003, that have not been modified since that time or have a value of less than $100,000. VETS believes no contracts subject to the part 61–250 regulations exist today because the Federal Acquisition Regulations (FAR) generally limit the length of government contracts to a maximum period of five years.[2] Any existing contracts entered into before December 1, 2003, would have been modified since that date, and if valued at $100,000 or more would be covered under the part 61–300 regulations. OFCCP published a final rule on September 24, 2013 (78 FR 58613), revising regulations implementing the affirmative action provisions of VEVRAA. That final rule rescinded the regulations in part 60–250, which apply to contracts entered before December 1, 2003. In the final rule's preamble, OFCCP stated that the rescission of the part 60–250 regulations was supported by the commenters, many of whom echoed the agency's belief that any contracts for $25,000 or more entered into prior to December 1, 2003, have either terminated or since been modified (which, if $100,000 or more would be covered under OFCCP's part 60–300 regulations). 78 FR at 58619.

Accordingly, this Final Rule eliminates the part 61–250 regulations in full.

41 CFR Part 61–300

Section 61–300.1 What is the purpose and scope of this part?

This section outlines the purpose and scope of the regulations.

VETS did not receive comments to this section.

The Final Rule revisions to paragraph (a) were made necessary by the rescission of the part 61–250 regulations. The references to the part 61–250 regulations and the JVA have been deleted from paragraph (a) because the Final Rule eliminates the need to distinguish the coverage of the part 61–300 regulations from that of the part 61–250 regulations. Additionally, paragraph (a) briefly describes the reporting obligations under VEVRAA, and states that contractors must provide the required information on veterans' employment by filing the VETS–4212 Report in accordance with the requirements of § 61–300.11.

The Final Rule carries forward paragraph (b) of the existing regulation without change. As discussed below in the section-by-section analysis of § 61–300.2, the Final Rule adds a definition for the term ''protected veteran.'' Accordingly, the term ''protected veteran'' has been substituted for the term ''veteran'' in paragraphs (c) and (d).

Section 61–300.2 What definitions apply to this part?

This section contains the definitions of terms used in the regulations. VETS proposed multiple minor changes to this section in the NPRM.

First, VETS proposed changing the term ''other protected veteran'' to the more descriptive ''active duty wartime or campaign badge veteran.'' The Veterans Employment Opportunity Act of 1998 (VEOA) amended VEVRAA by extending protection to the category of veterans ''who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.'' Both the VETS and OFCCP regulations implementing the VEOA amendments adopted the term ''other protected veteran'' to refer to the veterans belonging to this category. OFCCP's September 24, 2013, final rule replaces the term ''other protected veteran'' with the term ''active duty wartime or campaign badge veteran.'' As OFCCP explained in the final rule's preamble, the term ''other protected veteran'' has been misinterpreted as a ''catch-all'' that includes all veterans rather than shorthand for the category of veterans who served on active duty during a war or in a campaign for which a campaign badge has been authorized (78 FR 58619, Sept. 24, 2013). VETS agrees that the ''active duty wartime or campaign badge veteran'' is an appropriate classification for the category, and therefore the term is set forth in paragraph (b)(1) of § 61–300.2.

VETS received no comments on this change.

VETS also proposed adding a definition for ''electronic filing or 'e-filing''' in paragraph (b)(4). Under the Final Rule, ''electronic filing'' means using the VETS web-based filing system to file the VETS–4212 Report. The Final Rule also defines ''electronic filing'' to include transmitting or delivering the VETS–4212 Report as an electronic data file.

VETS received no comments on this change.

The existing regulations include the term ''covered veteran'' and indicate that it means a veteran in any of the four categories defined in the section—disabled veteran, other protected veteran, Armed Forces service medal veteran, and recently separated veteran. OFCCP's Final Rule adds a definition for the term ''protected veteran'' and defines it to mean a veteran belonging to any of the four categories specified in the statute. For consistency, VETS has replaced the term ''covered veteran'' with the term ''protected veteran.'' Thus, paragraph (b)(10) defines ''protected veteran'' as a veteran who may be classified as a ''disabled veteran,'' ''recently separated veteran,'' ''active duty wartime or campaign badge veteran,'' or an ''Armed Forces service medal veteran.''

The Final Rule restructures and renumbers the definitions so that they are in alphabetical order and easier to find. In addition, the Final Rule eliminates the definitions for ''covered veteran,'' ''covered incumbent veteran,'' ''other protected veteran,'' and ''qualified.'' Further, definitions for ''active duty wartime or campaign badge veteran,'' ''protected veteran,'' and ''electronic filing'' are added under the Final Rule.

Section 61–300.10 What reporting requirements apply to Federal contractors and subcontractors and what specific wording must the reporting requirements contract clause contain?

This section contains the reporting requirements clause that is to be included in each covered government contract or subcontract (and modifications, renewals, or extensions thereof if not included in the original contract). In existing § 61–300.10, paragraphs (a)(1) and (2) of the reporting requirements clause call for contractors to provide the total number of employees, by job category and hiring location, and the number of new hires during the reporting period who are ''disabled veterans,'' ''other protected veterans,'' ''Armed Forces service medal veterans,'' and ''recently separated veterans.''

[2] FAR 16.505(c)(1) stipulates that indefinite-delivery task-order contracts for advisory and assistance services cannot exceed five years. FAR 17.104(a) establishes a maximum length of five years for multi-year contracts. For contracts with options, FAR 17.204(e) states that the total of the base and options periods cannot exceed five years. FAR 17.204(e) provides an exception to the five-year limit for information technology (IT) contracts and special cases approved in accordance with agency procedures. Further, FAR 22.1002–1 provides that contracts for services that are subject to the Services Contract Act may not exceed five years.

Although the FAR exempts certain IT contracts from the five-year maximum, agencies may limit the duration so that they can re-compete the contract to take advantage of improvements in service delivery and supplies that subsequently occur in the IT industry. *See e.g.,* Office of Personnel Management, Contracting Policy No. 17.204 Contract Length, January 7, 2007, available at *www.opm.gov/DoingBusiness/contract/. . . / 17.204ContractLength.pdf.*

Paragraphs (a)(1) and (2) of the clause are revised to require contractors to provide the total number of employees and new hires who are ''protected veterans.'' Paragraph (a)(4) now reflects the definition of ''protected veteran'' found in § 61–300.2.

VETS received one comment complimenting the elimination of reporting by specific protected veteran category as easing contractors' reporting obligations, and simplifying data collection and recordkeeping.

The instructions for completing the existing VETS–100 and VETS–100A Reports are substantially similar. Reporting is based on the number of veterans in each category rather than the number of employees protected by VEVRAA. For example, an employee who is a disabled veteran and an Armed Forces service medal veteran would be counted in each of those protected veteran categories. Further, the existing VETS–100 and VETS–100A Reports do not ask contractors to provide the total number of protected veterans in their workforces. Nor do the reports ask contractors to report the total number of protected veterans who were hired during the reporting period. Moreover, because employees may be counted in more than one veteran category, it is not possible for the Government to determine the total number of protected veterans employed or newly hired in the contractor's workforce based on the data submitted in the existing VETS–100 and VETS–100A Reports.

VETS believes it is preferable for contractors to report the total number of protected veterans employed and newly hired during the reporting period in the annual reports required under VEVRAA, rather than the total number of veterans protected under each category of protected veterans. Accordingly, VETS is revising the manner in which contractors report on their employment and hiring of employees belonging to the categories of veterans protected under VEVRAA.

For example, data showing the total number of protected veterans employed and newly hired during the reporting period will be more appropriate for implementing the amendment to the reporting provisions under VEVRAA made by the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, (Pub. L 122–154). Section 708 of the Camp Lejeune Families Act, codified at 38 U.S.C. 4212(d)(3), requires VETS to publicly disclose the information reported in VETS–100 and VETS–100A Reports. The existing VETS–100 and VETS–100A Reports ask contractors to provide, by job category and hiring location, the number of employees in each of the specified categories of veterans. In many instances, the category might include only one employee, and currently it might be possible to discern the identities of disabled veteran employees because the reports disclose the number of employees who are disabled veterans. For example, if a contractor's VETS–100A Report lists two employees in the Executive/Senior Level Officials and Managers category, one of whom is a disabled veteran, the identity of the disabled veteran could be easily discovered.

In addition, VETS believes its annual report to Congress on reports filed by contractors under VEVRAA will be more meaningful by providing aggregate data on the total number of protected veterans employed and newly hired by Federal contractors, the total number of employees in the workforce, and the total number of new hires. In the annual report to Congress required under 38 U.S.C. 4107, VETS currently includes data showing the number of veterans in each of the categories found on the VETS–100 and VETS–100A Reports. By making available data on the total number of protected veterans employed and newly hired by Federal contractors it will now be possible to include cross-year comparisons of Federal contractors' employment and hiring of protected veterans in the annual report, as well as the proportion of contractors' workforce and new hires made up by protected veterans. Information on the total number and proportion of protected veterans employed and newly hired in Federal contractor workforces from year to year will show trends in the employment of protected veterans, and analyses of those trends can be used to assess the extent to which Federal contractors are providing employment opportunities to protected veterans.

Further, data showing the total number of protected veterans that Federal contractors employed or hired during the reporting period will better assist contractors in complying with their affirmative action obligations under VEVRAA. Contractors subject to the reporting requirements under VEVRAA are also required under the Act to take affirmative action to employ and advance in employment protected veterans. 38 U.S.C. 4212(a). Under regulations published by OFCCP in September 2013, contractors' affirmative action obligations include an annual assessment of the effectiveness of their outreach and recruitment efforts that is premised, in part, on the hiring data that they collect. *See* 41 CFR 60–300.44(f)(3). VETS believes that the revised data collection under this Final Rule could aid Federal contractors to more effectively monitor the success of their recruitment and outreach efforts to attract protected veterans. VETS recognizes that the changes to the manner in which contractors report on their employment of protected veterans may require them to adjust their recordkeeping systems. Therefore, to ensure that contractors have sufficient time to make any needed adjustments, VETS will not require contractors to comply with the reporting requirements in the revised part 61–300 regulations until the reporting cycle in 2015.

Accordingly, the Final Rule revises paragraphs (a)(1), (2), and (4) as noted, and revises paragraphs (b), (c), and (e) of the reporting requirements clause to refer to the ''VETS–4212 Report.'' Further, paragraph (e) no longer includes the term ''covered incumbent veterans'' because the Final Rule adopts the term ''protected veteran.'' No other changes are made to the reporting requirements clause in § 61–300.10. Existing § 61–300.10(c) provides that contractors must file reports by September 30 of each year following a calendar year in which a contractor held a covered contract or subcontract.

Section 61–300.11 When and how should Federal contractors and subcontractors file VETS–4212 Reports?

Final Rule § 61–300.11 addresses when and how contractors should file the report. The title to the section in the Final Rule is revised to refer to filing the VETS–4212 Report. References to the report ''form'' have been removed from § 61–300.11 to better reflect that no physical form will be required, as the Final Rule allows the VETS–4212 Reports to be filed electronically as well as in paper format.

Paragraph (a) provides that contractors must use the VETS–4212 Report to provide the information on veterans' employment specified in the reporting requirements clause set forth in § 61–300.10. This paragraph also provides that Federal contractors and subcontractors must provide the total number of current and newly hired employees in their workforces, as well as additional related information, on their VETS–4212 Reports. In addition, paragraph (a) incorporates various categories of veteran such as disabled, recently separated, active duty wartime or campaign badge, or Armed Forces service medal veterans under the broad term ''protected veteran.''

One commenter suggested that VETS provide contractors a flexible alternative to the existing ''hiring location'' requirement for reporting information

because some employees are not assigned to a specific location.

VETS notes that, for purposes of the statute, contractors' hiring actions typically occur at one or more specific hiring location. Accordingly, VETS believes that its long-standing policy of requiring contractors to report information by hiring location provides contractors a reliable basis to determine how to report information for employees who are not assigned to a specific location. In addition, this does not reflect a change in VETS' position, and was not offered as a revision for notice and comment in the NPRM. For these reasons, VETS declines to adopt this recommendation.

Paragraph (b) requires that VETS–4212 Reports must be filed between August 1 and September 30 of each year following a calendar year in which a contractor held a contract. One commenter recommended that VETS allow contractors flexibility to choose a payroll period aligning with the EEO–1 Report to file their VETS–4212 Reports. VETS respectfully declines to modify the Final Rule to allow contractors to choose a payroll period aligning with the EEO–1 reporting date. VETS believes that contractors should be able to choose a date common to both reports given there is a two-month period common to both reports. The EEO–1 Report must be filed no later than September 30, using employment figures for any pay period from July 1 through September 30. The filing period for the VETS–4212 Report is from August 1 to September 30, using employment data for the 12-month period preceding a date in the current year between July 1 and August 31 that represents the end of payroll period. Accordingly, contractors should be able to file both reports timely, using data from any pay period between July 1 and August 31, without difficulty.[3]

Paragraph (c) of this section sets forth the methods for filing the VETS–4212 Report. Paragraph (c)(1)(i) addresses electronic filing by contractors with one hiring location and states that such contractors may complete and submit a VETS–4212 Report using the web-based filing system.

Electronic filing by contractors with multiple hiring locations is addressed in paragraph (c)(1)(ii). Contractors with 10 or more hiring or business locations must file their VETS–4212 Reports electronically, either by using VETS' web-based electronic filing system or by submitting their VETS–4212 Reports in alternate electronic formats such as compact disc or flash drive. Under existing § 61–300.11(b) contractors with more than 10 hiring locations that submit computer-generated reports are required to submit the reports in an electronic data file. Similarly, paragraph (c)(1)(ii) requires contractors with more than 10 hiring locations to submit their VETS–4212 Reports in the form of an electronic data file and provides that the electronic data files may be submitted through the web-based filing system, transmitted electronically as an email attachment (if they do not exceed the size stated in the Department of Labor specifications), or submitted on a compact disc or other electronic storage media.

Paragraph (c)(2) addresses ''alternative filing methods'' and provides that Federal contractors with up to 10 hiring locations may file the VETS–4212 Report in paper format. Paragraph (c)(2) explains that paper versions of the VETS–4212 Report may be downloaded from the VETS Web site or requested by writing to VETS at the address stated in the final regulation.

VETS received two comments regarding its preference for electronic filing versus paper forms. One commenter proposed that contractors, regardless of size, be allowed to file manual (paper) forms, whereas another commenter proposed that paper forms should be allowed for contractors required to file electronically when electronic filing is unavailable. VETS recognizes that contractors may experience difficulty in submitting their reports when VETS' web-based electronic filing system is unavailable. Other means of electronic filing such as compact disc or flash drive are available, however, and contractors with 10 or fewer hiring locations may still file their reports in paper format. VETS declines to eliminate that requirement for contractors with more than 10 hiring locations. Such practice is consistent with the existing regulation and long-standing practice, and should not adversely affect those contractors. Moreover, in the event of an electronic filing system failure, VETS has the discretion to continue its practice of extending the filing cycle for a period of time commensurate with the disruption of the electronic filing system. Accordingly, the Final Rule states that contractors with 10 or fewer hiring locations may file their VETS–4212 Reports in paper format, but that all other contractors must submit their VETS–4212 Reports in one of the prescribed electronic formats.

Section 61–300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

This section states that OFCCP may determine whether a contractor has submitted a VETS–4212 Report as required by the regulations. The Final Rule carries forward this section without change, except that the word ''filed'' has been substituted for ''submitted'' and § 61–300.20 refers to the VETS–4212 Report.

VETS did not receive comments on this section.

Section 61–300.99 What is the OMB control number for this part?

The Final Rule makes no changes to this section.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal and policy implications

[3] Contractors that use December 31 as the ending date for the EEO–1 Report are permitted to use that date as the ending date for the 12-month reporting period for the VETS–4212 Report.

of this regulatory action have been examined. As reflected in the cost and paperwork burden analysis in the section on Paperwork Burden and Compliance Costs, the Final Rule will not have an annual effect on the economy of $100 million or more, and it does not raise novel legal or policy issues. Accordingly, it has been determined that the Final Rule is not a significant regulatory action under Executive Order 12866.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* requires agencies issuing rulemaking proposals to consider the impact they are likely to have on small entities. More specifically, the RFA requires agencies to ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations.'' If a proposed rule is expected to have a ''significant economic impact on a substantial number of small entities,'' the agency must prepare an initial regulatory flexibility analysis (IRFA). If, however, a proposed rule is not expected to have a significant economic impact on a substantial number of small entities, the agency may so certify, and need not perform an IRFA. Further, if the Final Rule is expected to have a significant economic impact on a substantial number of small entities, a final regulatory flexibility analysis (FRFA) is required which must respond to comments on the IRFA and explain why significant alternatives were rejected.

VETS certified in its NPRM that an IRFA was not required based on the lack of a significant economic impact on a substantial number of small entities. Based on the analysis below, in which VETS estimates the impact of complying with the requirements contained in this Final Rule on small entities that are Federal contractors, VETS certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities, and thus an FRFA is not required.

In making this certification, VETS determined the approximate number of regulated small entities that will be impacted by the Final Rule. Based on information in the VETS–100/100A Reporting System regarding reports on veterans' employment filed in 2012, VETS estimates that approximately 15,000 Federal contractors will be subject to the reporting requirements under the Final Rule. The size standard used by the Small Business Administration (SBA) to define small businesses varies by industry, but the SBA uses the ''fewer than 500 employees'' limit when making an across-the-board classification.[4] Using VETS data applied to the SBA standard noted above, VETS assumes that 8,000 of the Federal contractors subject to the Final Rule are small entities.[5] VETS sought comment on that assumption, but did not receive any. While the guidance for FRFAs does not specifically define ''substantial number,'' VETS concludes that the Final Rule may impact a substantial number of small entities.

However, VETS has determined that the impact on small entities affected by the Final Rule will not be significant. The objective of the Final Rule is to implement the reporting obligations under VEVRAA in a manner that provides meaningful data on Federal contractors' employment and hiring of protected veterans. As discussed below in the Paperwork Reduction Act section, the Final Rule will result in a significant reduction in paperwork burden for Federal contractors and subcontractors subject to the VETS–4212 reporting requirement over a ten-year period. VETS believes that Federal contractors may need to adjust their human resources (HR) information systems to provide the information requested in the VETS–4212 Report and therefore estimates one-time implementation costs would total $5.1 million. VETS estimates that all Federal contractors and subcontractors subject to the VETS–4212 reporting requirement would have combined recurring annual costs of about $2.7 million. Thus, VETS estimates that the first-year compliance costs for the Final Rule for all contractors combined are approximately $7.8 million. Assuming that each contractor subject to the reporting requirement has a contract valued at the $100,000 minimum for coverage under VEVRAA, VETS estimates that each contractor's share of first-year compliance costs is about $520 ($7.8 million/15,000 contractors) or about 0.52% of the $100,000 minimum contract. After the first year, each contractor's share of the recurring annual costs would be approximately $180 ($2.7 million/15,000) or about 0.18% of the $100,000 minimum contract. Accordingly, VETS considers it appropriate to conclude that the Final Rule will not have a significant economic impact on a substantial number of small entities. VETS invited comment from members of the public who believe there will be a significant economic impact on small entities that are Federal contractors. Other than the one comment, addressed previously, on VETS' calculus on burden hours, VETS received no other comments contesting its economic impact calculations.

Paperwork Reduction Act

The collections of information contained in the existing part 61–250 and part 61–300 regulations implementing the reporting requirements under VEVRAA are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* The existing information collection instruments—the VETS–100 Report that contractors subject to the part 61–250 regulations are required to use, and the VETS–100A Report that contractors covered under the part 61–300 regulations must use to report annually on their veterans' employment—are currently approved under OMB Control No. 1293–0005.

The Final Rule contains information collections that are subject to review and approval by OMB under the PRA. Section 61–300.11 now requires contractors to use a simplified collection instrument renamed the VETS–4212 Report to provide the total number of employees in their workforces; the total number of such employees, by job category and hiring location, who are protected veterans; the total number of new hires during the reporting period covered by the report; the total number of new hires who are protected veterans; and the maximum and minimum number of employees of such contractor during the period covered by the report.

Under the existing part 61–300 regulations, the collection instrument—the VETS–100A Report—is published as an appendix to the regulations. The Final Rule does not include the collection instrument in the regulations so that it will be easier to make future changes that do not require notice and comment rulemaking under the Administrative Procedure Act. However, the public will still be able to comment on any subsequent changes to the collection instrument under the PRA clearance procedures, as addressed previously.

[4] SBA Office of Advocacy *Frequently Asked Questions about Small Business,* September 2012, available at *http://www.sba.gov/advocacy/7495/29581.*

[5] The dollar amount of the government contract triggers the reporting requirement under VEVRAA. VETS does not maintain data on the size of Federal contractor workforces. However, VETS believes that a large number of Federal contractors and subcontractors employ more than 500 employees.

The recordkeeping and reporting burden for the collection of information in § 61–300.11 is imposed through the preparation and submission of the VETS–4212 Report, which is discussed in the paperwork burden analysis of the report below. A copy of the information collection request with applicable supporting documentation, including the VETS–4212 Report and instructions, a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain.*

VETS encouraged comments from the public on the continued collection of information for the VETS–100A Report as well as those in the NPRM, including comments about the specific format and content of the VETS–4212 Report that VETS is requiring contractors to use to report annually information on their employment of protected veterans.

VETS sought comments that:

(1) Evaluated whether the information collection is necessary to the proper performance of the agency, including whether the information will have practical utility;

(2) Evaluated the accuracy of the agency's estimate of the projected burden of the collection of information, including the methodology and assumptions used;

(3) Enhanced the quality, utility and clarity of the information to be collected; and

(4) Minimized the burden of the collection of information on those required to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

VETS received comments regarding the format and content of the VETS–4212 Report, which have been addressed above in the preamble discussion of the General Comments. As noted above, in response to one of these comments, VETS will indicate that providing information on new hires by job category on the VETS–4212 Report is optional. VETS also received one comment that its estimate of burden hours for the VETS–4212 Report is incorrect, and that the elimination of data fields will have no impact on the time necessary to complete the report. As VETS explained above in the preamble discussion of the General Comments, VETS believes its burden estimates are accurate.

Contractors and other members of the public were encouraged to provide data where estimates are provided or assumptions are described. This data would help VETS refine estimates of the amount of time needed to fulfill the reporting requirements. VETS notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the PRA, and it displays a currently valid OMB control number. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. The information collection in the Final Rule is not effective until the final regulations become effective and VETS publishes a **Federal Register** Notice announcing OMB's approval of the new information collection instrument.

Paperwork Burden and Compliance Costs

Estimate of the Burden for the Collection of Information

The paperwork burden that results from the Final Rule is comprised of two components. The first component is the one-time burden of the hours and their equivalent salary cost associated with contractors adjusting their recordkeeping systems to generate the information on veterans' employment required by the revisions to § 61–300.11 and the VETS–4212 Report. The second component is the ongoing annual burden (number of burden hours and their equivalent salary cost and the mailing cost) required for contractors to file annually the VETS–4212 Report.

The currently approved Information Collection Request for the VETS–100 and VETS–100A Reports contain paperwork burden hours and costs that are based on the total number of respondents and VETS–100 and VETS–100A Reports filed in 2010. The paperwork burden and costs associated with the VETS–4212 Report are based on data showing the actual number of respondents, and the VETS–100 and VETS–100A Reports filed in 2012.

One-Time Implementation Burden and Costs

In 2012, 14,714 contractors filed the VETS–100A Report, while nearly 5,960 filed the VETS–100 Report. Now that the 61–250 regulations are rescinded, the unnecessary duplicate filings many contractors do now will be eliminated, and VETS estimates that 15,000 contractors will file the VETS–4212 Report.

VETS assumes that contractors subject to the VETS–4212 reporting requirement will make adjustments to their human resources (HR) information systems to provide the data requested in the VETS–4212 Report. VETS expects the burden hours and costs for making such adjustments will be greater for contractors that electronically file annual reports on veterans' employment than they will be for contractors that file paper versions of the annual report. In 2012, approximately 98% of contractors electronically filed their annual reports, and therefore VETS estimates that 98% or 14,700 contractors will electronically file the VETS–4212 Report. VETS believes a software developer will take about 8 hours to make the one-time modification to the HR information system of a contractor that electronically files annual reports. Accordingly, the estimated burden for electronic filers to make the one-time change to their HR information systems is 117,600 hours ($14,700 \times 8$). The estimated cost for the system modifications for electronic filers is based on data from the Occupational Outlook Handbook (OOH), which lists the 2010 median compensation of $43.52 per hour for a software developer. VETS therefore estimates the one-time implementation salary costs for electronic filers would total $5,117,952.

With respect to contractors that file paper versions of the annual report on veterans' employment, VETS believes that it will take a human resources specialist about two hours to make the one-time adjustment to the HR information system. The OOH lists $25.33 per hour as the 2010 median compensation for a human resources specialist. The estimated burden for the 300 contractors that file paper versions of the annual report to make one-time adjustments to their HR information systems is 600 hours, and the estimated cost is $15,198. Thus, VETS estimates that the one-time implementation salary costs for all contractors that are required to file the VETS–4212 Report would total $5,133,150.

- Contractors: 15,000 Federal Contractors
- Electronic Filing (98%): 14,700 contractors
- Paper filing (2%): 300 contractors
- Hours for software design: 8 Hrs. × 14,700 contractors = 117,600 implementation work hours
- Hours for HR specialist: 2 Hrs. × 300 contractors = 600 implementation work hours
- Salary for software developer: $43.52 per hour
- Salary for HR Specialist: $25.33 per hour
- Estimated One-time Salary Costs: $5,117,952 (electronic) + $15,198 (paper) = $5,133,150

Recurring Burden Hours and Other Cost Calculation

The Final Rule requires contractors with a contract of $100,000 or more to file the VETS–4212 Report for each of their hiring locations. Table 1 shows 14,700 contractors submitted approximately 315,000 VETS–100A Reports in 2012. VETS estimates that approximately 15,000 contractors are subject to the VETS–4212 reporting requirement based on the number of VETS–100A reports filed in 2012.

TABLE 1—VETS–100A REPORTS FILED IN 2012

Submission from Federal contractors	Totals
Total Respondents	14,700
Total Annual Responses	315,000
• Electronic Response	308,700
• Paper Response	6,300

The VETS–4212 Report requires fewer reportable items. The currently approved VETS–100A Report required under the existing part 61–300 regulations has 82 unique reportable items. The VETS–4212 Report has just 42 unique items—a reduction of nearly 50 percent. The reduction in the number of reportable items is expected to reduce the time it takes to complete and file the annual report on veterans' employment. VETS estimates that it would take contractors 20 minutes (a reduction of 10 minutes per report) to complete and electronically file the VETS–4212 Report and 40 minutes (a reduction of 20 minutes per report) to complete a paper version of the VETS–4212 Report.

As shown in Table 2, VETS estimates that it would take 107,100 burden hours annually to file electronic and paper versions of the VETS–4212 Report. VETS assumes human resources specialists would prepare and file the reports, and based on their 2010 median compensation of $25.33 per hour, VETS estimates that the annual salary cost for filing the VETS–4212 Report would total $2,712,843.

In addition, VETS recognizes that the 300 contractors that file paper versions of the VETS–4212 Report will have operations and maintenance costs. VETS estimates that contractors on average will submit 21 VETS–4212 Reports and that it will cost approximately $.08 to print and/or copy each report. The estimated paper cost would be $504 (300 × 21 × $.08). In addition, VETS estimates an average mailing cost of $1.92 for each submission. The estimated cost for mailing would be $576 (300 × $1.92). Accordingly, Table 2 shows the total estimated annual operations and maintenance costs would be $1,080.

TABLE 2—ESTIMATED PAPERWORK BURDEN AND COSTS FOR FILING THE VETS–4212 REPORT

Submission from Federal contractors	Total VETS–4212 reporting
Total Respondents	15,000
Total Annual Responses (Avg. 21 Reports per Contractor)	(15,000 × 21) = 315,000
• Electronic Responses (98% of total responses)	308,700
• Paper Responses (2% of total responses)	6,300
Burden Hours:	
• Electronic 20 min	102,900
• Paper 40 min	4,200
Recurring Total Filing Burden Hours	107,100
• Filing Salary Equivalent Burden Cost ($25.33)	$2,712,843
• Annual Operations and Maintenance Cost	$1,080
Recurring Total Annual Costs	$2.713,923
Total One Time Implementation Burden Hours	118,200
Total One Time Implementation Salary Equivalent Burden Cost	$5,133,150

As Table 3 shows, the Final Rule is expected to reduce burden hours from the currently approved 199,350 to 107,100 total burden hours (a decrease of 46%). The reduction in burden hours comes from two sources: The rescission of the part 61–250 regulations and elimination of the VETS–100 reporting requirement, and the reduction in the number of unique items the contractor would be required to complete on the VETS–4212 Report. Over a ten-year period, the regulation is expected to save Federal contractors about 804,300 burden hours and approximately $18,233,780 in salary equivalent burden costs.

TABLE 3—ESTIMATED BURDEN HOURS AND COSTS

Submission from Federal contractors	Currently approved ICR for OMB No. 1293–0005	VETS–4212 estimate	Change in estimated burden hours and costs
Burden Hours:			
• Annual burden calculation	199,350	107,100	(92,250)
• One-Time Implementation Burden Hours	0	118,200	118,200
First-Year Burden	199,350	225,300	25,950
Burden Savings After Year One	199,350	107,100	(92,250)
Ten-Year Burden Savings			(804,300)
Burden Costs:			
• Annual Salary Equivalent Burden Cost ($25.33) [6]	$5,049,536	$2,712,843	($2,336,693)
• One Time Implementation Salary Equivalent Burden Cost	0	$5,133,150	$5,133,150
First-year Salary Equivalent Burden Cost	$5,049,536	$7,845,993	$2,796,457
Salary Equivalent Costs Savings After Year One	$5,049,536	$2,712,843	($2,336,692)
Ten-Year Salary Equivalent Cost Savings	$50,495,360	$32,261,580	($18,233,780)

Ongoing information collections must be reauthorized by OMB at least every three years. The annualized burden over the three-year life-span of this collection is summarized as follows:

Agency: DOL–VETS.

Title of Collection: Federal Contractor Veterans' Employment Report VETS–4212.

OMB Control Number: 1290–0005.

Affected Public: Private Sector—businesses or other for-profit and not-for-profit institutions; state, local, and tribal governments.

Total Estimated Number of Respondents: 15,000.

Total Estimated Number of Responses: 315,000.

Total Estimated Annual Burden Hours: 107,100.

Total Estimated Annualized Salary Equivalency: $4,423,893.

Total Estimated Other Cost Burden: $1,080.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this Final Rule does not include any Federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

VETS has reviewed this Final Rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This rule will not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This Final Rule does not have tribal implications under Executive Order 13175 that requires a tribal summary impact statement. The Final Rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Effects on Families

The undersigned hereby certifies that the Final Rule would not adversely affect the well-being of families, as discussed under Section 654 of the Treasury and General Government Appropriations Act of 1999.

Executive Order 13045 (Protection of Children)

This Final Rule would have no environmental health risk or safety risk that may disproportionately affect children.

Environmental Impact Assessment

A review of this Final Rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.;* the regulations of the Council on Environmental Quality, 40 CFR part 1500 *et seq.;* and DOL NEPA procedures, 29 CFR part 11, indicates the Final Rule would not have a significant impact on the quality of the human environment. Thus, there is no corresponding environmental assessment or an environmental impact statement.

Executive Order 13211 (Energy Supply)

This Final Rule is not subject to Executive Order 13211. It will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12630 (Constitutionally Protected Property Rights)

This Final Rule is not subject to Executive Order 12630 because it does not involve implementation of a policy that has takings implications or that could impose limitations on private property use.

Executive Order 12988 (Civil Justice Reform Analysis)

This Final Rule was drafted and reviewed in accordance with Executive Order 12988 and will not unduly burden the Federal court system. The Final Rule was: (1) Reviewed to eliminate drafting errors and ambiguities; (2) written to minimize litigation; and (3) written to provide a

[6] The Supporting Statement for the currently approved VETS–100/100A Reports (OMB No. 1293–0005) contains estimated salary equivalent burden costs that are based on the $16.00 hourly compensation of an unspecified contractor employee. The $25.33 per hour median compensation for a Human Resources Specialist is used to calculate the salary equivalent burden costs in this analysis. In order to calculate the change in salary equivalent costs resulting from the rule, VETS has used the $25.33 hourly compensation of the HR Specialist to calculate the salary equivalent burden cost for the currently approved burden hours.

clear legal standard for affected conduct and to promote burden reduction.

List of Subjects

41 CFR Part 61–250

Government contracts, reporting and recordkeeping requirements, Veterans.

41 CFR Part 61–300

Government contracts, reporting and recordkeeping requirements, Veterans.

Signed at Washington, DC, this 18th day of September 2014.

Keith Kelly,

Assistant Secretary of Labor for Veterans' Employment and Training Service.

Accordingly, for the reasons stated in the preamble, under the authority of 38 U.S.C. 4212, Title 41 of the Code of Federal Regulations, Chapter 61 is amended as follows:

PART 61–250 [Removed]

■ 1. Remove part 61–250.

■ 2. Revise part 61–300 to read as follows:

PART 61–300—ANNUAL REPORT FROM FEDERAL CONTRACTORS

Sec.
61–300.1 What is the purpose and scope of this part?
61–300.2 What definitions apply to this part?
61–300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?
61–300.11 When and how should Federal contractors and subcontractors file VETS–4212 Reports?
61–300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?
61–300.99 What is the OMB control number for this part?

Authority: 38 U.S.C. 4211 and 4212.

§ 61–300.1 What is the purpose and scope of this part?

(a) This part 61–300 implements 38 U.S.C. 4212(d). Each contractor or subcontractor who enters into a contract or subcontract in the amount of $100,000 or more with any department or agency of the United States for the procurement of personal property and non-personal services (including construction), and who is subject to 38 U.S.C. 4212(a), must report annually to the Secretary of Labor information on the number of employees in its workforce who belong to the categories of veterans protected under the Act, and the number of those employees who were hired during the period covered by the report. Each contractor or subcontractor must provide the required information on veterans' employment by filing the Federal Contractor Veterans' Employment Report VETS–4212 (VETS–4212 Report), in accordance with the requirements of § 61–300.11.

(b) Notwithstanding the regulations in this part, the regulations at 41 CFR part 60–300, administered by OFCCP continue to apply to contractors' and subcontractors' affirmative action obligations regarding protected veterans.

(c) Reporting requirements of this part regarding protected veterans will be deemed waived in those instances in which the Director of OFCCP has granted a waiver under 41 CFR 60–300.4(b)(1), or has concurred in the granting of a waiver under 41 CFR 60–300.4(b)(3), from compliance with all the terms of the equal opportunity clause for those establishments not involved in Government contract work. Where OFCCP grants only a partial waiver, compliance with these reporting requirements regarding protected veterans will be required.

(d) 41 CFR part 60–300, subpart C and Appendix B to part 60–300 provide guidance concerning the affirmative action obligations of Federal contractors toward applicants for employment who are protected veterans.

§ 61–300.2 What definitions apply to this part?

(a) For the purposes of this part, the definitions for the terms ''contract,'' ''contractor'', ''Government contract,'' ''subcontract,'' and ''subcontractor'' are the same as those set forth in 41 CFR part 60–300.

(b) For purposes of this part:

(1) *Active duty wartime or campaign badge veteran* means a veteran who served on active duty in the U.S. military, ground, naval, or air service during a war or in a campaign or expedition for which a campaign badge has been authorized under the laws administered by the Department of Defense.

(2) *Armed Forces service medal veteran* means a veteran who, while serving on active duty in the U.S. military, ground, naval or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209, 3 CFR, 1996 Comp., p. 159).

(3) *Disabled veteran* means:

(i) A veteran of the U.S. military, ground, naval or air service who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(ii) A person who was discharged or released from active duty because of a service-connected disability.

(4) *Electronic filing or ''e-filing''* means filing the VETS–4212 Report via the VETS web-based filing system. E-filing also includes transmitting or delivering the VETS–4212 Report as an electronic data file. Instructions for electronically filing the VETS–4212 Report are found on VETS' Web site at: *http://www.dol.gov/vets/vets100filing.htm.*

(5) *Employee* means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes except insurance sales agents who are considered to be employees for such purposes solely because of the provisions of 26 U.S.C. 3121 (d)(3)(B) (the Internal Revenue Code). Leased employees are included in this definition. Leased employee means a permanent employee provided by an employment agency for a fee to an outside company for which the employment agency handles all personnel tasks including payroll, staffing, benefit payments and compliance reporting. The employment agency shall, therefore, include leased employees in its VETS–4212 Report. The term employee shall not include persons who are hired on a casual basis for a specified time, or for the duration of a specified job (for example, persons at a construction site whose employment relationship is expected to terminate with the end of the employee's work at the site); persons temporarily employed in any industry other than construction, such as temporary office workers, mariners, stevedores, lumber yard workers, etc., who are hired through a hiring hall or other referral arrangement, through an employee contractor or agent, or by some individual hiring arrangement, or persons (except leased employees) on the payroll of an employment agency who are referred by such agency for work to be performed on the premises of another employer under that employer's direction and control.

(6) *Hiring location* (this definition is identical to *establishment* as defined by the instructions for completing Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report)) means an economic unit which produces goods or services, such as a factory, office, store, or mine. In most instances the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity. Units at different locations,

even though engaged in the same kind of business operation, should be reported as separate establishments. For locations involving construction, transportation, communications, electric, gas, and sanitary services, oil and gas fields, and similar types of physically dispersed industrial activities, however, it is not necessary to list separately each individual site, project, field, line, etc., unless it is treated by the contractor as a separate legal entity. For these physically dispersed activities, list as establishments only those relatively permanent main or branch offices, terminals, stations, etc., which are either:

(i) Directly responsible for supervising such dispersed activities; or

(ii) The base from which personnel and equipment operate to carry out these activities. (Where these dispersed activities cross State lines, at least one such establishment should be listed for each State involved).

(7) *Job category* means any of the following: Officials and managers (Executive/Senior Level Officials and Managers and First/Mid-Level Officials and Managers), professionals, technicians, sales workers, administrative support workers, craft workers, operatives, laborers and helpers, and service workers, as required by the EEO–1 Report, as follows:

(i) *Officials and managers* as a whole are to be divided into the following two subcategories: Executive/Senior Level Officials and Managers and First/Mid-Level Officials and Managers.

(A) *Executive/Senior Level Officials and Managers* means individuals, who plan, direct and formulate policies, set strategy and provide the overall direction of enterprises/organizations for the development and delivery of products and services, within the parameters approved by boards of directors of other governing bodies. Residing in the highest levels of organizations, these executives plan, direct, or coordinate activities with the support of subordinate executives and staff managers. They include, in larger organizations, those individuals within two reporting levels of the Chief Executive Officer (CEO), whose responsibilities require frequent interaction with the CEO. Examples of these kinds of managers are: Chief executive officers, chief operating officers, chief financial officers, line of business heads, presidents or executive vice presidents of functional areas or operating groups, chief information officers, chief human resources officers, chief marketing officers, chief legal officers, management directors and managing partners.

(B) *First/Mid-Level Officials and Managers* means individuals who serve as managers, other than those who serve as Executive/Senior Level Officials and Managers, including those who oversee and direct the delivery of products, services or functions at group, regional or divisional levels of organizations. These managers receive directions from Executive/Senior Level management and typically lead major business units. They implement policies, programs and directives of Executive/Senior Level management through subordinate managers and within the parameters set by Executives/Senior Level management. Examples of these kinds of managers are: Vice presidents and directors; group, regional or divisional controllers; treasurers; and human resources, information systems, marketing, and operations managers. The First/Mid-Level Officials and Managers subcategory also includes those who report directly to middle managers. These individuals serve at functional, line of business segment or branch levels and are responsible for directing and executing the day-to-day operational objectives of enterprises/organizations, conveying the directions of higher level officials and managers to subordinate personnel and, in some instances, directly supervising the activities of exempt and non-exempt personnel. Examples of these kinds of managers are: First-line managers; team managers; unit managers; operations and production managers; branch managers; administrative services managers; purchasing and transportation managers; storage and distribution managers; call center or customer service managers; technical support managers; and brand or product managers.

(ii) *Professionals* means individuals in positions that require bachelor and graduate degrees, and/or professional certification. In some instances, comparable experience may establish a person's qualifications. Examples of these kinds of positions include: accountants and auditors; airplane pilots and flight engineers; architects; artists; chemists; computer programmers; designers; dieticians; editors; engineers; lawyers; librarians; mathematical scientists; natural scientists; registered nurses; physical scientists; physicians and surgeons; social scientists; teachers; and surveyors.

(iii) *Technicians* means individuals in positions that include activities requiring applied scientific skills, usually obtained by post-secondary education of varying lengths, depending on the particular occupation, recognizing that in some instances additional training, certification, or comparable experience is required. Examples of these types of positions include: drafters; emergency medical technicians; chemical technicians; and broadcast and sound engineering technicians.

(iv) *Sales workers* means individuals in positions including non-managerial activities that wholly and primarily involve direct sales. Examples of these types of positions include: advertising sales agents; insurance sales agents; real estate brokers and sales agents; wholesale sales representatives; securities, commodities, and financial services sales agents; telemarketers; demonstrators; retail salespersons; counter and rental clerks; and cashiers.

(v) *Administrative support workers* means individuals in positions involving non-managerial tasks providing administrative and support assistance, primarily in office settings. Examples of these types of positions include: office and administrative support workers; bookkeeping; accounting and auditing clerks; cargo and freight agents; dispatchers; couriers; data entry keyers; computer operators; shipping, receiving and traffic clerks; word processors and typists; proofreaders; desktop publishers; and general office clerks.

(vi) *Craft workers* means individuals in positions that include higher skilled occupations in construction (building trades craft workers and their formal apprentices) and natural resource extraction workers. Examples of these types of positions include: boilermakers; brick and stone masons; carpenters; electricians; painters (both construction and maintenance); glaziers; pipe layers, plumbers, pipefitters and steamfitters; plasterers; roofers; elevator installers; earth drillers; derrick operators; oil and gas rotary drill operators; and blasters and explosive workers. This category also includes occupations related to the installation, maintenance and part replacement of equipment, machines and tools, such as: automotive mechanics; aircraft mechanics; and electric and electronic equipment repairers. This category also includes some production occupations that are distinguished by the high degree of skill and precision required to perform them, based on clearly defined task specifications, such as: millwrights; etchers and engravers; tool and die makers; and pattern makers.

(vii) *Operatives* means individuals in intermediate skilled occupations and includes workers who operate machines

or factory-related processing equipment. Most of these occupations do not usually require more than several months of training. Examples include: textile machine workers; laundry and dry cleaning workers; photographic process workers; weaving machine operators; electrical and electronic equipment assemblers; semiconductor processors; testers, graders and sorters; bakers; and butchers and other meat, poultry and fish processing workers. This category also includes occupations of generally intermediate skill levels that are concerned with operating and controlling equipment to facilitate the movement of people or materials, such as: bridge and lock tenders; truck, bus or taxi drivers; industrial truck and tractor (forklift) operators; parking lot attendants; sailors; conveyor operators; and hand packers and packagers.

(viii) *Laborers and helpers* means individuals with more limited skills who require only brief training to perform tasks that require little or no independent judgment. Examples include: production and construction worker helpers; vehicle and equipment cleaners; laborers; freight, stock and material movers; service station attendants; construction laborers; refuse and recyclable materials collectors; septic tank servicers; and sewer pipe cleaners.

(ix) *Service workers* means individuals in positions that include food service, cleaning service, personal service, and protective service activities. Skill may be acquired through formal training, job-related training or direct experience. Examples of food service positions include: cooks; bartenders; and other food service workers. Examples of personal service positions include: medical assistants and other healthcare support positions; hairdressers; ushers; and transportation attendants. Examples of cleaning service positions include: cleaners; janitors; and porters. Examples of protective service positions include: transit and railroad police and fire fighters; guards; private detectives and investigators.

(8) *NAICS* means the North American Industrial Classification System.

(9) *OFCCP* means the Office of Federal Contract Compliance Programs, U.S. Department of Labor.

(10) *Protected veteran* means a veteran who is protected under the non-discrimination and affirmative action provisions of the Act; specifically, a veteran who may be classified as a ''disabled veteran,'' ''recently separated veteran,'' ''active duty wartime or campaign badge veteran,'' or an ''Armed Forces service medal veteran,'' as defined in this section.

(11) *Recently separated veteran* means a veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty in the U.S. military, ground, naval or air service.

(12) *States* means each of the several States of the United States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Wake Island, and the Trust Territories of the Pacific Islands.

(13) *VETS* means the Office of the Assistant Secretary for Veterans' Employment and Training Service, U.S. Department of Labor.

§ 61–300.10 What reporting requirements apply to Federal contractors and subcontractors, and what specific wording must the reporting requirements contract clause contain?

Each contractor or subcontractor described in § 61–300.1 must submit reports in accordance with the following reporting clause, which must be included in each of its covered government contracts or subcontracts (and modifications, renewals, or extensions thereof if not included in the original contract). Such clause is considered as an addition to the equal opportunity clause required by 41 CFR 60–300.5. The reporting requirements clause is as follows:

Employer Reports on Employment of Protected Veterans

(a) The contractor agrees to report at least annually, as required by the Secretary of Labor, on:

(1) The total number of employees in the workforce of such contractor, by job category and hiring location, and the total number of such employees, by job category and hiring location, who are protected veterans;

(2) The total number of new employees hired by the contractor during the period covered by the report, and of such employees, the number who are protected veterans; and

(3) The maximum number and minimum number of employees of such contractor at each hiring location during the period covered by the report.

(4) The term ''protected veteran'' refers to a veteran who may be classified as a ''disabled veteran,'' recently separated veteran, ''active duty wartime or campaign badge veteran,'' or an ''Armed Forces service medal veteran,'' as defined in 41 CFR 61–300.2.

(b) The above items must be reported by completing the report entitled ''Federal Contractor Veterans' Employment Report VETS–4212.''

(c) VETS–4212 Reports must be filed no later than September 30 of each year following a calendar year in which a contractor or subcontractor held a covered contract or subcontract.

(d) The employment activity report required by paragraphs (a)(2) and (a)(3) of this clause must reflect total new hires and maximum and minimum number of employees during the 12-month period preceding the ending date that the contractor selects for the current employment report required by paragraph (a)(1) of this clause. Contractors may select an ending date:

(1) As of the end of any pay period during the period July 1 through August 31 of the year the report is due; or

(2) As of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO–1, Standard Form 100 (EEO–1 Report).

(e) The number of veterans reported according to paragraph (a) above must be based on data known to contractors and subcontractors when completing their VETS–4212 Reports. Contractors' and subcontractors' knowledge of veterans status may be obtained in a variety of ways, including, in response to an invitation to applicants to self-identify in accordance with 41 CFR 60–300.42, voluntary self-disclosures by employees who are protected veterans, or actual knowledge of an employee's veteran status by a contractor or subcontractor. Nothing in this paragraph (e) relieves a contractor from liability for discrimination under 38 U.S.C. 4212.

[End of Clause]

§ 61–300.11 When and how should Federal contractors and subcontractors file VETS–4212 Reports?

(a) The VETS–4212 Report must be used to report the information on veterans' employment required in paragraph (a) of the contract clause set forth in § 61–300.10. The VETS–4212 Report requires contractors and subcontractors to provide the total number of employees in their workforces by job category and hiring location; the total number of such employees, by job category and hiring location, who are protected veterans; the total number of new hires during the period covered by the report; the total number of new hires during the period covered by the report who are protected veterans; and the maximum and minimum number of employees of such contractor or subcontractor during the period covered by the report. Contractors and subcontractors must complete a VETS–4212 Report for each hiring location in the manner described in the instructions published on the VETS Web site and included in the paper version of the VETS–4212 Report.

(b) VETS–4212 Reports must be filed between August 1 and September 30 of each year following a calendar year in which a contractor or subcontractor held a contract or subcontract.

(c)(1) *Electronic filing.* Instructions for e-filing the VETS–4212 Report are found

on the Federal Contractor Reporting page on the VETS Web site at: *http://www.dol.gov/vets/.*

(i) *Single hiring location.* Contractors and subcontractors doing business at one hiring location may complete and submit a single VETS–4212 Report using the web-based filing system.

(ii) *Multiple hiring locations.* Contractors and subcontractors doing business at more than 10 locations must submit their VETS–4212 Reports in the form of an electronic data file in accordance with the instructions for filing the VETS–4212 Report. In these cases, state consolidated reports count as one location each. Contractors and subcontractors may submit VETS–4212 Reports in the form of electronic data files through the web-based filing system. Electronic data files also may be transmitted electronically as an email attachment (if they do not exceed the size stated in the specifications), or submitted on compact discs or other electronic storage media.

(2) *Alternative filing methods.* (i) Contractors and subcontractors with 10 or fewer hiring locations may file their VETS–4212 Report in paper format. Contractors and subcontractors may download a version of the VETS–4212 Report from the VETS Web site or send a written request for the paper version of the VETS–4212 Report to: Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–1325, Washington, DC 20210, Attn: VETS–4212 Report Form Request.

(ii) VETS–4212 Reports in paper format or electronic data files on compact discs or other electronic storage media may be delivered by U.S. mail or courier delivery service to the addresses set forth in the instructions for completing the report. Paper copies of the VETS–4212 Reports and electronic data files (if they do not exceed the size stated in the specifications) also may be sent as email attachments to the address indicated in the instructions.

§ 61–300.20 How will DOL determine whether a contractor or subcontractor is complying with the requirements of this part?

During the course of a compliance evaluation, OFCCP may determine whether a contractor or subcontractor has submitted its VETS–4212 Report(s) as required by this part.

§ 61–300.99 What is the OMB control number for this part?

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and its implementing regulations at 5 CFR part 1320, the Office of Management and Budget has assigned Control No. 1293–0005 to the information collection requirements of this part.

[FR Doc. 2014–22818 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[L13100000 PP0000 LLWO310000]

RIN 1004–AE36

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the Bureau of Land Management (BLM) mineral resources regulations to update some fees that cover the BLM's cost of processing certain documents relating to its minerals programs and some filing fees for mineral-related documents. These updated fees include those for actions such as lease renewals and mineral patent adjudications.

DATES: This final rule is effective October 1, 2014.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of Land Management, 2134LM, 1849 C Street NW., Washington, DC 20240; Attention: RIN 1004–AE36.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Chief, Division of Fluid Minerals, 202–912–7143; Mitchell Leverette, Chief, Division of Solid Minerals, 202–912–7113; or Anna Atkinson, Regulatory Affairs Analyst, 202–912–7438. Persons who use a telecommunications device for the deaf (TDD) may leave a message for these individuals with the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) establishing or revising certain fees and service charges, and establishing the method it would use to adjust those fees and service charges on an annual basis.

At 43 CFR 3000.12(a), the regulations provide that the BLM will annually adjust fees established in Subchapter C according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule will allow the BLM to update these fees and service charges by October 1 of this year, as required by the 2005 regulation. The fee recalculations are based on a mathematical formula. The public had an opportunity to comment on this procedure during the comment period on the original cost recovery rule, and this new rule administers the procedure set forth in those regulations. Therefore, the BLM has changed the fees in this final rule without providing opportunity for additional notice and comment. Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) that notice and public comment procedures are unnecessary and that the rule may be effective less than 30 days after publication.

II. Discussion of Final Rule

The BLM publishes a fee update rule each year, which becomes effective on October 1 of that year. The fee updates are based on the change in the IPD–GDP from the 4th Quarter of one calendar year to the 4th Quarter of the following calendar year. This fee update rule is based on the change in the IPD–GDP from the 4th Quarter of 2012 to the 4th Quarter of 2013, thus reflecting the rate of inflation over four calendar quarters.

The fee is calculated by applying the IPD–GDP to the base value from the previous year's rule, also known as the ''existing value.'' This calculation results in an updated base value. The updated base value is then rounded to the closest multiple of $5, or to the nearest cent for fees under $1, to establish the new fee.

Under this rule, 31 fees will remain the same and 17 fees will increase. Fourteen of the fee increases will amount to $5 each. The largest increase, $40, will be applied to the fee for adjudicating a mineral patent application containing more than 10 claims, which will increase from $2,995 to $3,035. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $25—from $1,495 to $1,520.

The calculations that resulted in the new fees are included in the table below:

FIXED COST RECOVERY FEES

[FY15]

Document/Action	Existing fee [1]	Existing value [2]	IPD-GDP Increase [3]	New value [4]	New fee [5]
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)					
Noncompetitive lease application	$400	$397.84262	$5.76872	$403.61134	$405
Competitive lease application	155	154.39399	2.23871	156.63270	155
Assignment and transfer of record title or operating rights	90	89.06505	1.29144	90.35649	90
Overriding royalty transfer, payment out of production	10	11.87326	0.17216	12.04542	10
Name change, corporate merger or transfer to heir/devisee	210	207.81845	3.01337	210.83182	210
Lease consolidation	440	439.39382	6.37121	445.76503	445
Lease renewal or exchange	400	397.84262	5.76872	403.61134	405
Lease reinstatement, Class I	75	77.18139	1.11913	78.30052	80
Leasing under right-of-way	400	397.84262	5.76872	403.61134	405
Geophysical exploration permit application—Alaska	25				[6] 25
Renewal of exploration permit—Alaska	25				[7] 25
Geothermal (part 3200)					
Noncompetitive lease application	400	397.84262	5.76872	403.61134	405
Competitive lease application	155	154.39399	2.23871	156.63270	155
Assignment and transfer of record title or operating rights	90	89.06505	1.29144	90.35649	90
Name change, corporate merger or transfer to heir/devisee	210	207.81845	3.01337	210.83182	210
Lease consolidation	440	439.39382	6.37121	445.76503	445
Lease reinstatement	75	77.18139	1.11913	78.30052	80
Nomination of lands	110	111.15701	1.61178	112.76879	115
plus per acre nomination fee	0.11	0.11116	0.00161	0.11277	0.11
Site license application	60	59.37670	0.86096	60.23766	60
Assignment or transfer of site license	60	59.37670	0.86096	60.23766	60
Coal (parts 3400, 3470)					
License to mine application	10	11.87326	0.17216	12.04542	10
Exploration license application	325	326.58226	4.73544	331.31770	330
Lease or lease interest transfer	65	65.32894	0.94727	66.27621	65
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)					
Applications other than those listed below	35	35.63018	0.51664	36.14682	35
Prospecting permit application amendment	65	65.32894	0.94727	66.27621	65
Extension of prospecting permit	105	106.88014	1.54976	108.42990	110
Lease modification or fringe acreage lease	30	29.69876	0.43063	30.12939	30
Lease renewal	510	510.66459	7.40464	518.06923	520
Assignment, sublease, or transfer of operating rights	30	29.69876	0.43063	30.12939	30
Transfer of overriding royalty	30	29.69876	0.43063	30.12939	30
Use permit	30	29.69876	0.43063	30.12939	30
Shasta and Trinity hardrock mineral lease	30	29.69876	0.43063	30.12939	30
Renewal of existing sand and gravel lease in Nevada	30	29.69876	0.43063	30.12939	30
Public Law 359; Mining in Powersite Withdrawals: General (part 3730)					
Notice of protest of placer mining operations	10	11.87326	0.17216	12.04542	10
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)					
Application to open lands to location	10	11.87326	0.17216	12.04542	10
Notice of location	20	17.80469	0.25817	18.06285	20
Amendment of location	10	11.87326	0.17216	12.04542	10
Transfer of mining claim/site	10	11.87326	0.17216	12.04542	10
Recording an annual FLPMA filing	10	11.87326	0.17216	12.04542	10
Deferment of assessment work	105	106.88014	1.54976	108.42990	110
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	30	29.69876	0.43063	30.12939	30
Mineral patent adjudication:					
(more than 10 claims)	2,995	2,992.71679	43.39439	3,036.11118	3,035
(10 or fewer claims)	1,495	1,496.34279	21.69697	1,518.03976	1,520
Adverse claim	105	106.88014	1.54976	108.42990	110
Protest	65	65.32894	0.94727	66.27621	65
Oil Shale Management (parts 3900, 3910, 3930)					
Exploration license application	315	313.24175	4.54201	317.78375	320

FIXED COST RECOVERY FEES—Continued

[FY15]

Document/Action	Existing fee [1]	Existing value [2]	IPD-GDP Increase [3]	New value [4]	New fee [5]
Application for assignment or sublease of record title or overriding royalty	65	63.71601	0.92388	64.63989	65

[1] The Existing Fee was established by the 2013 (Fiscal Year 2014) cost recovery fee update rule published August 16, 2013 (78 FR 49945), effective October 1, 2013.

[2] The Existing Value is the figure from the New Value column in the previous year's rule.

[3] From 4th Quarter 2012 to 4th Quarter 2013, the IPD–GDP increased by 1.45 percent. The value in the IPD–GDP Increase column is 1.45 percent of the Existing Value.

[4] The sum of the Existing Value and the IPD–GDP Increase is the New Value.

[5] The New Fee for Fiscal Year 2015 is the New Value rounded to the nearest $5 for values equal to or greater than $1, or to the nearest penny for values under $1.

[6] Section 365 of the Energy Policy Act of 2005 (Pub. L. 109–58) directed in subsection (i) that "the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing drilling-related permit applications and use authorizations." In the 2005 cost recovery rule, the BLM interpreted this prohibition to apply to geophysical exploration permits. 70 FR 58854–58855. While the $25 fees for geophysical exploration permit applications for Alaska and renewals of exploration permits for Alaska pre-dated the 2005 cost recovery rule and were not affected by the Energy Policy Act prohibition, the BLM interprets the Energy Policy Act provision as prohibiting it from increasing this $25 fee.

[7] The BLM interprets the Energy Policy Act prohibition discussed in footnote 6, above, as prohibiting it from increasing this $25 fee, as well.

Source for Implicit Price Deflator for Gross Domestic Product data: U.S. Department of Commerce, Bureau of Economic Analysis (April 25, 2014).

III. How Fees Are Adjusted

Each year, the figures in the Existing Value column in the table above (not those in the Existing Fee column) are used as the basis for calculating the adjustment to these fees. The Existing Value is the figure from the New Value column in the previous year's rule. In this year's published table we have expanded the Existing Value, IPD–GDP Increase, and New Value columns to five decimal places to more accurately reflect the actual values from the calculation spreadsheets. In the case of fees that were not in the table the previous year, or that had no figure in the New Value column the previous year, the Existing Value is the same as the Existing Fee. Because the new fees are derived from the new values—rounded to the nearest $5 or the nearest penny for fees under $1—adjustments based on the figures in the Existing Fee column would lead to significantly over- or under-valued fees over time. Accordingly, fee adjustments are made by multiplying the annual change in the IPD–GDP by the figure in the Existing Value column. This calculation defines the New Value for this year, which is then rounded to the nearest $5 or the nearest penny for fees under $1, to establish the New Fee.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

The BLM has determined that the rule will not have an annual effect on the economy of $100 million or more. It will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The changes in today's rule are much smaller than those in the 2005 final rule, which did not approach the threshold in Executive Order 12866. For instructions on how to view a copy of the analysis prepared in conjunction with the 2005 final rule, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflation factor that increases some existing user fees for processing documents associated with the onshore minerals programs. However, most of these fee increases are less than 2 percent and none of the increases materially affect the budgetary impact of user fees.

Finally, this rule will not raise novel legal issues. As explained above, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 cost recovery rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining. A coal lessee is a small entity if it employs not more than 250 people, including people working for its affiliates.

The SBA would consider many, if not most, of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of "small entity."

The final rule may affect a large number of small entities since 17 fees for activities on public lands will be increased. However, the BLM has concluded that the effects will not be significant. Most of the fixed fee increases will be less than 2 percent as a result of this final rule. The adjustments result in no increase in the fee for the processing of 31 documents relating to the BLM's minerals programs. The highest adjustment, in

dollar terms, is for adjudications of mineral patent applications involving more than 10 mining claims, which will be increased by $40. For the 2005 final rule, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. For instructions on how to view a copy of that analysis, please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT** section above. The analysis for the 2005 rule concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. For the 2005 final rule, which established the fee adjustment procedure that this rule implements, the BLM completed a threshold analysis, which is available for public review in the administrative record for that rule. The fee increases implemented in today's rule are substantially smaller than those provided for in the 2005 rule.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 13132, therefore, we find that the final rule does not have significant federalism effects. A federalism assessment is not required.

The Paperwork Reduction Act of 1995

These regulations contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the BLM submitted a copy of the proposed information collection requirements to the Office of Management and Budget (OMB) for review. The OMB approved the information collection requirements under the following Control Numbers:

Oil and Gas

(1) 1004–0034 which expires July 31, 2015;

(2) 1004–0137 which expires October 31, 2014;

(3) 1004–0162 which expires July 31, 2015;

(4) 1004–0185 which expires December 31, 2015;

Geothermal

(5) 1004–0132 which expires December 31, 2016;

Coal

(6) 1004–0073 which expires August 31, 2016;

Mining Claims

(7) 1004–0025 which expires March 31, 2016;

(8) 1004–0114 which expires October 31, 2016; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121 which expires March 31, 2016.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule is administrative and involves only procedural changes addressing fee requirements. In promulgating this rule, the government is conducting routine and continuing government business of an administrative nature having limited context and intensity. Therefore, it is categorically excluded from environmental review under Section 102(2)(C) of NEPA, pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215.

Pursuant to Council on Environmental Quality (CEQ) regulations and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means categories of actions ''which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of [CEQ] regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required.'' 40 CFR 1508.4; see also BLM National Environmental Policy Act Handbook H–1790–1, Ch. 4, at 17 (Jan. 2008).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian tribes. The BLM has not found any substantial direct effects. Consequently, the BLM did not utilize the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Public Law 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this final rule. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this rule is Anna Atkinson of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR Chapter II as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.;* 30 U.S.C. 181 *et seq.,* 301–306, 351–359, and 601 *et seq.;* 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.;* 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.;* and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to the BLM for the services listed for Fiscal Year 2015. These fees are nonrefundable and must be included with documents you file under this chapter. Fees will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

FY 2015 PROCESSING AND FILING FEE TABLE

Document/Action	FY 2015 Fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150)	
Noncompetitive lease application	$405.
Competitive lease application	155.
Assignment and transfer of record title or operating rights	90.
Overriding royalty transfer, payment out of production	10.
Name change, corporate merger or transfer to heir/devisee	210.
Lease consolidation	445
Lease renewal or exchange	405.
Lease reinstatement, Class I	80.
Leasing under right-of-way	405.
Geophysical exploration permit application—Alaska	25.
Renewal of exploration permit—Alaska	25.
Geothermal (part 3200)	
Noncompetitive lease application	405.
Competitive lease application	155.
Assignment and transfer of record title or operating rights	90.
Name change, corporate merger or transfer to heir/devisee	210.
Lease consolidation	445.
Lease reinstatement	80.
Nomination of lands	115.
plus per acre nomination fee	0.11.
Site license application	60.
Assignment or transfer of site license	60.
Coal (parts 3400, 3470)	
License to mine application	10.
Exploration license application	330.
Lease or lease interest transfer	65.
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580)	
Applications other than those listed below	35.
Prospecting permit application amendment	65.
Extension of prospecting permit	110.
Lease modification or fringe acreage lease	30.
Lease renewal	520.
Assignment, sublease, or transfer of operating rights	30.
Transfer of overriding royalty	30.
Use permit	30.
Shasta and Trinity hardrock mineral lease	30.
Renewal of existing sand and gravel lease in Nevada	30.
Public Law 359; Mining in Powersite Withdrawals: General (part 3730)	
Notice of protest of placer mining operations	10.
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870)	
Application to open lands to location	10.

FY 2015 PROCESSING AND FILING FEE TABLE—Continued

Document/Action	FY 2015 Fee
Notice of location*	20.
Amendment of location	10.
Transfer of mining claim/site	10.
Recording an annual FLPMA filing	10.
Deferment of assessment work	110.
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands.	30.
Mineral patent adjudication	3,035 (more than 10 claims). 1,520 (10 or fewer claims).
Adverse claim	110.
Protest	65.
Oil Shale Management (parts 3900, 3910, 3930)	
Exploration license application	320.
Application for assignment or sublease of record title or overriding royalty	65.

*To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833.

* * * * *

[FR Doc. 2014–22836 Filed 9–24–14; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register

Vol. 79, No. 186

Thursday, September 25, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0600; Airspace Docket No. 14–ASW–6]

Proposed Establishment of Class D and E Airspace, and Amendment of Class E Airspace; Hammond, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace and Class E airspace designated as an extension, at Hammond, LA. The establishment of an air traffic control tower has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations within the airspace at Hammond Northshore Regional Airport. This action also would amend the airport name and adjust the geographic coordinates for the current Class E airspace area.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0600/Airspace Docket No. 14–ASW–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0600/Airspace Docket No. 14–ASW–6.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of Hammond Northshore Regional Airport, Hammond, LA, to accommodate the establishment of an air traffic control tower. Class E airspace designated as an extension would be established within a 4.1-mile radius of the airport, with segments extending from the 4.1-mile radius of the airport to 7 miles north and 7 miles southeast of the Hammond VORTAC. Controlled airspace is needed for the safety and management of IFR operations at the airport. An amendment to Class E airspace would update the geographic coordinates of the airport to coincide with the FAA's aeronautical database, and reflect the airport name change from Hammond Municipal Airport to Hammond Northshore Regional Airport.

Class D and E airspace areas are published in Paragraph 5000, 6004, and 6005, respectively, of FAA Order 7400.9Y, dated August 6, 2014 and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will 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 would establish controlled airspace at Hammond Northshore Regional Airport, Hammond, LA.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA 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.

* * * * *

ASW LA D Hammond, LA [New]

Hammond Northshore Regional Airport, LA
(Lat. 30°31′18″ N., long. 90°25′06″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.1-mile radius of Hammond Northshore Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

ASW LA E4 Hammond, LA [New]

Hammond Northshore Regional Airport, LA
(Lat. 30°31′18″ N., long. 90°25′06″ W.)

Hammond VORTAC
(Lat. 30°31′10″ N., long. 90°25′03″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Hammond VORTAC 355° radial extending from the 4.1-mile radius to 7 miles north of the airport, and within 2.4 miles each side of the Hammond VORTAC 128° radial extending from the 4.1-mile radius to 7 miles southeast of the airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

ASW LA E5 Hammond, LA [Amended]

Hammond Northshore Regional Airport, LA
(Lat. 30°31′18″ N., long. 90°25′06″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Hammond Northshore Regional Airport

Issued in Fort Worth, TX, on September 18, 2014.

Robert W. Beck,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–22849 Filed 9–24–14; 8:45 am]

BILLING CODE 4901–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0565; Airspace Docket No. 14–ACE–7]

Proposed Revocation of Class D Airspace; Independence, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class D airspace at Independence Municipal Airport, Independence, KS. The closure of the airport's air traffic control tower has necessitated the need for this proposal.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2014–0565/Airspace Docket No. 14–ACE–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office, telephone 1–800–647–5527, is on the ground floor of the building at the above address.

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:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2014–0565/Airspace Docket No. 14–ACE–7.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments

received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by removing Class D airspace at Independence Municipal Airport, Independence, KS. The closing of the airport's air traffic control tower has made this action necessary.

Class D airspace areas 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 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will 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 would amend controlled airspace at Independence Municipal Airport, KS.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA 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 Independence, KS [Removed]

Issued in Fort Worth, TX, on September 11, 2014.

Humberto Melendez,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2014–22846 Filed 9–24–14; 8:45 am]

BILLING CODE 4901–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2014–0640; Airspace Docket No. 14–ACE–4]

RIN 2120–AA66

Proposed Modification of Restricted Areas R–4501A, R–4501B, R–4501C, R–4501D, R–4501F, and R–4501H; Fort Leonard Wood, MO.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the designated altitudes of restricted area R–4501B, Fort Leonard Wood, MO, by raising the restricted area ceiling from 1,500 feet mean seal level (MSL) in the north and 2,200 feet MSL in the south to a single altitude of 4,300 feet MSL across the entire restricted area. This action also proposes to add exclusions to the boundaries of R–4501C, R–4501F, and R–4501H to address overlapping restricted areas. Finally, this action proposes numerous administrative changes to the R–4501A and R–4501B titles and R–4501A–D, R–4501F, and R–4501H using agency information to standardize the format and information provided describing these restricted areas of the Fort Leonard Wood restricted area complex.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2014–0640 and Airspace Docket No. 14–ACE–4, at the beginning of your comments. You may also submit comments through the Internet at *www.regulations.gov.* Comments on environmental and land use aspects to should be directed to: Martha M. Miller, NEPA Program Manager, DPW Environmental Division, Fort Leonard Wood, MO 65473; telephone: (573) 596–8627.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2014–0640 and Airspace Docket No. 14–ACE–4) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2014–0640 and Airspace Docket No. 14–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Fort Leonard Wood, located in Pulaski County, Missouri, is one of 5 U.S. Army major basic training installations in the United States; training 50,000 to 60,000 initial military training soldiers per year. The R–4501 restricted area complex supports the military training conducted at Fort Leonard Wood with multiple firing ranges. Within the complex, R–4501B contains a number of training ranges equipped with pop up targets and electronic scoring to accommodate ammunition up to 7.62-mm.

R–4501B currently has 2 ceilings; 1,500 feet MSL in the north and 2,200 feet MSL in the south. Based on firing parameters and approved safety buffers, the U.S. Army has determined and requested the ceiling of R–4501B be increased to a single 4,300 foot MSL ceiling. This higher ceiling would ensure protection to non-participating air traffic while containing hazardous larger caliber rounds during visual and instrument meteorological conditions.

During the FAA's initial review of the proposal, a number of instances of overlapping restricted areas within the R–4501 complex were identified. To ensure the overlapping restricted areas are not active in the same volume of airspace at the same time, exclusionary language was drafted for inclusion in the R–4501C, R–4501F, and R–4501H descriptions, as proposed below.

The FAA also identified a number of editorial changes to six of the seven R–4501 complex restricted areas to standardize or correct the information contained in the existing descriptions. The proposed changes are addressed below; are administrative in nature; and do not affect the scheduling, use, or activities conducted within the restricted areas.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to raise and establish a single ceiling to R–4501B by changing the designated altitudes from ''The area north of a line between lat. 37°42′51″ N., long. 92°06′48″ W.; and lat. 37°42′53″ N., long. 92°09′18″ W., surface to 1,500 feet MSL. The area south of this line, surface to 2,200 feet MSL.'' to ''Surface to 4,300 feet MSL.'' for the entire restricted area. This proposed amendment is necessary to ensure containment of hazardous range operations using 7.62-mm caliber ammunition that could ricochet 2,500 feet above ground level and exceed the ceiling of the existing restricted area.

The boundaries for R–4501C, R–4501F, and R–4501H would add exclusions to prevent overlapping restricted areas from being active in the same airspace at the same time. R–4501C would add ''excluding R–4501B when active''; R–4501F would add ''excluding R–4501A, R–4501B, and R–4501C when active''; and R–4501H would add ''excluding R–4501B when active''.

Additionally, to standardize the format and information contained in the descriptions for the Fort Leonard Wood R–4501 complex, this action would remove the word ''West'' in the R–4501A title and remove the word ''East'' in the R–4501B title. The restricted area using agency name changes in R–4501A, R–4501B, R–4501C, and R–4501D would preface the existing using agency information with ''U.S. Army'', and the using agency name changes in R–4501F and R–4501H would update the existing ''Headquarters U.S. Army Training Center'' to ''Commanding General.'' These administrative changes would not affect the scheduling, use, or activities conducted within the restricted areas.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary

to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the restricted area airspace at Fort Leonard Wood, Missouri, to enhance aviation safety and accommodate essential U.S. Army training requirements.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.45 Missouri [Amended]

■ 2. § 73.45 is amended as follows:

R–4501A Fort Leonard Wood West, MO [Removed]

R–4501B Fort Leonard Wood East, MO [Removed]

R–4501A Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°41′06″ N., long. 92°09′18″ W.; to lat. 37°38′15″ N., long. 92°09′18″ W.; to lat. 37°37′35″ N., long. 92°10′38″ W.; to lat. 37°36′15″ N., long. 92°10′38″ W.; to lat. 37°36′15″ N., long. 92°15′22″ W.; to lat. 37°39′28″ N., long. 92°15′22″ W.; to lat. 37°41′07″ N., long. 92°14′24″ W.; to the point of beginning.

Designated altitudes. Surface to but not including 2,200 feet MSL.

Time of designation. 0630–2100 Monday–Saturday; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

R–4501B Fort Leonard Wood, MO [New]

Boundaries. Beginning at lat. 37°43′00″ N., long. 92°06′56″ W.; to lat. 37°42′11″ N., long. 92°06′15″ W.; to lat. 37°39′07″ N., long. 92°06′18″ W.; to lat. 37°38′15″ N., long. 92°09′18″ W.; to lat. 37°43′02″ N., long. 92°09′18″ W.; to the point of beginning.

Designated altitudes. Surface to 4,300 feet MSL.

Time of designation. 0630–2200 Monday–Saturday; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

R–4501C Fort Leonard Wood, MO [Amended]

Boundaries. Beginning at lat. 37°41′00″ N., long. 92°16′11″ W.; to lat. 37°41′26″ N., long. 92°10′16″ W.; to lat. 37°40′16″ N., long. 92°07′06″ W.; to lat. 37°38′20″ N., long. 92°06′56″ W.; to lat. 37°36′07″ N., long. 92°10′28″ W.; to lat. 37°35′22″ N., long. 92°15′32″ W.; to the point of beginning, excluding R–4501B when active.

Designated altitudes. From 2,200 feet MSL to 5,000 feet MSL.

Time of designation. 0900–2100 Monday; 0900–1600 Tuesday–Friday; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

R–4501D Fort Leonard Wood, MO [Amended]

Boundaries. Beginning at lat. 37°41′00″ N., long. 92°16′11″ W.; to lat. 37°41′26″ N., long. 92°10′16″ W.; to lat. 37°40′16″ N., long. 92°07′06″ W.; to lat. 37°38′20″ N., long. 92°06′56″ W.; to lat. 37°36′07″ N., long. 92°10′28″ W.; to lat. 37°35′22″ N., long. 92°15′32″ W.; to the point of beginning.

Designated altitudes. From 5,000 feet MSL to 12,000 feet MSL.

Time of Designation. 0900–2100 Monday; 0900–1600 Tuesday–Friday; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

* * * * *

R–4501F Fort Leonard Wood, MO [Amended]

Boundaries. Beginning at lat. 37°41′00″ N., long. 92°09′05″ W.; to lat. 37°41′00″ N., long. 92°10′53″ W.; to lat. 37°43′02″ N., long. 92°12′11″ W.; to lat. 37°43′10″ N., long. 92°08′46″ W.; to the point of beginning, excluding R–4501A, R–4501B, and R–4501C when active.

Designated altitudes. Surface to 3,200 feet MSL.

Time of designation. 0700–1800 daily; other times by NOTAM issued at least 24 hours in advance.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

R–4501H Fort Leonard Wood, MO [Amended]

Boundaries. Beginning at lat. 37°42′50″ N., long. 92°07′21″ W.; to lat. 37°44′00″ N., long. 92°07′16″ W.; to lat. 37°44′45″ N., long. 92°05′41″ W.; to lat. 37°44′50″ N., long. 92°04′49″ W.; to lat. 37°46′15″ N., long. 92°05′31″ W.; to lat. 37°47′45″ N., long. 92°06′01″ W.; to lat. 37°48′00″ N., long. 92°06′01″ W.; to lat. 37°48′00″ N., long. 92°02′41″ W.; thence south and along the Big Piney River and Reservation boundary; to lat. 37°42′30″ N., long. 92°04′06″ W.; to lat. 37°42′15″ N., long. 92°06′06″ W.; to the point of beginning, excluding R–4501B when active.

Designated altitudes. Surface to 3,200 feet MSL.

Time of designation. 1500–1600 Wednesday; other times by NOTAM.

Controlling agency. FAA, Kansas City ARTCC.

Using agency. U.S. Army, Commanding General, Fort Leonard Wood, MO.

Issued in Washington, DC, on September 18, 2014.

Paul Gallant,

Acting Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–22884 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2014–0639; Airspace Docket No. 13–ASW–20]

RIN 2120–AA66

Proposed Modification of Restricted Areas R–3804A, R–3804B, and R–3804C; Fort Polk, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to expand the lateral boundary of

restricted area R–3804B, Fort Polk, LA, and raise the restricted area ceiling to, but not including 10,000 feet mean sea level (MSL). The expanded restricted airspace would be used to contain new live fire ranges and support mission requirements of the U.S. Army in order to fully exploit the capabilities of modern weapons systems and complex training scenarios that replicate the conditions encountered during military deployments today. This action also proposes time of designation changes to R–3804A and R–3804B to better reflect when the restricted areas are required and in use by the U.S. Army and when the airspace is available for use by nonparticipants. This action would incorporate editorial corrections to the R–3804A, R–3804B, and R–3804C legal descriptions.

DATES: Comments must be received on or before November 10, 2014.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2014–0639 and Airspace Docket No. 13–ASW–20, at the beginning of your comments. You may also submit comments through the Internet at *www.regulations.gov.* Comments on environmental and land use aspects should be directed to: Elizabeth Hoyt, Ecologist, DPW ENRMD Conservation Branch, 1697 23rd Street, Building 2543, Fort Polk, LA 71459, phone 337–531–1363.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and Regulations Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2014–0639 and Airspace Docket No. 13–ASW–20) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2014–0639 and Airspace Docket No. 13–ASW–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Joint Readiness Training Center (JRTC) Fort Polk, located in Fort Polk, LA, is one of two U.S. Army training sites for conducting realistic force on force exercises. Units typically rotate through Fort Polk as one of their final preparations for deployments worldwide. The Fort Polk training environment allows the integration of ground and air forces using the most modern weapons and tactics in highly complex scenarios. Much of the training is accomplished with live ordinance that possess capabilities which exceed the current dimensions of R–3804B.

In order to fully exploit the capabilities of modern weapons systems and provide the required training scenarios that replicate conditions encountered during deployments today, it is necessary to expand R–3804B laterally and vertically. New weapons ranges planned for use would contain hazardous artillery and mortar fires reaching a maximum altitude of 9,400 feet MSL. Planned firing ranges would also present a vertical hazard to nonparticipants above the current R–3804B ceiling of 3,000 feet MSL. Several of these planned ranges are located within the proposed lateral expansion of R–3804B, outside the existing restricted area boundary, and would enable employment of the weapon systems at realistic distances from the target. The proposed airspace expansion would also permit the use of non-eye safe targeting lasers from airborne platforms at distances that replicate modern combat tactics.

The land underlying the proposed lateral expansion of R–3804B is owned by the U.S. Army and the proposed vertical expansion of the restricted area would continue to be contained within the Warrior 1 Low and Warrior 1 High Military Operations Areas (MOAs), which rise upward from 100 feet above the ground to flight level (FL) 180. Additionally, R–3804A abuts the proposed expansion of R–3804B immediately to the east and rises from the surface to FL 180; thus, creating a shadow in which the proposed R–3804B would lie.

Currently, R–3804B lacks the lateral and vertical dimensions necessary to contain the extended weapons employment ranges and altitudes, and laser training profiles, used today in combat operations. This deficiency reduces the U.S. Army's mission integration training in the employment of air and ground units during the final stages of deployment preparation. The proposed expansion of R–3804B would provide the necessary live-fire capability supporting modern combat tactics and is critical to conducting realistic full mission profile training.

Upon review of the R–3804 restricted area complex, additional proposed amendments to the time of designation of R–3804A and R–3804B were identified to better reflect when the restricted areas are required and in use by the U.S. Army and when the airspace is no longer required for its designated purpose. And, editorial changes to correct the R–3804A, R–3804B, and R–

3804C using agency information were also identified.

The proposed amendments to R–3804A, R–3804B, and R–3804C are addressed below.

The Proposal

The FAA is proposing an amendment to 14 CFR part 73 to expand the lateral and vertical dimensions of restricted area R–3804B, Fort Polk, LA. The proposed R–3804B would be the minimum size required for containing hazardous mortar, gunnery, and non-eye safe laser targeting activities conducted there. The actual usage of the restricted area is estimated to be continuous for two weeks out of each month during JRTC military rotations. The proposed R–3804B amendments are described below.

The proposed R–3804B boundary would extend the current eastern boundary northward to match the northwestern corner of R–3804A at 31°08′43″ N. latitude. The northern boundary would then begin at that matched northwestern corner of R–3804A and run west along the 31°08′43″ N. latitude to intercept the 93°11′00″ W. longitude. The proposed R–3804B western boundary would then begin at that intercepted point (lat. 31°08′43″ N., long. 93°11′00″ W.) and run southward along the 93°11′00″ W. longitude to intercept the northern boundary of the current R–3804B at lat. 31°04′56″ N., long. 93°11′00″ W. The remaining R–3804B boundary information would be unchanged.

The proposed R–3804B designated altitudes would be changed from ''surface to 3,000 feet MSL'' to ''surface to but not including 10,000 feet MSL.'' This is necessary to ensure containment of the hazardous artillery and mortar fires with a maximum altitude of 9,400 feet MSL.

Additionally, the proposed time of designation for the amended R–3804B would be changed from ''Continuous'' to ''By NOTAM.'' During periods when the proposed restricted area is not needed by the using agency for its designated purpose, the airspace would be returned to the controlling agency for access by other airspace users. This proposed amendment would ensure the restricted area is available to the U.S. Army when needed, continuously during training rotations, and provide a better indication to nonparticipants when the R–3804B airspace is active and when it is available for use by the public.

Similarly, the proposed time of designation for R–3804A would be changed from ''Continuous'' to ''By NOTAM'' to match the proposed R–3804B time of designation. Again, during periods when the restricted area is not needed by the using agency for its designated purpose, the airspace would be returned to the controlling agency for access by other airspace users. This proposed amendment would ensure R–3804A is available to the U.S. Army when needed, continuously during training rotations, and provide a better indication to nonparticipants when the R–3804A airspace is active and when it is available for use by the public.

Lastly, this action proposes administrative changes to the using agency name for R–3804A, R–3804B, and R–3804C to incorporate the military service component of the using agency in the using agency name and to the designated altitudes and time of designation for R–3804C to remove unnecessary verbiage. The using agency information change for the three restricted areas would simply preface the existing using agency information with ''U.S. Army.'' The designated altitudes information change for R–3804C would remove the word ''up'' and the time of designation information change for R–3804C would remove the words ''As published.'' These are purely administrative changes that do not affect the scheduling, use, or activities conducted within the restricted areas.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the restricted area airspace at Fort Polk, Louisiana, to enhance aviation safety and accommodate essential U.S. Army training requirements.

Environmental Review

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.38 Louisiana (Amended)

■ 2. § 73.38 is amended as follows:

* * * * *

R–3804A Fort Polk, LA (Amended)

Boundaries. Beginning at lat. 31°00′53″ N., long. 93°08′12″ W.; to lat. 31°00′53″ N., long. 92°56′53″ W.; to lat. 31°00′20″ N., long. 92°56′14″ W.; to lat. 31°00′20″ N., long. 92°54′23″ W.; to lat. 31°03′55″ N., long. 92°51′34″ W.; to lat. 31°09′35″ N., long. 92°58′25″ W.; to lat. 31°09′35″ N., long. 93°00′56″ W.; to lat. 31°08′43″ N., long. 93°01′55″ W.; to lat. 31°08′43″ N., long. 93°08′12″ W.; to the point of beginning.

Designated altitudes. Surface to FL 180.

Time of designation. By NOTAM.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Commanding General, Fort Polk, LA.

R–3804B Fort Polk, LA (Amended)

Boundaries. Beginning at lat. 31°00′53″ N., long. 93°10′53″ W.; to lat. 31°00′53″ N., long. 93°08′12″ W.; to lat. 31°08′43″ N., long. 93°08′12″ W.; to lat. 31°08′43″ N., long. 93°11′00″ W.; to lat. 31°04′56″ N., long. 93°11′00″ W.; to lat. 31°04′15″ N., long. 93°12′31″ W.; to the point of beginning.

Designated altitudes. Surface to but not including 10,000 feet MSL.

Time of designation. By NOTAM.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Commanding General, Fort Polk, LA.

R–3804C Fort Polk, LA (Amended)

Boundaries. Beginning at lat. 31°00′53″ N., long. 93°08′12″ W.; to lat. 31°00′53″ N., long. 92°56′53″ W.; to lat. 31°00′20″ N., long. 92°56′14″ W.; to lat. 31°00′20″ N., long. 92°54′23″ W.; to lat. 31°03′55″ N., long. 92°51′34″ W.; to lat. 31°09′35″ N., long. 92°58′25″ W.; to lat. 31°09′35″ N., long. 93°00′56″ W.; to lat. 31°08′43″ N., long. 93°01′55″ W.; to lat. 31°08′43″ N., long. 93°08′12″ W.; to the point of beginning.

Designated altitudes. FL 180 to but not including FL 350.

Time of designation. By NOTAM 24 hours in advance.

Controlling agency. FAA, Houston ARTCC.

Using agency. U.S. Army, Commanding General, Fort Polk, LA.

Issued in Washington, DC, on September 18, 2014.

Paul Gallant,

Acting Manager, Airspace Policy and Regulations Group.

[FR Doc. 2014–22880 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234, 244, 250, 255, 256, 257, 259, and 399

[Docket No. DOT–OST–2014–0056]

RIN 2105–AE11

Transparency of Airline Ancillary Fees and Other Consumer Protection Issues

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This action reopens the comment period for a Notice of Proposed Rulemaking (NPRM) on transparency of airline ancillary fees and other consumer protection issues that was published in the **Federal Register** on May 23, 2014. We are extending the end of the comment period from September 22, 2014, to September 29, 2014. Open Allies for Airfare Transparency and the Travel Technology Association (Travel Tech) have noted the delay in posting the summary of a meeting attended by DOT staff with representatives of Airlines for America (A4A), the Regional Airline Association (RAA), and several of their member airlines on August 7, 2014. The reopening of the comment period is intended to provide all interested parties sufficient time prior to the close of the comment period for this rulemaking to review the summary of the August 7 meeting that DOT posted in the rulemaking docket.

DATES: The comment period for the proposed rule published on May 23, 2014 (79 FR 29970), is reopened. Comments must be received by September 29, 2014. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may file comments identified by the docket number DOT–OST–2014–0056 by any of the following methods:

- *Federal eRulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Room Wl2–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2014–0056 or the Regulatory Identification Number, RIN No. 2105–AE11, for the rulemaking at the beginning of your comment. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, a business, a labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 *FR* 19477–78), or you may visit *http://Docketslnfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202–366–9342 (phone), 202–366–7152 (fax), *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION: On May 23, 2014, the Department published a Notice of Proposed Rulemaking (NPRM) on transparency of airline ancillary fees and other consumer protection issues which sought comment on a number of proposals to enhance protections for air travelers and improve the air travel environment. Comments on the matters proposed were to be received 90 days after publication of the NPRM, or by August 21, 2014. On July 31, 2014, the Department extended the comment period to September 22, 2014 as it was persuaded that more time was needed because of the complexity of the proposals. With this document, the Department is further extending the comment period to September 29, 2014 to provide all interested parties two full weeks to review the summary of an August 7 meeting that DOT posted in the rulemaking docket on September 15, 2014, affording commenters the opportunity, if necessary, to revise their comments prior to submission, or to supplement any previously filed comments. We do not anticipate any further extension of the comment period for this rulemaking, but we will consider comments filed after the close of the comment period to the extent possible.

Issued this 19th day of September, 2014, in Washington, DC.

Kathryn B. Thomson,

General Counsel, U.S. Department of Transportation.

[FR Doc. 2014–22902 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–5650–N–08]

Native American Housing Assistance and Self-Determination Act of 1996: Request for Information

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Request for information.

SUMMARY: On June 12, 2013, HUD published a **Federal Register** document that established the Native American Housing and Self-Determination Formula Negotiated Rulemaking Committee, 2013 (Committee). The purpose of the Committee is to develop

regulatory changes to the funding formula for the Indian Housing Block Grant (IHBG) program authorized by the Native American Housing Assistance and Self-Determination Act of 1996. As part of its charter, the Committee is reviewing whether the current data source for the needs variables, which is the U.S. Decennial Census, should be updated or revised. HUD and the Committee are considering all relevant data sources, including the American Community Survey (ACS), and how each data source might be used or modified, to serve as the source of the data upon which the needs variables of the IHBG formula would be based. This Request for Information requests interested members of the public to provide information regarding alternate data sources, including ACS, which might serve as the basis upon which the needs variables of the IHBG formula could be based.

DATES: Comment Due Date: October 27, 2014.

ADDRESSES: Interested persons are invited to submit information responsive to this document to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit information electronically.

2. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

Note: To receive consideration, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of this notice.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all communications submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rodger Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number: 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 12, 2013 (78 FR 35178), HUD published a **Federal Register** document that established the Native American Housing and Self-Determination Formula Negotiated Rulemaking Committee, 2013 (Committee). The purpose of the Committee is to develop regulatory changes to the funding formula for the Indian Housing Block Grant (IHBG) program authorized by the Native American Housing Assistance and Self-Determination Act of 1996.

In carrying out its charter, the Committee is reviewing the need to update the data source upon which the needs variables will be determined. Currently, 24 CFR 1000.330 provides that the need variables are based on data from the U.S. Decennial Census. After the 2000 Census, the U.S. Census Bureau discontinued using the long form portion of the Decennial Census and replaced it with the ACS. The ACS, unlike the U.S. Decennial Census, is an ongoing statistical survey by the U.S. Census Bureau that regularly samples household across the country to gather information. In considering various alternative data source options, the Committee considered basing the need variables on the ACS. Several Committee members expressed concerns regarding the use of ACS.

The Committee agreed to establish a Study Group to identify and review all relevant data sources, including the ACS, and determine for each data source whether it might be used or modified to serve as the basis for the needs variables of the IHBG formula. This document seeks information from members of the public that could assist the Study Group by identifying and reviewing one or more existing data sources that might serve as the basis for the needs variables.

The Committee requests a data source and method of introducing that data source that achieves an optimal balance of the following factors: Recognizes Tribal sovereignty; provides data that is relevant to eligible AIAN housing needs; and has a data collection methodology that is objective, equitable, transparent, consistent, capable of being applied to all existing formula areas, statistically reliable, and replicable both over time and diverse geographies. Data should be collected and submitted by proficient persons or organizations that have appropriate capacity and training and should be collected on a recurring basis at reasonable intervals or be capable of reliable statistical aging. Finally, the data source should not impose an undue administrative or financial burden upon Tribes, be cost-effective, and be capable of being fully evaluated by the Study Group within a one-year timeframe.

Dated: September 18, 2014.

Jemine A. Bryon,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 2014–22897 Filed 9–24–14; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0297; FRL–9912–68–Region 9]

Revisions to the Arizona State Implementation Plan, Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). This revision concerns particulate matter (PM) emissions from

incinerators, burn-off ovens and crematories. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 27, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0297, 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: Idalia Pérez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Rule 313, Incinerators, Burn-Off Ovens and Crematories. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule 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.

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.

[FR Doc. 2014–22742 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0512; FRL–9915–34–Region 9]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from boilers, steam generators, and process heaters. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 27, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0512, 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: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters and SCAQMD Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. In the Rules and Regulations section of this **Federal Register**, we are approving these local 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: July 25, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–22481 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2013–0602; FRL–9917–13–OAR]

RIN 2060–AR33

Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the period for providing public comments on the proposed rule published on June 18, 2014, titled ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units'' is being extended by 45 days.

DATES: The public comment period for the proposed rule published June 18, 2014 (79 FR 34830), is being extended by 45 days to December 1, 2014.

ADDRESSES: *Comments.* Written comments on the proposed rule may be submitted to the EPA electronically, by mail, by facsimile or through hand delivery/courier. Please refer to the proposal (79 FR 34830) for the addresses and detailed instructions.

Docket: The EPA has established the official public docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–0602. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm* for additional information about the EPA's public docket.

World Wide Web. The EPA Web site containing information for this rulemaking is: *http://www2.epa.gov/cleanpowerplan/.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Vasu, Sector Policies and Programs Division (D205–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–0107, facsimile number (919) 541–4991; email address: *vasu.amy@epa.gov* or Ms. Marguerite McLamb, Sector Policies and Programs Division (D205–01), U.S. EPA, Research Triangle Park, NC 27711; telephone number (919) 541–7858, facsimile number (919) 541–4991; email address: *mclamb.marguerite@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comment Period

The EPA is extending the public comment period for the proposed rule, ''Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,'' (79 FR 34830; June 18, 2014) by 45 days. With this extension, the public comment period will end on December 1, 2014, rather than October 16, 2014.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 18, 2014.

Janet G. McCabe,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2014–22832 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[WC Docket No. 05–25; RM–10593; DA 14–1328]

Special Access Proceeding; Comment Deadline Extended

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment period.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) extends the deadline for filing comments and reply comments in the Special Access Proceeding Further Notice of Proposed Rulemaking (FNPRM) regarding possible changes to the special access rules that apply to incumbent local exchange carriers that are subject to price cap regulation. This extension is necessary to allow time for the Federal Communications Commission (Commission) to collect data that will be used for a proposed one-time, multi-faceted market analysis of the special access market and for potential commenters to review the data in advance of submitting comments and replies.

DATES: Comments for section IV.B of the FNPRM are due on or before April 6, 2015, and reply comments are due on or before May 18, 2015.

ADDRESSES: You may submit comments identified by WC Docket No. 05–25 and RM–10593 by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For additional information and instructions for submitting comments, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher Koves, Pricing Policy Division, Wireline Competition Bureau, 202–418–8209, at *Christopher.koves@fcc.gov.*

SUPPLEMENTARY INFORMATION: The synopsis of this document, WC Docket No. 05–25, RM–10593; DA 14–1328, is stated below. The full text of this document is also available for public inspection during regular business

hours in the Commission's Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may be purchased from Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, via telephone at 202 488–5300, via facsimile at 202 488–5563, or via email at the Commission's Web site.

Background

On December 11, 2012, the Commission adopted a Report and Order requiring providers and purchasers of special access and certain entities providing ''best efforts'' service to submit data and information for a comprehensive evaluation of the special access market. FCC 12–153, 78 FR 2572 (Jan. 11, 2013). In the accompanying FNPRM, the Commission sought comment on possible changes to its rules for granting pricing flexibility for the special access services provided by incumbent local exchange carriers in price cap areas. 78 FR 2600 (Jan. 11, 2013). The Commission invited interested parties to provide such comments after the Commission collected data for the market analysis to enable commenters to include analysis of such data in their comments. In the Report and Order, the Commission delegated authority to the Bureau to implement the data collection and obtain approval for the collection from the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). On August 15, 2014, the Commission obtained OMB's approval for the collection under OMB Control Number 3060–1197. On September 15, 2014, the Bureau released an order amending the collection to reflect the approval received from OMB and announcing a December 15, 2014 deadline by which parties are required to submit data and information. DA 14–1327 (Sept. 15, 2014).

Synopsis

The previous deadline for filing comments on section IV.B of the FNPRM was October 6, 2014 and November 17, 2014 for filing reply comments. 79 FR 15092 (March 18, 2014). Because collection of data must be completed and made available for review before parties can comment on the questions posed in the FNPRM, the Bureau extends the deadline for filing comments and reply comments in the special access proceeding. Accordingly, the Commission in this document, WC Docket No. 05–25, RM–10593; DA 14–1328, sets the new comment date as April 6, 2015 and the new reply comment date as May 18, 2015.

Comment Filing Procedures

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (May 1, 1998).

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau, 202–418–0530 (voice), 202–418–0432 (tty).

The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Deena Shetler,

Associate Bureau Chief, Wireline Competition Bureau.

[FR Doc. 2014–22873 Filed 9–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 14–159, RM–11735; DA 14–1344]

Television Broadcasting Services; Dayton, Ohio

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by WKEF Licensee L.P. (''WKEF Licensee''), the licensee of station WKEF(TV), channel 51, Dayton, Ohio, requesting the substitution of channel 18 for channel 51 at Dayton. While the Commission instituted a freeze on the acceptance of full power television rulemaking petitions requesting channel substitutions in May 2011, it subsequently announced that it would lift the freeze to accept such petitions for rulemaking seeking to relocate from channel 51 pursuant to a voluntary relocation agreement with Lower 700 MHz A Block licensees. WKEF Licensee has entered into such a voluntary relocation agreement with T-Mobile, Inc. and states that operation on channel 18 would eliminate potential interference to and from wireless operations in the adjacent Lower 700 MHZ A Block.

DATES: Comments must be filed on or before October 27, 2014, and reply comments on or before November 10, 2014.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Clifford M. Harrington, Esq., Pillsbury Winthrop Shaw Pittman, LLP, 2300 N Street NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *Joyce.Bernstein@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 14–159, adopted September 18, 2014, and released September 18, 2014. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via email *www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an email to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Ohio is amended by adding channel 18 and removing channel 51 at Dayton.

[FR Doc. 2014–22871 Filed 9–24–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 171 and 173

[Docket No. PHMSA–2011–0143 (HM–253)]

RIN 2137–AE81

Hazardous Materials: Reverse Logistics (RRR).

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking. Extension of comment period.

SUMMARY: PHMSA is notifying the public of its intent to extend the comment period by thirty days for a notice of proposed rulemaking entitled ''Hazardous Materials: Reverse Logistics'' under Docket Number PHMSA–2011–0143 (HM–253) published in the **Federal Register** on August 11, 2014.

DATES: The comment period for the NPRM published August 11, 2014, at 79 FR 46748, is extended from October 10, 2014, until November 10, 2014. To the extent possible, PHMSA will consider late-filed comments.

ADDRESSES: You may submit comments identified by the Docket Number (PHMSA–2011–0143; HM–253) by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 1–202–493–2251.
- Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this notice at the beginning of the comment. Note that all comments received will be posted without change to the docket management system, including any personal information provided.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov,* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Steven Andrews, Hazardous Materials Standards and Rulemaking Division, (202) 366–8553, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On August 11, 2014, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a notice of proposed rulemaking [79 FR 46748] seeking comments on our proposal to revise the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) applicable to return shipments of certain hazardous materials by motor vehicle. PHSMA proposed to establish a new section in the regulations to provide an exception for materials that are transported in a manner that meets the definition of ''reverse logistics.'' In this NPRM, PHMSA also proposed to clearly identify the hazardous materials authorized, and the packaging, hazard communication, and training requirements applicable to reverse logistics shipments. In addition, this rulemaking also proposed to expand an existing exception for reverse logistics shipments of used automobile batteries that are being shipped from a retail facility to a recycling center.

II. Extension of Comment Period

PHMSA received a request to extend the comment period by thirty days from the American Trucking Association (ATA). ATA is conducting its annual meeting in early October 2014, and will require more time to adequately respond with an official comment. ATA is requesting this extension in order to have sufficient time to fully evaluate the impacts of the proposed requirements associated with the proposals in the NPRM. An extension of the comment period will provide ATA and its members the opportunity to compile valuable and comprehensive comments.

Due to PHMSA's desire to collect meaningful input from affected stakeholders, PHMSA is granting the ATA's request to extend the comment period to ensure ATA and other stakeholders have sufficient time to review the proposals in the NPRM. PHMSA is confident the 30-day extension will allow stakeholders sufficient time to conduct a more thorough review.

Issued in Washington, DC, on September 19, 2014, under authority delegated in 49 CFR 1.97(b).

William S. Schoonover,

Deputy Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2014–22759 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

[Docket No. FRA–2009–0039]

RIN 2130–AC10

Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees, Retrospective Regulatory Review-Based Amendments (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On July 28, 2014, FRA published an NPRM proposing to expand the scope of its alcohol and drug regulations to cover employees who perform maintenance-of-way (MOW) activities and certain additional substantive amendments. This document provides notice that FRA is extending the comment period for this NPRM by 60 days.

DATES: The comment period for the NPRM published on July 28, 2014 (79 FR 43830), which was closing on September 26, 2014, is extended until November 25, 2014.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2009–0039 may be submitted by any of the following methods:

- *Online:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking, RIN 2130–AC10. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Interested parties should also be aware that anyone is able to search the electronic form of all written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, 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), or you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT: For program and technical issues, contact Gerald Powers, Drug and Alcohol Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone 202–493–6313), *gerald.powers@dot.gov.* For legal issues, contact Elizabeth A. Gross, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–1342), *elizabeth.gross@dot.gov;* or Patricia V. Sun, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6060), *patricia.sun@dot.gov.*

SUPPLEMENTARY INFORMATION: In response to Congress' mandate in the Rail Safety Improvement Act of 2008 (RSIA), on July 28, 2014, FRA published an NPRM proposing to expand the scope of its alcohol and drug regulations to cover employees who perform maintenance-of-way (MOW) activities. 79 FR 43830. In addition, in the NPRM, FRA proposed certain additional substantive amendments to its alcohol and drug regulations that either respond to National Transportation Safety Board recommendations or update and clarify the regulations based on a retrospective regulatory review analysis.

In a document dated September 15, 2014, the American Public Transportation Association, American Short Line and Regional Railroad Association, Association of American

Railroads, and National Railroad Construction and Maintenance Association, Inc., jointly requested a 60 day extension of the NPRM's comment period. This document provides notice that FRA is extending the comment period for this NPRM by 60 days and comments to the NPRM are now due on November 25, 2014.

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; Sec. 412, Pub. L. 110–432, 122 Stat. 4889; and 49 CFR 1.89.

Issued in Washington, DC, on September 19, 2014.

Robert C. Lauby,

Associate Administrator for Railroad Safety and Chief Safety Officer.

[FR Doc. 2014–22768 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 259

[Docket No. 080410551–4596–01]

RIN 0648–AW57

Capital Construction Fund; Fishing Vessel Capital Construction Fund Procedures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the Capital Construction Fund (CCF) regulations to eliminate provisions that no longer meet the needs of CCF participants, and to simplify and clarify the regulations to better implement the purposes of the underlying statute. These amendments would eliminate the minimum cost and maximum allowable completion time for reconstruction projects, requirements for minimum annual deposits and the requirement that any vessel acquired with CCF funds must be reconstructed, regardless of vessel condition. The new regulations would also add a restriction that the CCF program (program) would not allow withdrawals of funds for projects that increase harvesting capacity.

DATES: NMFS invites the public to comment on this proposed rule. Comments on the proposed rule must be received by November 10, 2014.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0144, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to: *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0144,* Click the ''Comment Now!'' icon, complete the required fields and enter or attach your comments.
- *Mail:* Submit written comments to Paul Marx, Financial Services Division (FSD), NMFS–MB5, 1315 East-West Highway, Silver Spring, MD 20910; or
- *Fax:* 301–713–1939; Attn: Richard VanGorder.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the mailing address above or by calling Richard VanGorder (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule to Richard VanGorder at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer) or email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7825.

FOR FURTHER INFORMATION CONTACT: Richard VanGorder at 301–427–8784 or via email at *Richard.VanGorder@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule revises and replaces the CCF regulations found at 50 CFR part 259.

The program was established by the Merchant Marine Act of 1970. The CCF was authorized by Section 607 of the Merchant Marine Act, 1936, as amended, 46 U.S.C. 1177 (now at 46 U.S.C. 53503) and is administered pursuant to 50 CFR part 259.

The purpose of the program is to assist owners and operators of United States flagged vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine fleet and to provide economic support for the U.S. fishing industry. The extensive vessel reconstruction requirements in the current regulations no longer make sense given the improved status of the merchant marine fleet.

The program encourages construction, reconstruction, or acquisition of vessels through deferment of Federal income taxes. Owners and operators of vessels deposit income from fishing into CCF accounts prior to paying income taxes. All deferred taxes are eventually recovered upon the sale of the vessel because the cost basis of the vessel is reduced by the dollar amount of CCF funds used for its purchase or improvements. The program was deemed necessary because operators of U.S.-flagged vessels are faced with a competitive disadvantage in the construction and replacement of their vessels relative to foreign-flagged operators, whose vessels are registered in countries that do not tax fishing income. The program helps counterbalance this situation through its tax-deferral privileges.

To participate in the program, a vessel owner submits an application to the Financial Services Division of the National Marine Fisheries Service in advance of the relevant Federal tax filing due date. The application identifies the income earning vessel(s), the type of project(s) anticipated and the financial institution that will hold the CCF deposits. Once the Secretary of Commerce deems an application compliant with the CCF statute and regulations, a CCF Agreement is executed between the United States and the vessel owner or operator.

Currently, there are 1,634 CCF Agreements with a total of approximately $263M on deposit. Many of these CCF Agreements were established years ago and identify scheduled projects that are no longer viable. Consequently, CCF participants are faced with either having funds languish on deposit for nonviable scheduled projects or making a non-qualified withdrawal of funds and paying deferred taxes at the highest marginal rate.

The authority to make regulatory changes to the program is granted under 46 U.S.C. 53502(a), which permits the

Secretary of Commerce to prescribe regulations (except for the determination of tax liability) to carry out the program. The program regulations were last amended in 1997 to permit reconstruction projects for safety improvements.

The proposed changes to the CCF regulations are intended to ease the current restrictions on the allowable uses of CCF funds while remaining consistent with current agency priorities of maintaining sustainable fisheries. For example, currently, reconstruction is required when using CCF funds to acquire a used vessel. Reconstruction is mandated regardless of the condition of the vessel. Consequently, the CCF participant must often invest money in unnecessary capital improvements. If this requirement is eliminated and the definition of a ''qualified reconstruction'' is changed, a large portion of the funds that are currently on deposit could be used for projects that are actually needed, rather than required by now-outdated regulations. Additionally, these changes would allow the Government to recapture deferred taxes.

The Proposed Rule:

1. Revises § 259.31(a) to eliminate the requirement that the Agreement holder reconstruct a used vessel acquired with CCF funds (redesignated § 259.3(a)). This would eliminate the requirement to reconstruct vessels, because not all purchased vessels need improvement;

2. Revises § 259.31(b) to eliminate the requirement that the minimum cost of a reconstruction project be the lesser of $100,000 or 20% of the reconstructed vessel's acquisition cost. This provision would eliminate making excessive capital improvements to vessels based upon an arbitrary amount. Instead, program participants would use the CCF to spend what is needed to improve the vessel. It also would remove § 259.31(b)(2), which tiers off of the minimum cost requirement (redesignated § 259.3(c)), now eliminated;

3. Revises § 259.31(b)(1) to add material increases in safety, reliability, or energy efficiency to the list of qualified reconstruction items.

4. Revises § 259.31(c) to specify that a reconstruction or construction be completed within 12 months of commencement. The original regulations allowed for up to 18 months to complete reconstruction projects in order to allow program participants an extended period of time to meet the minimum cost requirements. Since the minimum cost requirement for reconstructions is eliminated, there would be no need for an extended period to complete planned projects.

5. Eliminates the requirement in § 259.34(a) that the Agreement holder annually make a minimum deposit of 2% of the anticipated cost of the scheduled Agreement objectives. The Proposed rule would also eliminate paragraphs (a)(1) and (2) of § 259.34 pertaining to the minimum cost requirement, now eliminated. This proposed change would be consistent with our attempt to reduce the amount of CCF funds on deposit by not requiring excess deposits to meet an annual deposit requirement;

6. Adds the requirement that any project done with CCF funds cannot add to the harvesting capacity of any fishery. This addition would ensure consistency with the agency's larger responsibility to maintain sustainable fisheries (new § 259.3(a), (b), and (c)), and reflects the CCF's current policy; and

7. Removes § 259.32 pertaining to ''Conditional Fisheries.'' ''Conditional Fisheries'' regulations were part of the Financial Aid Program Procedures contained in 50 CFR part 251 and were eliminated on April 3, 1996, under the authority of 16 U.S.C. 742.

Sections are redesignated as necessary due to these changes.

In addition to the changes easing restrictions on CCF projects, program regulations would be amended as follows for purposes of simplicity, clarity, and brevity:

1. A Definitions section would be added (new § 259.1);

2. Existing § 259.1 would be removed because it deals only with deposits for taxable years beginning after December 31, 1969, and before January 1, 1972, and no such deposits remain;

3. Section 259.30 would be redesignated as § 259.2. Proposed § 259.2(b)(1) would add the requirement that the application for an Agreement include the name and Tax Identification Number of the applicant, pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701, *et seq.*);

4. Section 259.31 is redesignated as § 259.3 and would add a prohibition against using CCF funds for any vessel acquisition, construction, or reconstruction that increases fisheries harvesting capacity, to be consistent with the agency's larger responsibility to maintain sustainable fisheries;

5. Proposed § 259.3(a) would simplify the term ''Acquisition'' by removing the existing requirements when acquiring a used vessel and would add the requirement that the acquired vessel must replace an existing or recently sunken vessel, to ensure that the acquired vessel does not add to the fisheries' harvesting capacity (the replaced vessel must lose its fisheries trade endorsement);

6. Proposed § 259.3(b) is a new section pertaining specifically to the term ''Construction,'' which had been omitted as a separate section in the existing regulations, and to clarify that Construction of a vessel, like Acquisition, could not add fisheries harvesting capacity, in accordance with current NMFS fisheries policy;

7. Proposed § 259.3(c) replaces old § 259.31(b), and would simplify the definition of Reconstruction by incorporating the relevant language regarding energy and safety improvements from the deleted Sections 259.31(d) and (e);

8. Proposed § 259.3(d) replaces old § 259.31(c) and would change the time permitted for construction and reconstruction projects from 18 months to 12 months.

9. Section 259.33 would be redesignated as § 259.4;

10. Section 259.34 would be redesignated as § 259.5 and would eliminate the minimum deposit requirement;

11. Proposed § 259.6 would be added to provide for termination of inactive accounts and accounts with zero balances on deposit, and to detail the notification procedures and time limit for resolving Agreement deficiencies to avoid termination;

12. Section 259.35 would be redesignated as § 259.7, and the requirement to submit a preliminary deposit and withdrawal report at the end of each calendar year would be removed, because the preliminary report no longer serves a useful purpose and is not required by the Internal Revenue Service;

13. Section 259.36 would be redesignated as § 259.8, and provisions relating to non-cash deposits or investments would be dropped because they have never occurred;

14. Section 259.37 would be redesignated as § 259.9; and

15. Section 259.38 would be redesignated as § 259.10.

Classification

This proposed rule is published under the authority of, and is consistent with, Chapter 535 of the Shipping Act. The NMFS Assistant Administrator has determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act, as amended, and other applicable law, subject to further consideration after public comment.

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

In addition to public comment about the proposed rule's substance, NMFS also seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment (EA) for this proposed rule. The assessment discusses the impact of this proposed rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and an Initial Regulatory Flexibility Analysis (IRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impacts this proposed rule, if adopted, would have on small entities. The analysis will aid us in considering regulatory alternatives that could minimize the economic consequences on affected small entities. The proposed rule does not duplicate or conflict with other Federal regulations.

Summary of IRFA

The RFA defines a small business as having the same meaning as a ''small business concern'' which is defined under Section 3 of the Small Business Act (SBA). Additionally, ''small governmental jurisdictions'' are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000. As defined in the RFA, the small entities that this rule may affect include vessel owners, vessel operators, fish dealers, individual fishermen, small corporations, others engaged in commercial and recreational activities regulated by NOAA and native Alaskan governmental jurisdictions. In addition, the rule would affect some larger businesses. Notably for new participants, since the CCF is a voluntary program that provides tax deferred benefits to qualified applicants, we assume that no entities large or small would be negatively impacted by this rule. For current participants, the changes allow more flexibility in the use of the funds and, therefore, would only positively affect those entities.

Description of the Number of Small Entities

Most participants in the program have annual gross revenues of less than $5.5 million for shellfish, $20.5 million for finfish and $7.5 million for other fishing. The IRFA analysis estimates that most of the 1634 active program participants are considered small entities. Furthermore, because analysts cannot quantify the exact number of small entities that may be directly regulated by this action, a definitive finding of non-significance for the proposed action under the RFA is not possible. However, because the proposed action would not result in additional compliance obligations, operating costs or any other costs on small entities, the net effects would be expected to be minimal relative to the status quo.

Since the new regulations merely simplify existing CCF regulations and policies, this action will not create new reporting requirements for small entities participating in the CCF. Although the CCF requires certain supporting documentation during the life of the Agreement, the CCF's requirements do not impose unusual burdens. Those supporting documents are usually within the normal business records already maintained by small business entities, and include income tax returns, tax basis schedules, vessel ownership documents, etc. Depending on circumstances, the CCF may require other supporting documents that can be acquired at reasonable cost if they are not already available. We estimate it will take small entities fewer than 3.5 hours per application to meet these requirements.

Because participation is voluntary and requires an average of 3.5 hours to prepare an application, all CCF applicants are assumed to have made a determination that using the program incurs a benefit. Consequently, it is assumed that the CCF's tax deferrals provide a positive economic impact. Importantly, the CCF does not regulate or manage the affairs of its program users, and the regulations impose no additional compliance obligations, operating costs or any other costs on small entities.

Because these regulations will impose no significant costs on any small entities, but rather will provide small and large entities with benefits, negative economic impacts on small entities, if any, are expected to be minimal at worst. The impact is likely to be positive. Accordingly, this rule will not substantially impact a significant number of small businesses.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains no new collection of information requirements subject to the PRA. Existing collections have been approved by OMB under OMB Control No. 0648–0041. This collection includes the Deposit/Withdrawal Report, the Interim Capital Construction Fund Agreement and Certificate. The estimate of the annual total program public reporting burden for the Deposit/Withdrawal report is 1,200 hours. This equates to an average of less than 1 hour of annual reporting burden per program user. The estimates of the annual total program public reporting burden for the Interim Capital Construction Fund Agreement and Certificate is 2,250 hours. This equates to an average of 1 hour of annual reporting burden per existing program user and 3.5 hours of reporting burden for new applicants to the CCF program. The response time estimates above include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Send comments regarding the burden hour estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule will not affect the coastal zone of any state.

The Assistant Administrator for Fisheries, NMFS, determined that this proposed rule will not affect endangered or threatened species, marine mammals, or critical habitat.

This proposed rule does not contain policies with federalism implications under E.O. 13132.

List of Subjects in 50 CFR Part 259

Fisheries, Fishing vessels, Income taxes, Reporting and recordkeeping requirements.

Dated: September 18, 2014.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, NMFS proposes to revise 50 CFR part 259 to read as follows:

PART 259—CAPITAL CONSTRUCTION FUND TAX REGULATIONS

Sec.
259.1 Definitions.
259.2 Applying for a Capital Construction Fund Agreement (''Agreement'').
259.3 Acquisition, construction, or reconstruction.
259.4 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which an Agreement is effective.
259.5 Maximum deposits and time to deposit.
259.6 Termination of inactive and zero balance accounts.
259.7 Annual deposit and withdrawal reports required.
259.8 CCF accounts.
259.9 Conditional consents to withdrawal qualification.
259.10 Miscellaneous.

Authority: 46 U.S.C. 53501, formerly 46 U.S.C. App. 1177 and 1177–1.

§ 259.1 Definitions.

Act means Chapter 535 of Title 46 of the U.S. Code (46 U.S.C. 53501–53517), as may be amended from time to time.

Agreement means the contract to participate in the program between the approved CCF applicant (party) and the Secretary.

Agreement vessel means any eligible vessel or qualified vessel which is subject to an Agreement.

Citizen of the United States means any person who is a United States citizen and any corporation or partnership organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

Commercial fishing means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

Depository means the bank or brokerage account(s) listed in the Agreement where the CCF funds will be physically held.

Eligible vessel means—

(1) A vessel—

(i) Constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) Documented under the laws of the United States; and

(iii) Operated in the foreign or domestic commerce of the United States or in the fisheries of the United States; and

(2) A commercial fishing vessel—

(i) Constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) Of at least 2 net tons but fewer than 5 net tons;

(iii) Owned by a citizen of the United States;

(iv) Having its home port in the United States; and

(v) Operated in the commercial fisheries of the United States.

Extension period means the first day following the end of the Filing period and ending on the last day of the party's last filing extension.

Filing period means the first day following the end of the Tax Year and ending on the party's last day to file their tax return absent a filing extension.

Qualified vessel means—

(1) A vessel—

(i) Constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) Documented under the laws of the United States; and

(iii) Agreed, between the Secretary and the person maintaining the capital construction fund established under 46 U.S.C. 53503, to be operated in the fisheries of the United States; and

(2) A commercial fishing vessel—

(i) Constructed in the United States and, if reconstructed, reconstructed in the United States;

(ii) Of at least 2 net tons but fewer than 5 net tons;

(iii) Owned by a citizen of the United States;

(iv) Having its home port in the United States; and

(v) Operated in the commercial fisheries of the United States; and

(3) Gear which is permanently fixed to the vessel. The expenditure for gear and certain nets which are not fixed to the vessel (pots, traps, longline, seine nets, gill set nets and gill drift nets) is excluded from the amount eligible for qualified withdrawals of CCF funds.

Schedule A means the section of the Agreement that designates the income producing vessel from which deposits are made to a designated account.

Schedule B means the section of the Agreement that designates the qualified project for which the CCF funds are to be expended.

Secretary means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States.

Tax due date means the date the party's Federal tax return must be filed, including extensions, with the Internal Revenue Service.

Tax year means the period between January 1 and December 31 for Calendar year filers or the designated fiscal year for fiscal year filers.

United States means the United States of America and, for citizenship purposes, includes the Commonwealth of Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States, or any political subdivision of any of them.

§ 259.2 Applying for a Capital Construction Fund Agreement (''Agreement'').

(a) *General qualifications.* To be eligible to enter into an Agreement an applicant must:

(1) Be a citizen of the United States (citizenship requirements are those necessary for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended);

(2) Own or lease one or more eligible vessels (as defined at 46 U.S.C. 53501) operating in the foreign or domestic commerce of the United States;

(3) Have an acceptable plan to acquire, construct, or reconstruct one or more qualified vessels (as defined at 46 U.S.C. 53501). The plan must be a firm representation of the applicant's actual intentions. Qualified vessels must be for commercial operation in the fisheries of the United States. If the vessel is 5 net tons or over, it must be documented with a fishery trade endorsement. Dual documentation in both the fisheries and the coastwise trade of the United States is permissible. Any vessel which will carry fishing parties for hire must be inspected and certified (under 46 CFR part 176) by the U.S. Coast Guard as qualified to carry more than six passengers. If the vessel weighs fewer than 5 net tons the party must demonstrate to the Secretary's satisfaction that the carrying of fishing parties for hire will constitute its primary activity.

(b) *Content of application.* Applicants seeking an Agreement must submit a formal application providing the following information:

(1) Name and Tax Identification Number (TIN) of applicant;

(2) Proof of U.S. citizenship;

(3) The first taxable year for which the Agreement is to apply (see § 259.4 for the latest time at which applications for an Agreement relating to the previous taxable year may be received);

(4) The following information regarding each *eligible vessel* which is to be incorporated in Schedule A of the Agreement:

(i) Name of vessel,

(ii) Official number or, in the case of vessels weighing under 5 net tons, the State registration number, where required,

(iii) Type of vessel (i.e., catching vessel, processing vessel, transporting vessel, charter vessel, barge, passenger carrying fishing vessel, etc.),

(iv) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried or in the case of vessels operating in the foreign or domestic commerce the various uses of the vessel, etc.),

(v) Whether it is owned or leased and, if leased, the name of the owner, and a copy of the lease,

(vi) Date and place of construction,

(vii) If reconstructed, date of redelivery and place of reconstruction,

(viii) Trade (or trades) in which the vessel is documented and date last documented,

(ix) The fishery of operation (which in this section means each species or group of species). Each species must be specifically identified by the acceptable common names of fish, shellfish, or other living marine resources which each vessel catches, processes, or transports or will catch, process, or transport for commercial purposes such as marketing or processing the catch),

(x) The area of operation (which for fishing vessels means the general geographic areas in which each vessel will catch, process, or transport, or charter for each species or group of species of fish, shellfish, or other living marine resources),

(5) The specific objectives to be achieved by the accumulation of assets in a Capital Construction Fund (to be incorporated in Schedule B of the Agreement) including:

(i) Number of vessels,

(ii) Type of vessel (i.e., catching, processing, transporting, or passenger carrying fishing vessels),

(iii) General characteristics (i.e., net tonnage, fish-carrying capacity, age, length, type of fishing gear, number of passengers carried),

(iv) Cost of projects,

(v) Amount of indebtedness to be paid for vessels to be constructed, acquired, or reconstructed (all notes, mortgages, or other evidence of indebtedness must be submitted as soon as available, together with sufficient additional evidence to establish that full proceeds of the indebtedness to be paid from a CCF account under an Agreement, were used solely for the purpose of the construction, acquisition, or reconstruction of Schedule B vessels),

(vi) Date of construction, acquisition, or reconstruction,

(vii) Fishery of operation (which in this section means each species or group of species must be specifically identified by acceptable common name of fish, shellfish, or other living marine resources), and

(viii) Area of operation (which in this section means the general geographic areas in which each vessel will operate for each species or group of species of fish, shellfish, or other living marine resources),

(c) *Filing.* The application must be signed and submitted to the Financial Services Division of the National Marine Fisheries Service. As a general rule, the Agreement must be executed and entered into by the taxpayer on or prior to the due date for the filing of the Federal tax return in order to be effective for the tax year to which that return relates. It is manifestly in the Applicant's best interest to file at least 45 days in advance of such date.

§ 259.3 Acquisition, construction, or reconstruction.

CCF funds cannot be used for any vessel acquisition, construction, or reconstruction that increases harvesting capacity.

(a) *Acquisition.* CCF funds can be used to replace an existing or a recently sunken vessel and its existing harvesting capacity. The replaced vessel must lose its fisheries trade endorsement and the vessel owner must notify the Coast Guard Documentation Center of that fact.

(b) *Construction.* CCF funds can be used to construct a vessel to replace an existing vessel, or a recently sunken vessel and its existing harvesting capacity.

(c) *Reconstruction.* Reconstruction may include rebuilding, replacing, reconditioning, refurbishing, repairing, converting and/or improving any portion of a vessel. A reconstruction project must, however, either substantially prolong the useful life of the reconstructed vessel, increase its value, materially increase its safety, reliability, or energy efficiency, or adapt it to a different commercial use in the fishing trade or industry. No vessel more than 25 years old at the time of withdrawal shall be a qualified vessel for the purpose of reconstruction unless a special showing is made, to the Secretary's discretionary satisfaction, that the type and degree of reconstruction intended will result in an efficient and productive vessel with an economically useful life of at least 10 years beyond the date reconstruction is completed.

(d) *Time permitted for construction or reconstruction.* Construction or reconstruction must be completed within 12 months from the date construction or reconstruction first commences, unless otherwise consented to by the Secretary.

§ 259.4 Constructive deposits and withdrawals; ratification of withdrawals (as qualified) made without first having obtained Secretary's consent; first tax year for which an Agreement is effective.

(a) *Constructive deposits and withdrawals (before Agreement executed date).* Constructive deposits and withdrawals are deemed to have been deposited to and withdrawn from a designated CCF account even though the funds were not physically deposited. Constructive deposits and withdrawals shall be permissible only during the ''Tax Year'' for which a written application for an Agreement is submitted to the Secretary. Once the Secretary executes the Agreement, the constructive deposit and withdrawal period ends. All deposits must be physically deposited into a designated CCF account.

(1) All qualified deposits and expenditures occurring within the period specified directly above, that are within the eligible ceilings specified at 46 U.S.C. 53505, may be consented to by the Secretary as constructive deposits and withdrawals. In order for the Secretary to provide his or her consent for constructive deposit and withdrawal treatment, the applicant must include a written request with the application and provide sufficient supporting data to enable the Secretary to evaluate the request. This written request must be submitted no later than the ''Extension Period'' for that party's initial tax year.

(2) [Reserved]

(b) *Constructive deposits and withdrawals (after the Agreement effective date).* The Secretary shall not permit constructive deposits or withdrawals after the effective date of an Agreement. Deposits made after the effective date of an Agreement must be physically deposited into a dedicated CCF account.

(c) *First tax year for which an Agreement is effective.* In order for an Agreement to be effective for any applicant's ''Tax Year,'' the written application must be submitted to the Secretary before the end of the ''Filing Period'' or ''Extension Period'' for that tax year, whichever applies. If the written application is received by the Secretary, after the end of the ''Filing

Period'' or ''Extension Period,'' whichever applies, then the Agreement will be first effective for the next succeeding ''Tax Year.''

(1) It is in the applicant's best interest to submit his or her written application at least 45 days in advance of the end of his or her tax due date. If the written application is submitted too close to the tax due date, and the Secretary is not ultimately able to execute the Agreement, the applicant must bear the burden of negotiating with the Internal Revenue Service for relief. The Secretary shall regard any penalties related to this denied application as due to the applicant's failure to apply for an Agreement in a timely manner.

(2) [Reserved]

(d) *Ratification of withdrawals, as qualified, made without first having obtained Secretary's prior consent.* Any withdrawals made after the effective date of an Agreement without the Secretary's consent are automatically non-qualified withdrawals, unless the Secretary subsequently consents to them by ratification.

(1) The Secretary may ratify, as qualified, any withdrawal made without the Secretary's prior consent, provided the withdrawal would have resulted in the Secretary's consent had it been requested before withdrawal.

(2) The Secretary may issue his or her retroactive consent, if appropriate, as work priorities permit. However, if the Secretary is unable to issue retroactive consent for withdrawals made without his or her consent, then those withdrawals, and any associated penalties, will be deemed due to the party's failure to apply in a timely manner.

(3) It is recommended that a party submit his or her request for withdrawal at least 45 days in advance of the expected date of withdrawal. Withdrawals made without the Secretary's consent, in reliance on obtaining the Secretary's consent, are made purely at a party's own risk. Should any withdrawal made without the Secretary's consent prove, for any reason, to be one which the Secretary will not or cannot consent to ratify, then the result will be an unqualified withdrawal and/or an involuntary termination of the Agreement.

(4) Should a party withdraw CCF funds for a project not previously deemed an eligible Schedule B objective without having first obtained the Secretary's consent, the Secretary may entertain an application to amend the Agreement's Schedule B objectives as the prerequisite to consenting by ratification to the withdrawal.

(5) Redeposit of any withdrawals made without the Secretary's consent, and for which such consent is not subsequently given (either by ratification or otherwise), shall not be permitted. If the non-qualified withdrawal adversely affects the Agreement's general status the Secretary may terminate the Agreement.

§ 259.5 Maximum deposit amounts and time to deposit.

(a) Other than the maximum annual ceilings established by the Act, the Secretary shall not establish an annual ceiling. However, deposits can no longer be made once a party has deposited 100 percent of the anticipated cost of all Schedule B objectives unless the Agreement is then amended to establish additional Schedule B objectives.

(b) Ordinarily, the Secretary shall permit deposits to accumulate prior to commencement of any given Schedule B objective for a maximum of ten years. However, at the Secretary's sole discretion and based on good and sufficient cause shown, the time period may be extended.

§ 259.6 Termination of inactive and zero balance accounts.

(a) If a Schedule B objective has not commenced within 10 years from the date the Agreement was established, and has not been extended by written approval of the Secretary, the Agreement is considered inactive and subject to termination.

(b) If the account balance of all depositories of an Agreement is zero dollars 10 years after the date it was established, and has not been extended through amendment, the Agreement is considered inactive and subject to termination unless its Schedule B objective has commenced.

(c) A certified letter will be sent to holders of Agreements identified for termination informing them that the agreement will terminate 60 days after the date of the letter unless the deficiencies identified in the letter are addressed.

§ 259.7 Annual deposit and withdrawal reports required.

(a) The Secretary will require from each party an annual deposit and withdrawal report for each CCF depository. Failure to submit such reports may be cause for involuntary termination of the party's Agreement.

(1) A final deposit and withdrawal report at the end of the tax year, which shall be submitted not later than 30 days after expiration of the due date, for filing the party's Federal income tax return. The report must be made on a form prescribed by the Secretary using a separate form for each CCF depository.

(2) Each report must bear a certification that the deposit and withdrawal information given includes all annual deposit and withdrawal activity for each CCF depository. Negative reports must be submitted in those cases where there is no deposit and/or withdrawal activity.

(b) The Secretary, at his or her discretion, may, after due notice, disqualify withdrawals and/or involuntarily terminate the Agreement for the participant's failure to submit the required annual deposit and withdrawal reports.

(c) Additionally, each party shall submit, not later than 30 days after expiration of the party's tax due date, a copy of the party's Federal Income Tax Return filed with IRS for the preceding tax year. Failure to submit the Federal Income Tax Return shall, after due notice, be cause for the same adverse action specified in the paragraph above.

§ 259.8 CCF accounts.

(a) *General.* Each CCF account in a scheduled depository shall have an account number, which must be reflected on the reports required by § 259.7. All CCF accounts shall be reserved only for CCF transactions. There shall be no intermingling of CCF and non-CCF transactions and there shall be no pooling of 2 or more CCF accounts without the prior consent of the Secretary. Safe deposit boxes, safes, or the like shall not be eligible CCF depositories without the Secretary's consent, which shall be granted solely at his or her discretion.

(b) *Assignment.* The use of funds held in a CCF depository for transactions in the nature of a countervailing balance, compensating balance, pledge, assignment, or similar security arrangement shall constitute a material breach of the Agreement unless prior written consent of the Secretary is obtained.

(c) *Depositories.* Section 53506(a) of the Act provides that amounts in a CCF account must be kept in a depository or depositories specified in the Agreements and be subject to such trustee or other fiduciary requirements as the Secretary may require. Unless otherwise specified in the Agreement, the party may select the type or types of accounts in which the assets of the Fund may be deposited.

§ 259.9 Conditional consents to withdrawal qualification.

The Secretary may conditionally consent to the qualification of a withdrawal. This consent is conditioned

upon the timely submission, to the Secretary, of the items requested by the Secretary in the withdrawal approval letter. Failure to provide these items in a timely manner, and after due notice, will result in nonqualification of the withdrawal and/or involuntary termination of the Agreement.

§ 259.10 Miscellaneous.

(a) Wherever the Secretary prescribes time constraints, the postmark date shall control if mailed. If a private delivery service is used, including Federal Express or United Parcel Service, the date listed on the label shall control. Submission of CCF transactions by email or facsimile is only allowable when an original signature is not required.

(b) All CCF information received by the Secretary shall be held strictly confidential to the extent permitted by law, except that it may be published or disclosed in statistical form provided such publication does not disclose, directly or indirectly, the identity of the fund holder.

(c) While recognizing that precise regulations are necessary in order to treat similarly situated parties similarly, the Secretary also realizes that precision in regulations can sometimes cause inequitable effects to result from unavoidable, unintended, or minor discrepancies between the regulations and the circumstances they attempt to govern. The Secretary will, consequently, at his or her discretion, as a matter of privilege and not as a matter of right, attempt to afford relief to parties where literal application of the purely procedural, as opposed to substantive, aspects of these regulations would otherwise work an inequitable hardship. This privilege will be sparingly granted and no party should act in reliance on its being granted.

(d) These §§ 259.1 through 259.10 are applicable to all Agreements first entered into (or amended) on or after the date these sections are adopted.

(e) These §§ 259.1 through 259.10 are specifically incorporated in all present Agreements.

[FR Doc. 2014–22821 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 186

Thursday, September 25, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the public meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 12:30 p.m. to 4:45 p.m. on Tuesday, October 14, 2014 in Salon B of the Des Moines Marriott Downtown Hotel in Des Moines, Iowa. The meeting will be streamed live on the Internet. The link to the global live stream is on BIFAD's home page: *http://www.usaid.gov/bifad.*

The central theme of this year's meeting will be *Feeding the World in 2050: Agricultural Research Capacity and Youth Engagement.* Dr. Brady Deaton, BIFAD Chair, will preside over the public business meeting, which will begin promptly at 12:30 p.m. with opening remarks. At this public meeting, the Board will address old and new business and hear from USAID, the university community, and other experts on progress and mechanisms for advancing programming in agricultural research and capacity development.

BIFAD Chairman Deaton will present an outreach report on his participation in the World Edible Legume Research Conference hosted by the USAID Innovation Lab for Grain Legumes. The first panel in the session will inform BIFAD and the public on updates from USAID principals on the Presidential *Feed the Future* Initiative and other USAID initiatives, including progress to date and the *Feed the Future* research, policy and capacity development strategy. USAID principals also will present the USAID Nutrition Strategy.

Starting at 1:45 p.m., BIFAD member Harold Martin will chair a second panel on *Needs for agricultural research capacity to feed the world in 2050.* George Norton from Virginia Polytechnic Institute and State University (Virginia Tech) will discuss returns to investment in agricultural research and Keith Fuglie from the USDA Economic Research Service will explain the use of Total Factor Productivity Studies in measuring agricultural research investments.

The third panel session, chaired by BIFAD Chair Deaton, will focus on *Youth Engagement in Food Security Efforts.* Dean June Henton will discuss the Auburn University Hunger Initiative, and Gary Burniske, Purdue Managing Director of the Purdue University Global Food Security Center, will provide an update on the Global Food Security Fellows Program, a USAID program for US university students.

At 3:30 p.m. the *BIFAD Awards for Scientific Excellence in a Title XII Innovation Lab* will be announced and presented by Chair Deaton and BIFAD member Waded Cruzado, followed by a half-hour public comment period from 4:00–4:30 p.m. At 4:30 p.m. Chair Brady Deaton will make closing remarks and adjourn the public meeting.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Susan Owens, Executive Director and Designated Federal Officer for BIFAD in the Bureau for Food Security at USAID. Interested persons may write to her in care of the U.S. Agency for International Development, Ronald Reagan Building, Bureau for Food Security, 1300 Pennsylvania Avenue NW., Room 2.09–067, Washington, DC 20523–2110 or telephone her at (202) 712–0218.

Susan Owens,

Executive Director and USAID Designated Federal Officer for BIFAD, Bureau for Food Security, U.S. Agency for International Development.

[FR Doc. 2014–22839 Filed 9–24–14; 8:45 am]

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DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request To Conduct a New Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection, the Organic Certifiers Survey. This will be a voluntary survey that will be conducted annually.

DATES: Comments on this notice must be received by November 24, 2014 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–NEW, by any of the following methods:

- *Email: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *eFax:* (855) 838–6382.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Renee Picanso, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

SUPPLEMENTARY INFORMATION:

Title: Organic Certifiers Survey

OMB Control Number: 0535–NEW

Type of Request: Intent to seek approval to conduct a new information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture.

The sample will consist of all organizations that certify farm and ranch operations that have met the

Federal standards to be classified as organic producers. The survey will collect data for all States that have certified producers (crops and livestock). The survey will collect the number of operations that are certified organic for each State, along with the number of acres certified for the various crops, and the number of head of livestock and poultry certified as organic. The data will be used by NASS as administrative data so that future needs to collect organic data from farm and ranch operations can be kept to a minimum.

The National Agricultural Statistics Service will publish summaries once a year at the State level and for each major organic commodity when possible. Due to confidentiality rules, some State level data may be combined and published at the regional or national level to prevent disclosure of individual operation's data.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 Public Law 104–13 (44 U.S.C. 3501, et seq.) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, ''Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),'' **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: This data collection will be done in a two step process. The first step will involve a personal visit from one of our State or Regional Field Office statisticians with the managers of these certifying organizations to introduce them to NASS and to discuss the data collection needs. NASS will also collect some basic profile information at that time. This initial visit should take approximately 1 hour. The second step will involve the compiling and reporting of the data. In this second step it is estimated to take the respondent less than 15 hours to compile and report the data for their state(s). If the respondent would like to provide one of our field enumerators access to their data, we will compile the data for the respondent(s). The surveys will be voluntary and will be conducted once a year.

Respondents: Organic certifying organizations

Estimated Number of Respondents: 55

Estimated Total Annual Burden on Respondents: Approximately 900 hours

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 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 through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, September 11, 2014.

R. Renee Picanso,

Associate Administrator.

[FR Doc. 2014–22831 Filed 9–24–14; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

2014 Farm Bill Implementation Listening Session—Rural Community College Coordinated Strategy

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice of Public Listening Session.

SUMMARY: As part of the implementation of the Agricultural Act of 2014 (commonly referred to as the 2014 Farm Bill), USDA Rural Development is hosting a listening session to receive public input about ways USDA can help community colleges form partnerships and get funding for local economic development. The 2014 Farm Bill directs USDA to work with community and technical colleges on a strategy to help them better serve the needs of local rural communities.

The listening session will provide an opportunity for stakeholders to voice their comments, concerns or requests regarding this strategy. Instructions to register for and attend the listening session are in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: *Listening session:* The listening session will be on Thursday, October 9, 2014, and will begin at 2:00 p.m. and is scheduled to end no later than 4:00 p.m.

Registration: You must register by October 7, 2014, to attend in person and to provide oral comments during the listening session.

Comments: A recording of public comments will be available. To obtain a copy of the recording, contact Dexter Pearson, *dexter.pearson@wdc.usda.gov.* Written comments are due by October 10, 2014. Written comments must be submitted electronically via the Federal eRulmaking Portal: Regulations.gov (see below).

ADDRESSES: The listening session will be held in Room 107–A of the Whitten Building at 14th Street and Independence Ave. SW., Washington, DC 20250. We invite you to participate in the listening session. The listening session is open to the members of the public who register (see below).

For participants who cannot attend in person, remote participation will be available:

Dial 1–888–469–0566 and enter Conference ID: 3499699.

We invite all participants to submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments; or
- Orally at the listening sessions; please also provide a written copy of your comments online as specified.

FOR FURTHER INFORMATION CONTACT: Dexter Pearson, 202–401–9790, Email: *dexter.pearson@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: On February 7, 2014, the 2014 Farm Bill (Pub. L. 113–79) was signed into law. The Secretary of Agriculture and the respective USDA agencies, including Rural Development, are working to implement the provisions of the 2014 Farm Bill as expeditiously as possible to meet the needs of stakeholders. To plan and implement the newly authorized Rural College Coordinated Strategy, it is important to consult and engage with our stakeholders to learn and

understand their comments, concerns, or requests.

Rural Development will hold the Rural College Coordinated Strategy listening session on Thursday, October 9, 2014, to receive oral comments from groups representing rural-serving community colleges and technical colleges. Oral comments received from this listening session will be documented. All attendees of this listening session who submit oral comments are requested to submit a written copy to help Rural Development accurately capture public input. (See the **ADDRESSES** section above for information about submitting written comments.) In addition, stakeholders and the public who do not wish to attend or speak at the listening session are invited to submit written comments, which must be received by October 10, 2014 via regulations.gov, as described above.

At the listening session, the focus is for Rural Development to hear from the public; this is not a discussion with Rural Development officials or a question and answer session. As noted above, the purpose is to receive public input that Rural Development can consider in order to implement the Rural Community College Coordinated Strategy provision of the 2014 Farm Bill.

Rural Development is interested in receiving input on all aspects on the implementation of this provision, including, how RD can coordinate critical investments in rural community colleges and technical colleges involved in workforce training and to impact physical, human, social, financial and natural capitol in rural communities. Rural Development efforts are to expand our partnerships and services for improving the quality of life and more effectively serve communities in rural America.

Date: Thursday, October 9, 2014.

Time: 2:00pm–4:00pm.

Location information: United States Department of Agriculture—Whitten Building, 1400 Independence Ave. SW.; Room 107–A; Washington, DC 20250.

The listening session will begin with brief opening remarks from USDA leadership in Rural Development. Individual speakers providing oral comments are requested to be succinct (no more than 3 minutes) as we do not know at this time how many participants there will be. As noted above, we request that speakers providing oral comments also provide a written copy of their comments. (See the **ADDRESSES** section above for information about submitting written comments.) All stakeholders and interested members of the public are welcome to register to provide oral comments; however, if necessary due to time constraints, a limited number will be selected on a first come, first serve basis.

Instructions for Attending the Listening Session

Space for attendance at the listening session is limited. Due to USDA headquarters security and space requirements, all persons wishing to attend the listening session in person or via phone must send an email to *michelle.wert@wdc.usda.gov* by October 7, 2014, to register. Registrations will be accepted until maximum capacity is reached. To register, provide the following information:

- First Name
- Last Name
- Organization
- Title
- Email
- Phone Number
- City
- State

For participants who cannot make it to the listening session in person, remote participation will be available: Dial 1–800–981–3173 and enter Conference ID: 0844.

Upon arrival at the USDA Whitten Building, registered persons must provide valid photo identification in order to enter the building; visitors need to enter the Whitten Building on the mall side. Please allow extra time to get through security. Additional information about the listening session, agenda, directions to get to the listening session, and how to provide comments is available at the USDA Farm Bill Web site found at: *http://www.usda.gov/wps/portal/usda/usdahome?navid=farmbill.*

All written comments received will be publicly available on *www.regulations.gov.* If you require special accommodations, such as a sign language interpreter, use the contact information above. The listening session location is accessible to persons with disabilities.

Nondiscrimination Statement

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 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 (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 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 of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: September 19, 2014.

Doug O'Brien,

Acting Under Secretary, Rural Development.

[FR Doc. 2014–22827 Filed 9–24–14; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Crab Arbitration.

OMB Control Number: 0648–0516.

Form Number(s): NA.

Type of Request: Regular (request for extension of a current information collection).

Number of Respondents: 2.

Average Hours per Response: Combined Notification and Arbitration Organization Report, 3 hours (all other reports are done by contractors).

Burden Hours: 6.

Needs and Uses: This request is for extension of a currently approved collection.

The Crab Rationalization Program allocates Bering Sea and Aleutian Islands (BSAI) crab resources among harvesters, processors, and coastal communities through a limited access system that balances the interests of these groups who depend on these fisheries. Program components include quota share allocation, processor quota share allocation, individual fishing quota and individual processing quota issuance, quota transfers, use caps, crab harvesting cooperatives, protections for Gulf of Alaska groundfish fisheries, arbitration system, monitoring, economic data collection, and cost recovery fee collection.

The Crab Rationalization Program Arbitration System is established by the contracts required pursuant to 50CF 680.20, including the process by which the Market Report and Non-Binding Price Formula are produced, as well as the negotiation approaches and the Binding Arbitration process.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 19, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–22756 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Data Collection for Compliance with Government Performance and Results Act.

OMB Control Number: 0610–0098.

Form Number(s): ED–915, ED–916, ED–917, and ED–918.

Type of Review: Regular submission (extension of a currently approved information collection).

Burden Hours: 11,131.

Number of Respondents: 1,530.

Average Hours per Response: 7 hours and 16 minutes.

Needs and Uses: EDA must comply with the Government Performance and Results Act of 1993 which requires Federal agencies to develop performance measures, and report to Congress and stakeholders the results of the agency's performance. EDA needs to collect specific data from grant recipients to report on its performance in meeting its stated goals and objectives.

Affected Public: State or local governments; Economic Development Districts; federally-recognized tribal governments; institutions of higher education; and non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 19, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–22780 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species (HMS) Scientific Research Permits, Exempted Fishing Permits, Letters of Acknowledgment, Display Permits, and Shark Research Fishery Permits.

OMB Control Number: 0648–0471.

Form Number(s): NA.

Type of Request: Revision and extension of a current information collection.

Number of Respondents: 57.

Average Hours Per Response: Two hours for a scientific research plan; 40 minutes for an application for an EFP, Display Permit, SRP, LOA, or Shark Research Permit or for an annual report; 1 hour for an interim report; 15 minutes for an application for amendment; 5 minutes for notification of departure phone calls to NMFS Enforcement; 10 minutes for calls to request an observer; and 2 minutes for ''no-catch'' reports or tag applications.

Burden Hours: 217.

Needs and Uses: Exempted Fishing Permits (EFPs), Scientific Research Permits (SRPs), Display Permits, Letters of Acknowledgment (LOAs), and Shark Research Fishery Permits are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Issuance of these permits is necessary for the collection of Highly Migratory Species (HMS) for public display and scientific research that requires exemption from regulations that otherwise may prohibit such collection. Display Permits are issued for the collection of HMS for the purpose of public display, and a limited number of Shark Research Fishery Permits are issued for the collection of fishery-dependent data for future stock assessments and cooperative research with commercial fishermen to meet the shark research objectives of the Agency.

Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activities with respect to Atlantic HMS. Since the Magnuson-Stevens Act does not include scientific research within the definition of ''fishing,'' scientific research is exempt from this statute. NMFS requests copies of scientific research plans for these activities and indicates concurrence by issuing a LOA to researchers to indicate that the proposed activity meets the definition of scientific research and is therefore exempt from regulation.

Scientific research is not exempt from regulation under ATCA. NMFS issues SRPs for collection of species managed

under this statute (e.g., tunas, swordfish, billfish), which authorize researchers to collect HMS from bona fide research vessels (e.g., NMFS or university research vessel.) NMFS will issue an EFP when research/collection involving such species occurs from commercial or recreational fishing platforms.

To regulate these fishing activities, NMFS needs information to determine the justification for granting an EFP, LOA, SRP, Display or Shark Research Fishery Permit. Interim, annual and no-catch/fishing reports must also be submitted to the HMS Management Division within NMFS.

Revision: Minor changes have been made to forms, including language encouraging electronic submission.

Affected Public: Non-profit institutions; state, local, or tribal government; business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 19, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–22755 Filed 9–24–14; 8:45 am]

BILLING CODE 3210–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Annual Report from Foreign-Trade Zones.

OMB Control Number: 0625–0109.

Form Number(s): ITA–359P.

Type of Request: Regular Submission (revision/extension of a currently approved information collection).

Burden Hours: 11,073 hours.

Number of Respondents: 173.

Average Hours per Response: 25 to 161 hours (depending on size and structure of the foreign-trade zone).

Needs and Uses: The Foreign-Trade Zone Annual Report is the vehicle by which Foreign Trade Zone (FTZ) grantees report annually to the Foreign Trade Zones Board, pursuant to the requirements of the Foreign Trade Zones Act (19 U.S.C. 81a–81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZ's. The data and information contained in the reports relates to international trade activity in FTZ's. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities in FTZ's to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

The information collection instrument has been revised to include updated language to reflect the revised Foreign-Trade Zones Board regulations and to remove certain information which is no longer required.

Affected Public: State, local, or tribal governments or not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: September 19, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–22757 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results of Antidumping Duty New Shipper Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is amending the final results of the new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China covering the period January 1, 2012 through December 31, 2012 to correct a ministerial error.

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

FOR FURTHER INFORMATION CONTACT: Lori Apodaca, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4551.

SUPPLEMENTARY INFORMATION: On September 2, 2014, the Department published in the **Federal Register** the final results of the 2012 new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China.[1] Prior to that, on August 29, 2014, the Department disclosed to interested parties its calculations for the final results in accordance with 19 CFR 351.224(b). On September 2, 2014, the new shipper, Dongguan Chengcheng Furniture Co., Ltd., submitted a timely ministerial error allegation with respect to the Department's final results in the new shipper review.

Ministerial Error

A ministerial error, as defined in section 751(h) of the Tariff Act of 1930, as amended (''the Act''), includes ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012* 79 FR 51594 (September 2, 2014) (''*Final Results*'') and accompanying issues and decision memorandum entitled, ''Wooden Bedroom Furniture from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2012 Administrative Review and New Shipper Review.''

administering authority considers ministerial.'' [2] Dongguan Chengcheng Furniture Co., Ltd. alleges that the Department incorrectly identified it as ''Dongguan Chengcheng Group Co., Ltd.'' in the rate table for the final results of the new shipper review. Dongguan Chengcheng Furniture Co., Ltd. states that the Department used the correct name of the company, Dongguan Chengcheng Co., Ltd., in another part of the final results notice and, thus, it requests that the Department correct the name of the company in the final results rate table by eliminating the word ''Group'' from the company name.

After analyzing the ministerial error allegation, in accordance with section 751(h) of the Act, we agree that we incorrectly listed the name of the company in the final results of the new shipper review. However, we have not corrected the name in the manner requested by Dongguan Chengcheng Furniture Co., Ltd. The record shows that we initiated the new shipper review on Dongguan Chengcheng Furniture Co., Ltd. Moreover, company records submitted by the new shipper show that the company's name is ''Dongguan Chengcheng Furniture Co., Ltd.'' Thus, we have corrected the error by removing the word ''Group'' from the company name and replacing it with the word ''Furniture'' rather than simply removing the word ''Group'' as requested by Dongguan Chengcheng Furniture Co., Ltd. The correct name is in the table below:

Amended Final Results of the Review

Exporter	Producer	Weighted-average dumping margin (percent)
Dongguan Chengcheng Furniture Co., Ltd	Dongguan Chengcheng Furniture Co., Ltd	0.00

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: September 19, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–22859 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 24, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China (the PRC). The period of review (POR) is February 1, 2012, through January 31, 2013. For the final results, we continue to find that certain companies covered by this review made sales of subject merchandise at less than normal value, and that other companies are now part of the PRC-wide entity.

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

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Michael Romani, 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) 482–0665 or (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2014, the Department published the preliminary results of the administrative review of the antidumping duty order on small diameter graphite electrodes from the PRC.[1] We received case and rebuttal briefs with respect to the *Preliminary Results.*

We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order includes all small diameter graphite electrodes with a nominal or actual diameter of 400 millimeters (16 inches) or less and graphite pin joining systems for small diameter graphite electrodes. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8545.11.0010, 3801.10, and 8545.11.0020. The HTSUS numbers are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Issues and Decision Memorandum.[2] The written description of the scope of the order is dispositive.

Determination of No Shipments

UK Carbon and Graphite Co., Ltd. (UKCG) filed a timely ''no shipment'' certification stating that it had no exports, sales, or entries of subject merchandise during the POR.[3] We subsequently confirmed with U.S. Customs and Border Protection (CBP) the ''no shipment'' claim made by UKCG.[4] Based on the certification by UKCG and CBP's confirmation, we determine that UKCG did not have any reviewable entries of subject merchandise during the POR, and will issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.[5]

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I.

[2] *See also* 19 CFR 351.224(f).

[1] *See Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2012–2013,* 79 FR 15944 (March 24, 2014) (*Preliminary Results*).

[2] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China'' dated concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[3] *See* UKCG's letter, dated April 4, 2013.

[4] *See* CBP message 3163308, dated June 12, 2013.

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Practice Refinement*); *see also* the ''Assessment'' section of this notice, below.

The Issues and 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 Issues and Decision Memorandum can be found at *http://enforcement.trade.gov/frn/index.html.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Separate Rate for Non-Selected Companies

In the *Preliminary Results,* we found that Xinghe County Muzi Carbon Co., Ltd. (Muzi Carbon) and Jilin Carbon Import and Export Company (Jilin Carbon) demonstrated their eligibility for separate-rate status.[6] We have not received any information since then that would lead us to reconsider our preliminary finding. Therefore, we continue to determine that Muzi Carbon and Jilin Carbon are eligible for separate-rate status, and have assigned to each a dumping margin of 21.16 percent, based on the weighted-average dumping margin that we calculated for the Fangda Group [7] for these final results.[8]

The PRC-Wide Entity

In the *Preliminary Results,* we determined that 12 companies [9] for which a review was requested did not demonstrate their eligibility for a separate rate and are properly considered part of the PRC-wide entity.[10] We have not received any information since then that would lead us to reconsider our preliminary determination with respect to these 12 companies. Therefore, we continue to find that these 12 companies should be treated as part of the PRC-wide entity and subject to the PRC-wide entity rate. Further, although Fushun Jinly applied for separate rate status, we determined that we cannot rely on any of the information provided in Fushun Jinly's responses, including its section A response. Accordingly, we determined that Fushun Jinly does not qualify for a separate rate, is part of the PRC-wide entity, and is subject to the PRC-wide entity rate.

In the *Preliminary Results,* we stated our intent not to rescind the review for certain companies that remain a part of the PRC-wide entity, notwithstanding timely withdrawal of review requests for these companies, because the PRC-wide entity remains under review.[11] Since the *Preliminary Results,* we did not receive any information that would cause us to revisit our preliminary determination not to rescind the review with respect to these companies.[12]

Consistent with our practice, we will issue appropriate instructions to CBP for any entries made by the companies that remain a part of the PRC-wide entity during the POR.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we did not make any revisions to the margin calculations for the Fangda Group.

Final Results of the Review

We determine that the following percentage weighted-average dumping margins exist for the period February 1, 2012, through January 31, 2013:

Exporter	Margin (percent)
Beijing Fangda Carbon Tech Co., Ltd.	21.16
Chengdu Rongguang Carbon Co., Ltd.	21.16
Fangda Carbon New Material Co., Ltd.	21.16
Fushun Carbon Co., Ltd.	21.16
Hefei Carbon Co., Ltd.	21.16
Xinghe County Muzi Carbon Co., Ltd.	21.16
Jilin Carbon Import and Export Company	21.16
PRC-wide entity †	159.64

† The PRC-wide entity includes the companies listed in Appendix II.

Assessment

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. For customers or importers of the Fangda Group, we calculated customer/importer-specific antidumping duty assessment rates based on customer-/importer-specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1).

For the non-selected respondents that received a separate rate, Muzi Carbon and Jilin Carbon, we will instruct CBP to apply an antidumping duty assessment rate of 21.16 percent to all entries of subject merchandise that entered the United States during the POR.

For all other companies, we will instruct CBP to apply an antidumping duty assessment rate of the PRC-wide entity, 159.64 percent,[13] to all entries of subject merchandise exported by these companies.

Pursuant to a refinement to the Department's assessment practice in NME cases,[14] for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide rate. In addition, for companies where the Department determined that the exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide rate.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

[6] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 9–11.

[7] The Fangda Group consists of Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd. We refer to the Fangda Group as a single entity pursuant to 19 CFR 351.401(f)(1). *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances, in Part,* 73 FR 49408, 49411–12 (August 21, 2008) (where we collapsed the following individual members of the Fangda Group: Beijing Fangda Carbon Tech Co., Ltd., Chengdu Rongguang Carbon Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., and Hefei Carbon Co., Ltd.), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049 (January 14, 2009).

[8] *See* section titled ''Separate Rate for Non-Selected Companies'' in the Issues and Decision Memorandum for further discussion.

[9] These companies are Fangda Lanzhou Carbon Joint Stock Company Co. Ltd., Jilin Carbon Graphite Material Co., Ltd., Lanzhou Carbon Co., Ltd., Lanzhou Carbon Import & Export Corp., Lanzhou Hailong New Material Co., Lanzhou Hailong Technology, Liaoning Fangda Group Industrial Co., Ltd., Sinosteel Anhui Co., Ltd., Sinosteel Corp., Sinosteel Jilin Carbon Plant, Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd., and Sinosteel Sichuan Co., Ltd.

[10] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 12.

[11] *Id.,* and accompanying Preliminary Decision Memorandum at 12.

[12] *See* Appendix II for a complete list of these companies.

[13] *Id.,* and accompanying Preliminary Decision Memorandum at 13.

[14] For a full discussion of this practice, *see Assessment Practice Refinement.*

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in these final results of review for each exporter as listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 19, 2014.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Separate Rate for Non-Selected Companies
5. Discussion of the Issues
   - Comment 1: Application of Total Adverse Facts Available
   - Comment 2: Surrogate Value for Pitch Oil
   - Comment 3: Surrogate Value for Steel Strap
   - Comment 4: Surrogate Value for Plastic Foam
   - Comment 5: Surrogate Value for Natural Gas
   - Comment 6: Application of Partial Facts Available for Tolling Data
   - Comment 7: Treatment of Irrevocable Value-Added Taxes
   - Comment 8: Surrogate Value for Reintroduced Forming Scrap By-Product
6. Recommendation

Appendix II

Firms for which we are not rescinding the review.

1. 5-Continent Imp. & Exp. Co., Ltd.
2. Acclcarbon Co., Ltd.
3. Allied Carbon (China) Co., Limited
4. Anssen Metallurgy Group Co., Ltd.
5. AMGL
6. Apex Maritime (Dalian) Co., Ltd.
7. Asahi Fine Carbon (Dalian) Co., Ltd.
8. Beijing Kang Jie Kong Cargo Agent Expeditors (Tianjin Branch)
9. Beijing Xinchengze Inc.
10. Beijing Xincheng Sci-Tech. Development Inc.
11. Carbon International
12. Chang Cheng Chang Electrode Co., Ltd.
13. Chengdelh Carbonaceous Elements Factory
14. Chengdu Jia Tang Corp.
15. China Industrial Mineral & Metals Group
16. China Shaanxi Richbond Imp. & Exp. Industrial Corp. Ltd.
17. China Xingyong Carbon Co., Ltd.
18. CIMM Group Co., Ltd.
19. Dalian Carbon & Graphite Corporation
20. Dalian Hongrui Carbon Co., Ltd.
21. Dalian Honest International Trade Co., Ltd.
22. Dalian Horton International Trading Co., Ltd.
23. Dalian LST Metallurgy Co., Ltd.
24. Dalian Oracle Carbon Co., Ltd.
25. Dalian Shuangji Co., Ltd.
26. Datong Carbon
27. Datong Carbon Plant
28. Datong Xincheng Carbon Co., Ltd.
29. Dechang Shida Carbon Co., Ltd.
30. De Well Container Shipping Corp.
31. Dewell Group
32. Dignity Success Investment Trading Co., Ltd.
33. Double Dragon Metals and Mineral Tools Co., Ltd.
34. Foset Co., Ltd.
35. Fushun Orient Carbon Co., Ltd.
36. Grameter Shipping Co., Ltd. (Qingdao Branch)
37. Guangdong Highsun Yongye (Group) Co., Ltd.
38. Guanghan Shida Carbon Co., Ltd.
39. Haimen Shuguang Carbon Industry Co., Ltd.
40. Handan Hanbo Material Co., Ltd.
41. Hanhong Precision Machinery Co., Ltd.
42. Hebei Long Great Wall Electrode Co., Ltd.
43. Heilongjiang Xinyuan Metacarbon Company Ltd.
44. Henan Sanli Carbon Products Co., Ltd.
45. Hopes (Beijing) International Co., Ltd.
46. Huanan Carbon Factory
47. Hunan Mec Machinery and Electronics Imp. & Exp. Corp.
48. Hunan Yinguang Carbon Factory Co., Ltd.
49. Inner Mongolia QingShan Special Graphite and Carbon Co., Ltd.
50. Inner Mongolia Xinghe County Hongyuan Electrical Carbon Factory
51. Jiang Long Carbon
52. Jiangsu Yafei Carbon Co., Ltd.
53. Jichun International Trade Co., Ltd. of Jilin Province
54. Jiexiu Juyuan Carbon Co., Ltd.
55. Jiexiu Ju-Yuan & Coaly Co., Ltd.
56. Jilin Songjiang Carbon Co. Ltd.
57. Jinneng Group Co., Ltd.
58. Jinyu Thermo-Electric Material Co., Ltd.
59. JL Group
60. Kaifeng Carbon Company Ltd.
61. KASY Logistics (Tianjin) Co., Ltd.
62. Kimwan New Carbon Technology and Development Co., Ltd.
63. Kingstone Industrial Group Ltd.
64. L & T Group Co., Ltd.
65. Laishui Long Great Wall Electrode Co. Ltd.
66. Lanzhou Ruixin Industrial Material Co., Ltd.
67. LH Carbon Factory of Chengde
68. Lianxing Carbon Qinghai Co., Ltd.
69. Lianxing Carbon Science Institute
70. Lianxing Carbon (Shandong) Co., Ltd.
71. Lianyungang Jinli Carbon Co., Ltd.
72. Lianyungang Jianglida Mineral Co., Ltd.
73. Liaoyang Carbon Co. Ltd.
74. Linyi County Lubei Carbon Co., Ltd.
75. Maoming Yongye (Group) Co., Ltd.
76. MBI Beijing International Trade Co., Ltd.
77. Nantong Dongjin New Energy Co., Ltd.
78. Oracle Carbon Co., Ltd.
79. Orient (Dalian) Carbon Resources Developing Co., Ltd.
80. Orient Star Transport International, Ltd.
81. Peixian Longxiang Foreign Trade Co. Ltd.
82. Pingdingshan Coal Group
83. Pudong Trans USA, Inc. (Dalian Office)
84. Qingdao Grand Graphite Products Co., Ltd.
85. Quingdao Haosheng Metals & Minerals Imp. & Exp. Co., Ltd.
86. Qingdao Liyikun Carbon Development Co., Ltd.
87. Qingdao Likun Graphite Co., Ltd.
88. Qingdao Ruizhen Carbon Co., Ltd.
89. Ray Group Ltd.
90. Rex International Forwarding Co., Ltd.
91. Rt Carbon Co., Ltd.

92. Ruitong Carbon Co., Ltd.
93. Sea Trade International, Inc.
94. Seamaster Global Forwarding (China)
95. Shandong Basan Carbon Plant
96. Shandong Zibo Continent Carbon Factory
97. Shanghai Carbon International Trade Co., Ltd.
98. Shanghai P.W. International Ltd.
99. Shanghai Shen-Tech Graphite Material Co., Ltd.
100. Shanghai Topstate International Trading Co., Ltd.
101. Shanxi Datong Energy Development Co., Ltd.
102. Shanxi Foset Carbon Co. Ltd.
103. Shanxi Jiexiu Import and Export Co., Ltd.
104. Shanxi Jinneng Group Co., Ltd.
105. Shanxi Yunheng Graphite Electrode Co., Ltd.
106. Shida Carbon Group
107. Shijaizhuang Carbon Co., Ltd.
108. Shijiazhuang Huanan Carbon Factory
109. Sichuan 5-Continent Imp & Exp Co., Ltd.
110. Sichuan Dechang Shida Carbon Co., Ltd.
111. Sichuan Guanghan Shida Carbon Co., Ltd.
112. Sichuan Shida Carbon Co., Ltd.
113. Sichuan Shida Trading Co., Ltd.
114. Sichuan GMT International Inc.
115. Sinicway International Logistics Ltd.
116. SK Carbon
117. SMMC Group Co., Ltd.
118. Sure Mega (Hong Kong) Ltd.
119. Tangshan Kimwan Special Carbon & Graphite Co., Ltd.
120. Tengchong Carbon Co., Ltd.
121. T.H.I. Group (Shanghai), Ltd.
122. T.H.I. Global Holdings Corp.
123. Tianjin (Teda) Iron & Steel Trade Co., Ltd.
124. Tianjin Kimwan Carbon Technology and Development Co., Ltd.
125. Tianjin Yue Yang Industrial & Trading Co., Ltd.
126. Tielong (Chengdu) Carbon Co., Ltd.
127. United Carbon Ltd.
128. United Trade Resources, Inc.
129. Weifang Lianxing Carbon Co., Ltd.
130. World Trade Metals & Minerals Co., Ltd.
131. XC Carbon Group
132. Xinghe Xingyong Carbon Co., Ltd.
133. Xinyuan Carbon Co., Ltd.
134. Xuanhua Hongli Refractory and Mineral Company
135. Xuchang Minmetals & Industry Co., Ltd.
136. Xuzhou Carbon Co., Ltd.
137. Xuzhou Electrode Factory
138. Xuzhou Lianglong Carbon Manufacture Co., Ltd.
139. Yangzhou Qionghua Carbon Trading Ltd.
140. Yixing Huaxin Imp & Exp Co. Ltd.
141. Youth Industry Co., Ltd.
142. Zhengzhou Jinyu Thermo -Electric Material Co., Ltd.
143. Zibo Continent Carbon Factory
144. Zibo DuoCheng Trading Co., Ltd.
145. Zibo Lianxing Carbon Co., Ltd.
146. Zibo Wuzhou Tanshun Carbon Co., Ltd.

Companies that are now part of the PRC entity because they did not demonstrate in this review that they are entitled to a separate rate.

1. Fushun Jinly Petrochemical Carbon Co., Ltd.
2. Fangda Lanzhou Carbon Joint Stock Company Co. Ltd.
3. Jilin Carbon Graphite Material Co., Ltd.
4. Lanzhou Carbon Co., Ltd.
5. Lanzhou Carbon Import & Export Corp.
6. Lanzhou Hailong New Material Co.
7. Lanzhou Hailong Technology
8. Liaoning Fangda Group Industrial Co., Ltd.
9. Sinosteel Anhui Co., Ltd.
10. Sinosteel Corp.
11. Sinosteel Jilin Carbon Plant
12. Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd.
13. Sinosteel Sichuan Co., Ltd.

[FR Doc. 2014–22870 Filed 9–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The Manufacturing Council will hold its final meeting of its term on Wednesday, October 15, 2014, to discuss and deliberate on final recommendations addressing: workforce development best practices; strategies to address misconceptions of manufacturing careers; innovation, research and development in manufacturing; and export growth opportunities for U.S. manufacturers. Additionally, the Council will receive updates from representatives of the U.S. government on the manufacturing initiatives taking place across federal agencies. A final agenda will be available on the Council's Web site one week prior to the meeting. The Council advises the Secretary of Commerce on government programs and policies that affect U.S. manufacturing and provides a means of ensuring regular contact between the U.S. Government and the manufacturing sector.

DATES: October 15, 2014, 9:00 a.m.–12:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held at the Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Due to building security, all attendees must pre-register. This meeting will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Pre-registration and requests for sign language interpretation or other auxiliary aids should be submitted no later than Monday, October 6, 2014, to the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone 202–482–4501, *mc@trade.gov.* Last minute requests will be accepted, but may be impossible to fill.

FOR FURTHER INFORMATION CONTACT: Office of Advisory Committees and Industry Outreach, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *mc@trade.gov.*

SUPPLEMENTARY INFORMATION: A limited amount of time, from 11:45 a.m.–12:00 p.m., will be made available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to five minutes per person. Individuals wishing to reserve speaking time during the meeting must contact the Office of Advisory Committees and Industry Outreach and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed speaker, by 5:00 p.m. ET on Monday, October 6, 2014. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to bring at least 30 copies of their oral comments for distribution to the members of the Manufacturing Council and to the public at the meeting. Any member of the public may submit pertinent written comments concerning the Manufacturing Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Advisory Committees and Industry Outreach, the Manufacturing Council, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, telephone: 202–482–4501, email: *mc@trade.gov.* To be considered during the meeting, written comments must be received by 5:00 p.m. EDT on Monday, October 6, 2014, to ensure transmission to the Manufacturing Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of Council meeting minutes will be available within 90 days of the meeting.

Dated: September 22, 2014.

Jennifer Pilat,

Executive Secretary, The Manufacturing Council.

[FR Doc. 2014–22825 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD394

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore North Carolina, September to October, 2014

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) implementing regulations, we hereby give notice that we have issued an Incidental Harassment Authorization (Authorization) to Lamont-Doherty Earth Observatory (Lamont-Doherty) a component of Columbia University, in collaboration with the National Science Foundation (Foundation), to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey in the northwest Atlantic Ocean off the North Carolina coast from September 15 through October 31, 2014.

DATES: Effective September 15, 2014, through October 31, 2014.

ADDRESSES: A copy of the final Authorization and application are available by writing to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contacts listed here, or by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm#ldeonsf_nc.*

The Foundation has prepared an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and the regulations published by the Council on Environmental Quality (CEQ). LGL, Ltd. environmental research associates prepared the EA titled, ''Draft Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Atlantic Ocean off Cape Hatteras, September–October 2014,'' on behalf of the Foundation and Lamont-Doherty. We have also prepared an EA titled, ''Issuance of an Incidental Harassment Authorization to Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Atlantic Ocean Offshore North Carolina, September through October, 2014,'' and FONSI in accordance with NEPA and NOAA Administrative Order 216–6. To obtain an electronic copy of the application containing a list of the references used in this document, visit the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm#ldeonsf_nc.*

NMFS also issued a Biological Opinion under section 7 of the Endangered Species Act (ESA) to evaluate the effects of the survey and Authorization on marine species listed as threatened and endangered. The Biological Opinion is available online at: *http://www.nmfs.noaa.gov/pr/consultations/opinions.htm.*

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

Through the authority delegated by the Secretary, NMFS (hereinafter, we) shall grant an Authorization for the incidental taking of small numbers of marine mammals if we find that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also prescribe, where applicable, the permissible methods of taking by harassment pursuant to the activity; other means of effecting the least practicable adverse impact on the species or stock and its habitat, and on the availability of such species or stock for taking for subsistence uses (where applicable); the measures that we determine are necessary to ensure no unmitigable adverse impact on the availability for the species or stock for taking for subsistence purposes (where applicable); and requirements pertaining to the mitigation, monitoring and reporting of such taking. We have defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On February 26, 2014, we received an application from Lamont-Doherty requesting an Authorization for the take of marine mammals, incidental to conducting a seismic survey offshore Cape Hatteras, NC September through October, 2014. We determined the application complete and adequate on July 15, 2014 and published a notice of proposed Authorization on July 31, 2014 (79 FR 44549). The notice afforded the public a 30-day comment period on our proposed MMPA Authorization.

Lamont-Doherty, with research funding from the Foundation, plans to conduct a high-energy, 2-dimensional (2-D) seismic survey on the R/V *Langseth* in the Atlantic Ocean approximately 17 to 422 kilometers (km) (10 to 262 miles (mi)) off the coast of Cape Hatteras, NC for approximately 33 days during the period of September 15 to October 31, 2014. The proposed activity will generate increased underwater sound during the operation of the seismic airgun arrays. Thus, we anticipate that take, by Level B harassment only, of 30 species of marine mammals could result from the specified activity.

Description of the Specified Activity

Overview

Lamont-Doherty plans to use one source vessel, the R/V Marcus *G.* Langseth (*Langseth*), seismic airgun arrays configured with 18 or 36 airguns as the energy source, one hydrophone streamer, and 94 ocean bottom seismometers (OBS) to conduct the conventional seismic survey. In addition to the operations of the airguns, Lamont-Doherty proposes to

operate a multibeam echosounder, a sub-bottom profiler, and acoustic Doppler current profiler on the *Langseth* continuously throughout the proposed survey. However, they would not operate the multibeam echosounder, sub-bottom profiler, and acoustic Doppler current profiler during transits to and from the survey area.

The purpose of the research seismic survey is to collect and analyze data on the mid-Atlantic coast of the East North America Margin (ENAM). The study would cover a portion of the rifted margin of the eastern U.S. and the results would allow scientists to investigate how the continental crust stretched and separated during the opening of the Atlantic Ocean and magnetism's role during the continental breakup. The proposed seismic survey is purely scientific in nature and not related to oil and natural gas exploration on the outer continental shelf of the Atlantic Ocean.

Dates and Duration

Lamont-Doherty proposes to conduct the seismic survey from the period of September 15 through October 22, 2014. The study would include approximately 792 hours of airgun operations (i.e., a 24-hour operation over 33 days). Some minor deviation from Lamont-Doherty's requested dates of September 15 through October 22, 2014, is possible, depending on logistics and weather conditions. Thus, this Authorization will be effective from September 15, 2014 through October 31, 2014. Lamont-Doherty will not conduct the survey after October 31, 2014 to avoid exposing North Atlantic right whales (*Eubalaena glacialis*) to sound at the beginning of their migration season.

Specified Geographic Region

Lamont-Doherty proposes to conduct the seismic survey in the Atlantic Ocean, approximately 17 to 422 kilometers (km) (10 to 262 miles (mi)) off the coast of Cape Hatteras, NC between approximately 32–37° N and approximately 71.5–77° W (see Figure 1 in this notice). Water depths in the survey area are approximately 20 to 5,300 m (66 feet (ft) to 3.3 mi). They would conduct the proposed survey outside of North Carolina state waters, within the U.S. Exclusive Economic Zone, and partly in international waters.

Detailed Description of Activities

Transit Activities

The *Langseth* would depart from Norfolk, VA and transit for approximately one day to the survey area. Setup, deployment, and streamer ballasting would occur over approximately three days and seismic acquisition would take approximately 33 days. At the conclusion of the proposed survey, the *Langseth* would take approximately one day to retrieve gear. At the conclusion of the proposed survey activities, the *Langseth* would return to Norfolk, VA.

Vessel Specifications

We outlined the vessel's specifications in the notice of proposed Authorization (79 FR 44549, July 31, 2014). The descriptions of the vessel's specifications have not changed between the proposed Authorization and our final Authorization.

Data Acquisition Activities

We outlined the details regarding Lamont-Doherty's data acquisition activities using the airguns, hydrophone streamer, ocean bottom seismometers, multibeam echosounder, sub-bottom profiler, and acoustic Doppler current profiler in the notice of proposed Authorization (79 FR 44549, July 31, 2014).

We would like to clarify some information about the acquisition activities presented in the proposed notice of Authorization here. In summary, the survey would cover approximately 5,320 kilometers (km) (3,306 miles (mi)) of transect lines (approximately 1,900 km (1,180 mi) for the multi-channel seismic tracklines and approximately 3,420 km (2,125 mi) for the ocean bottom seismometer tracklines within the survey area. This represents a 1,030 km (640 mi) reduction in transect lines from Lamont-Doherty's original proposal in their application that totaled 6,350 km (3,946 mi).

During the survey, the *Langseth* crew would deploy a four-string array consisting of 36 airguns with a total discharge volume of approximately 6,600 cubic inches (in^3), or a two-string array consisting of 18 airguns with a total discharge volume of 3,300 in^3 as an energy source. The *Langseth* would tow the four-string array at a depth of approximately 9 m (30 ft) and would tow the two-string array at a depth of 6 m (20 ft).

Lamont-Doherty would deploy a total of 94 seismometers along five different tracklines that would be ensonified twice using the four-string array consisting of 36 airguns. The first pass over the trackline would acquire seismometer data and the second pass would record source shots with the multi-channel seismic portion of the survey. On average, for a 400-km (248 mi) line segment, the *Langseth* traveling at 8.3 km/hour would take approximately four days to complete the acquisition for the seismometer trackline. In total, there are 10 tracklines that would require repeat coverage (Figure 1, Lines 1 through 4b).

Last, for this survey, Lamont-Doherty has informed us that they would not operate the multibeam echosounder, sub-bottom profiler, and acoustic Doppler current profiler during transits to and from the survey area.

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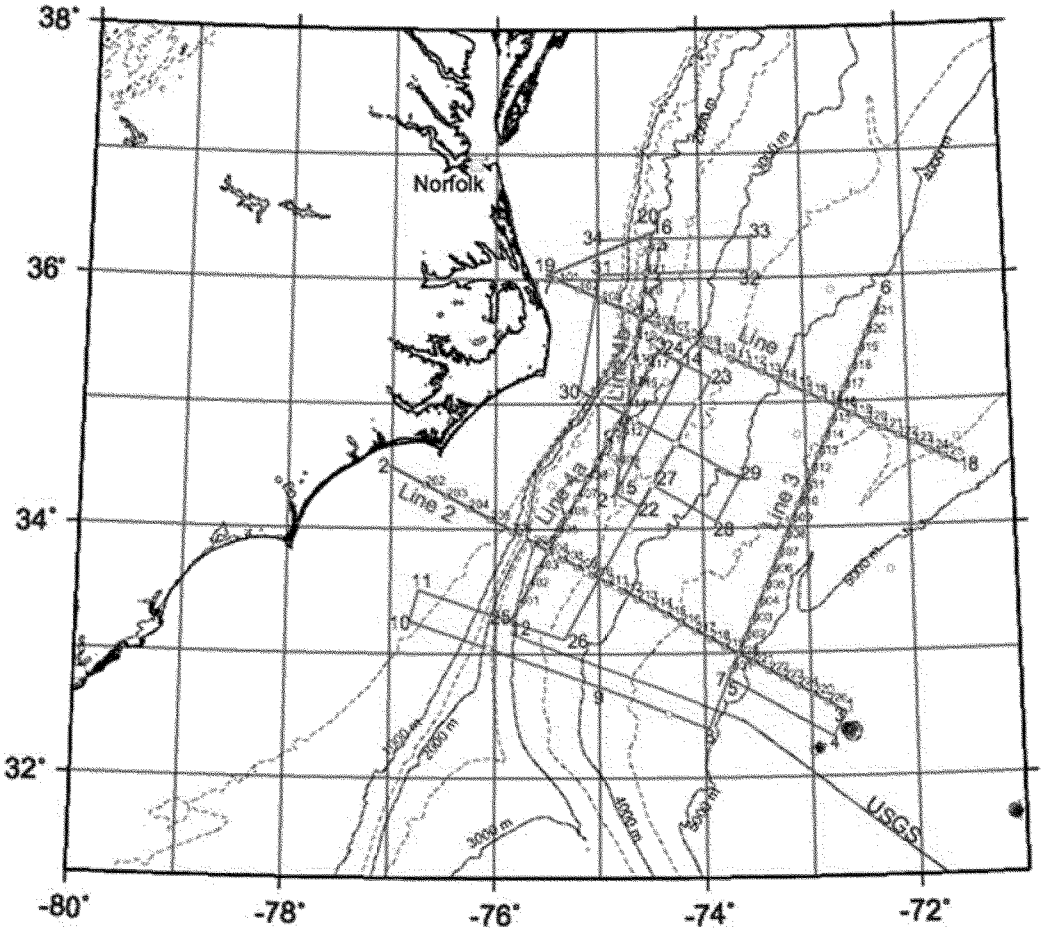
Figure 1 – Proposed Langseth ship track for the ENAM 2014 seismic survey, September – October, 2014. Five transects will be shot twice, once for OBS and once for MCS data acquisition. The larger numbers show the order in which the Langseth will follow this track beginning with Point #1 in the southeast corner of the map.



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Other than these clarifications, there has been no change to Lamont-Doherty's data acquisition activities as described in the proposed Authorization (79 FR 44549, July 31, 2014). For a more detailed description of the authorized action, including vessel and acoustic source specifications, metrics, characteristics of airgun pulses, predicted sound levels of airguns, etc., we refer the reader to the notice of proposed Authorization (79 FR 44549, July 31, 2014) and associated documents referenced above this section.

Comments and Responses

We published a notice of receipt of Lamont-Doherty's application and proposed Authorization in the **Federal Register** on July 31, 2014 (79 FR 44549). During the 30-day public comment period, we received comments from nine private citizens and the following organizations: The Marine Mammal Commission (Commission); Natural Resources Defense Council and Center for Biodiversity (hereafter referred to as NRDC et al.); the Town of Nags Head, NC; the Town of Kill Devil Hills, NC; and the Marcus Langseth Science Oversight Committee (MLSOC). We posted these comments online at *http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm.*

We address any comments specific to Lamont-Doherty's application that address the statutory and regulatory requirements or findings that we must make in order to issue an Authorization. Following is a summary of the public comments and our responses.

Effects Analyses

Comment 1: The Commission recommends that we adjust density estimates using some measure of uncertainty when available density data originate from different geographical areas and temporal scales and that we formulate a consistent policy for how applicants should incorporate uncertainty into their density estimates.

Response: The availability of representative density information for marine mammal species varies widely across space and time. Depending on survey locations and modeling efforts, it may be necessary to consult estimates that are from a different area or season, that are at a non-ideal spatial scale, or that are several years out of date. As the Commission notes in their letter to us, we continue to evaluate available density information and are continuing progress on guidance that would outline a consistent general approach for addressing uncertainty in specific situations where certain types of data are or are not available.

Comment 2: The Commission recommends that we follow a consistent approach for requiring the assessment of Level B harassment takes for sub-bottom profilers, echosounders, sidescan sonar, and fish-finding sonar by applicants who propose to use them. The Commission also recommends that the Authorization prohibit the operation of the multi-beam echosounder, sub-

bottom profiler, and acoustic Doppler current profiler during transit.

Response: We acknowledge the Commission's recommendation and note that we continue to work on a consistent approach for addressing potential impacts from active acoustic sources.

For this survey, we assessed the potential for multi-beam echosounder, sub-bottom profiler, and acoustic Doppler current profiler operations to impact marine mammals with the concurrent operation of the airgun array. We assume that, during simultaneous operations of the airgun array and the other active acoustic sources, a marine mammal close enough to be affected by the other active acoustic sources would already be affected by the airguns. Because Lamont-Doherty will not operate the multibeam echosounder, sub-bottom profiler, and acoustic Doppler current profiler during transits when the airgun array is not active, we will not require an assessment of Level B harassment takes for those sources for this survey, and we have not authorized take from these other sound sources. The Authorization includes language restricting the use of these devices during transit.

Comment 3: The Commission recommends that we require Lamont-Doherty to power down the airgun array when observers see concentrations of six or more humpback, sei, fin, blue, and/or sperm whales within the Level B harassment zone.

Response: We agree with the Commission's recommendation and have included a new mitigation measure within the Authorization that requires the *Langseth* to power down the airgun array when protected species observers see concentrations of six or more humpback, sei, fin, blue, and/or sperm whales.

Comment 4: The Commission described our proposed requirement for the *Langseth* to conduct the survey (especially when near land) from the coast (inshore) and proceed towards the sea (offshore) to the maximum extent possible. The Commission agrees with this requirement, but recommends that we remove the qualifying phrase ''. . . to the maximum extent practicable . . .'' within the Authorization.

Response: Lamont-Doherty has planned the survey to comply with the requirement to conduct acquisition activities from the coast in a seaward direction to the maximum extent practicable. However, this requirement may not be practicable in all situations. In a few cases, Lamont-Doherty must acquire data (see Lines 1 and Lines 2 in Figure 1 in this notice) transiting towards the coast to meet their research goals such as when switching from an OBS line to a MCS line. We have evaluated the commenter's recommendation and Lamont-Doherty's reasons for why the measure may (or may not) be practicable and have concluded that after taking into consideration the project's purpose, there is no practicable alternative for Lamont-Doherty's proposed acquisition activities. Thus, for this Authorization we will not remove the qualifying phrase to the maximum extent practicable.

Comment 5: The Commission states that Lamont-Doherty changed its proposal to use 18-airgun configuration during the MCS portion of the survey instead of the originally proposed 36-airgun configuration for the same tracklines. Because Lamont-Doherty still plans to use the 36-airgun configuration during the OBS portion of the survey, which would occur in water depths as shallow as 20 m, the Commission questions the need for the larger airgun array and OBS devices in shallow water and seeks justification for the use of the 36-airgun array to obtain data in shallow water. Further, if the researchers can obtain the same quality of data using the smaller 18-airgun configuration, they recommend we require Lamont-Doherty to use the 18-airgun configuration to minimize impacts on marine mammals.

Response: Lamont-Doherty requires the larger 36-airgun array to first acquire wide-angle seismic data on the OBSs and to record source shots on the MCS streamer. Lamont-Doherty has informed us that it is not practicable to use the 18-airgun array configuration to obtain data on the OBS tracklines because the reflection and refraction surveys achieve different scientific goals (i.e., they reveal different geologic aspects and targets). We have considered this rationale and Lamont-Doherty's reasons for why the measure may (or may not) be practicable. After taking into consideration the project's purpose, we agree with Lamont-Doherty that there is no practicable alternative for Lamont-Doherty's proposed use of the 36-airgun array for OBS tracklines. Thus, for the reasons stated, we will not require the use of the 18-airgun array configuration for the OBS tracklines.

Comment 6: The Commission expressed doubt about Lamont-Doherty's use of in-situ measurements from Diebold *et al.* (2010) to estimate the proposed exclusion zones for the 18-airgun array in shallow water. They question Lamont-Doherty's use of the hydrophone data from the Gulf of Mexico calibration study which they believe sampled sound propagation measurements at 50 meters (m) (164 feet (ft)) depth instead of the 20 m (66 ft) water depth proposed for the survey. They assert that Lamont-Doherty used an invalid methodology to derive exclusion zones and does not support the use of the Diebold *et al.* (2010) method for shallow water.

Response: Lamont-Doherty's application (LGL, 2014) and Appendix A in the Foundation's EA (NSF, 2014) describe the approach to establishing mitigation exclusion and buffer zones. For this survey, Lamont-Doherty developed the shallow-water exclusion and buffer zones for the 18-airgun array based on the empirically derived measurements from the Gulf of Mexico calibration survey (Fig. 5a in Appendix H of the Foundation's PEIS). Diebold *et al.* (2010) showed that Lamont-Doherty's model produced appropriate mitigation radii for shallow water.

Lamont-Doherty used a similar process to develop mitigation radii for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington in 2012. The Observatory conducted the shallow-water survey using a similar airgun configuration (6,600 in^3) and recorded the received sound levels on the shelf and slope off Washington using the *Langseth's* 8-km hydrophone streamer. Crone *et al.* (2013) analyzed those received sound levels from the 2012 survey and reported that the actual distances for the exclusion and buffer zones were two to three times smaller than what Lamont-Doherty's modeling approach predicted. While results confirm the role that bathymetry plays in propagation, it also confirmed that empirical measurements from the Gulf of Mexico survey over-estimated the size of the exclusion zones for the Washington survey. Lamont-Doherty presented these preliminary results in a poster session at the American Geophysical Union fall meeting in December 2013 (Crone *et al.,* 2013; available at: *http://berna.ldeo.columbia.edu/agu2013/agu2013.pdf*). They anticipate publishing their results in a peer-reviewed journal in 2014. When available, we will review and consider the final results and how they reflect on the Lamont-Doherty model and will continue to work with Lamont-Doherty on verifying the accuracy of their model.

Comment 7: The Commission does not support the methodology that Lamont-Doherty uses to obtain deep-water exclusion and buffer zones. Citing Figures 11, 12, and 16 in Appendix H of the Foundation's Programmatic Environmental Impact Statement for geophysical surveys, they note that the calibration data show that at greater

distances (4 to 5 km) the actual sound levels reflected and refracted from the seafloor and sub-seafloor rise very close to the mitigation model curve. The Commission states that Lamont-Doherty should use site-specific modeling to account for reflective or refractive arrivals which would address their concerns with their model.

The Commission further recommends that we require Lamont-Doherty to re-estimate the proposed zones and take estimates using site-specific parameters (including at least sound speed profiles, bathymetry, and sediment characteristics) for the proposed Authorization. They also recommend that we require the same for all future incidental harassment authorization requests from Lamont-Doherty.

Response: Lamont-Doherty acquired field measurements for several array configurations at shallow- and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico in 2003 (Tolstoy *et al.,* 2004) and in 2007 and 2008 (Tolstoy *et al.,* 2009). Based on the empirical data from those studies, Lamont-Doherty developed a sound propagation modeling approach that conservatively predicts received sound levels as a function of distance from a particular airgun array configuration in deep water.

In 2010, L–DEO assessed their accuracy of their modeling approach by comparing the sound levels of the field measurements in the Gulf of Mexico study to their model predictions (Diebold *et al.,* 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted mitigation radii curve for deep water (Diebold *et al.,* 2010). Based on this information, their current modeling approach reliably estimates mitigation radii in deep water and represents the best available information to reach our determinations for the Authorization. We considered reflected and refracted arrivals in reviewing their model's results and note that the comparisons of Lamont-Doherty's model results and the field data collected in the Gulf of Mexico and Washington illustrate a degree of conservativeness built into their model for deep water. Given that Lamont-Doherty has demonstrated that the model is conservative in deep water, we conclude that the model is an effective means to aid in determining potential impacts to marine mammals from the planned seismic survey and estimating take numbers, as well as establishing buffer and exclusion zones for mitigation.

We acknowledge the Commission's concerns about Lamont-Doherty's current modeling approach for estimating exclusion and buffer zones and also acknowledge that Lamont-Doherty did not incorporate site-specific sound speed profiles, bathymetry, and sediment characteristics of the research area within the current approach to estimate those zones for this Authorization. However, as described earlier (and in Comment 6), empirical data collected at two different sites and compared against model predictions indicate that other facets of the model (besides the site-specific factors cited above) do result in a conservative estimate of exposures in the cases tested. At present, Lamont-Doherty cannot adjust their modeling methodology to add the environmental and site-specific parameters as requested by the Commission. We are working with Lamont-Doherty and the Foundation to explore ways to better consider site-specific information to inform the take estimates and development of mitigation measures in coastal areas for future seismic surveys with Lamont-Doherty. Also, the Foundation is exploring different approaches in collaboration with Lamont-Doherty and other academic institutions with whom they collaborate. When available, we will review and consider the final results from Lamont-Doherty's expected publications (See our response to Comment 6).

Lamont-Doherty has conveyed to us that additional modeling efforts to refine the process and conduct comparative analysis may be possible with the availability of research fund and other resources. Obtaining research funds is typically through a competitive process, including those submitted to Federal agencies. The use of models for calculating buffer and exclusion zone radii and developing take estimates are not a requirement of the MMPA incidental take authorization process. Furthermore, our agency does not provide specific guidance on model parameters nor prescribes a specific model for applicants as part of the MMPA incidental take authorization process. There is a level of variability not only with parameters in the models, but the uncertainty associated with data used in models and therefore the quality of the model results submitted by applicants. We, however, take all of this variability into consideration when evaluating applications. Applicants use models as a tool to evaluate potential impacts, estimate the number of takes of marine mammals, and for mitigation purposes. We take into consideration the model used and its results in determining the potential impacts to marine mammals; however, it is just one component of our analysis during the MMPA consultation process as we also take into consideration other factors associated with the proposed action, such as geographic location, duration of activities, context, intensity, etc. We consider takes generated by modeling as estimates, not absolutes, and we factor these into our analysis accordingly.

Comment 8: The Commission states that Lamont-Doherty applied scaling factors to empirical shallow-water zones based on modeled deep-water zones to account for tow depth differences. However, they are unsure why Lamont-Doherty would assume that the ratio of modeled zones in deep water would equate to empirical zones in shallow water, as those two quantities are not comparable.

Response: Lamont-Doherty's approach compares the sound exposure level (SEL) outputs between two different types of airgun configurations in deep water. This approach allows them to derive scaling relationships between the arrays and extrapolate empirical measurements or model outputs to different array sizes and tow depths. For example, if an Airgun Source A produces sound energy that is three times greater than Airgun Source B in deep water, it is reasonable to infer that the shallow-water mitigation zones for Airgun Source A would be three times larger than the shallow-water mitigation zones for Airgun Source B. Lamont-Doherty believes that this approach of deriving scaling factors is a more rigorous approach to extrapolate existing empirical measurements for shallow water. Thus, this is the best available information to extrapolate the in situ shallow water measurements to array tow depths without field verification studies (Crone et al., 2013; Crone et. al., in press; Barton and Diebold, 2006).

Comment 9: The Commission seeks clarification on why Lamont-Doherty's estimated exclusion zone for the proposed survey (36-airgun array towed at 9 m in depth) is smaller than those previously authorized and the proposed buffer zone is larger than previously authorized (75 FR 44770; 76 FR 75525, 49737; 77 FR 25693, 41755). They also question why the estimated shallow-water exclusion zone for the mitigation airgun is smaller than previously authorized or proposed to be authorized (e.g., 77 FR 41755).

Response: We recognize the Commission's statement that the estimated exclusion zones are smaller

and buffer zones are larger than under previous Authorizations and provide a detailed clarification of Lamont-Doherty's previous and current approaches in acoustic modeling in the notice of issuance of an Incidental Harassment Authorization to the USGS (79 FR 52121, September 2, 2014).

In summary, Lamont-Doherty's previous authorization applications and EAs for different airgun array configurations based their mitigation radii on the empirical results of Tolstoy *et al.* (2009) and adjusted for tow depth. For the deep-water site in the study, the hydrophone was at a depth of 350 to 500 m (1,148.3 to 1,640.4 ft) and only sampled received levels at a constant depth of 500 m (1,640.4 ft). Thus, the hydrophone did not sample the maximum received levels in the water column down to 2,000 m (6,561.7 ft). Due to this cutoff, one cannot use those predicted distances to the 160-, 180-, and 190-dB threshold contours as buffer and exclusion zones.

The previous documents use 160 dB root mean square (rms) from Tolstoy *et al.* (2009) and adjust for tow depth, and the current documents use the 150 dB sound exposure level (SEL) contour from the Diebold *et al.* (2010) model, which accounts for the large difference in the 160-dB buffer zone (3,850 vs 5,780 m).

For the 190-dB exclusion zone, the differences between the previous rms versus the current SEL metrics are a significant factor. In Figures 7 and 8 of Tolstoy *et al.* (2009), there is not an exact 10-dB difference between SEL and 90% rms in the empirical data at short distances (200 to 500 m). In recent documents, Lamont-Doherty uses the Diebold et al., (2010) modeling approach. Here, they calculate the modeling results as SEL and then convert them to rms values using a fixed 10-dB difference. Using this approach, the distance to 190 dB rms (approximately 180 dB SEL) is less than what they previously obtained using rms values of the empirical measurements. However, the current approach does not underestimate the distance with respect to the trend of the SEL values of the empirical measurements obtained at the closest ranges shown in Figure 8 of Tolstoy *et al.* (2009) and also demonstrated in Figure 10 of Diebold *et al.* (2010).

The main reason for the significant fluctuations in modeling (dB discount with SEL value) is based on converting the values calculated as 90 percent rms and values obtained as SEL plus 10 dB. Table 1 compares Lamont-Doherty's previous (Tolstoy *et al.,* 2009) and current (Tolstoy *et al.,* 2009; Diebold et al., 2010) approach to acoustic propagation.

TABLE 1—COMPARISON OF LAMONT-DOHERTY'S PREVIOUS AND CURRENT APPROACH TO ACOUSTIC PROPAGATION

Categories	Previous approach to acoustic propagation (Tolstoy *et al.,* 2009)	Current approach to acoustic propagation (Tolstoy *et al.,* 2009 and Diebold *et al.,* 2010)
Model Approach	Ray trace of direct arrivals and source ghosts (reflection at the air-water interface at the array) from the array to the receivers.	Ray trace of direct arrivals and source ghosts (reflection at the air-water interface at the array) from the array to the receivers.
Model Assumptions	Constant velocity, infinite homogenous ocean layer, seafloor unbounded. Cross-line model more conservative than in-line model.	Constant velocity, infinite homogenous ocean layer, seafloor unbounded. Cross-line model more conservative than in-line model.
Propagation Measurements Analyzed.	36 airguns (6,600 in^3), 6 m tow depth, 1,600 m (deep) 36 airguns (6,600 in^3), 6 m tow depth, 600 to 1,100 m (intermediate). 36 airguns (6,600 in^3), 6 m tow depth, 50 m (shallow) ..	36 airguns (6,600 in^3), 6 m tow depth, 50 m (shallow).
Receiver Specs	Calibration hydrophone buoy Shallow—spar buoy anchored on the seafloor, hydrophone at 18 m Intermediate—spar buoy not anchored, hydrophone at 18 m and 500 m. Deep—spar buoy not anchored, hydrophone at 18 m and 350 to 500 m.	Calibration hydrophone buoy and multi-channel seismic hydrophone array, both in shallow water.
Data Validation	Curve based on best fit line, 95% of received levels fall below curve.	NA.
Empirical Radii Appropriate for Sampling Maximum Received Level.	36 airguns (shallow)—Yes, appropriate for mitigation modeling 36 airguns (intermediate)—No, does not sample maximum received levels > 500 m. 36 airguns (deep)—No does not sample maximum received levels > 500 m.	36 airguns (shallow)—Yes, appropriate for mitigation radii.
Received Level Metric Presented.	90% of cumulative energy rms levels and SEL Tolstoy et al. (2009) empirical data from Table 1.	SEL contours (150, 170, and 180) Diebold *et al.* (2010) modeled data from Figure 2.
RMS vs. SEL Offsets	36 airguns in deep water—~14 dB offset, rms > SEL .... 36 airguns in shallow water—8 dB offset, rms > SEL.	NA.
Differences between the Previous and Current Approaches.	Because the deep-water calibration buoy only sampled received levels at a constant depth of 500 m, it is not appropriate to use the empirical deep-water data from Tolstoy et al. (2009) to derive mitigation radii. This is due to the buoy not capturing the intersect of all the SPL isopleths at their wildest point from the sea surface down to ~2,000 m. However, the received levels (i.e., direct arrivals and reflected and refracted arrivals) are in agreement with the current propagation model.	The current propagation model uses the maximum SPL values shown in Figure 2 in Diebold *et al.* (2010). These values along the diagonal maximum SPL line connect the points where the isopleths attain their maximum width (providing the maximum distance associated with each sound level). These distances will differ from values obtained along the Tolstoy *et al.* (2009) data shown in Table 1 which derives radii from the 500 m constant depth line.

Comment 10: The Commission notes that Lamont-Doherty (in cooperation with Pacific Gas and Electric Company) previously modeled sound propagation using site-specific parameters under various environmental conditions for a

2012 incidental harassment authorization application and associated environmental assessment for a geophysical survey of Diablo Canyon in California (77 FR 58256, September 19, 2012). The Commission agrees that we should not instruct applicants to use specific contractors or modeling packages, but that we should hold applicants to the same standard as other applicants where they incorporate site and operation-specific environmental parameters into their models.

Response: See our response to Comment 7. On a broader note, we are currently pursuing methods that include site-specific components to allow us to better cross-check isopleth and propagation predictions submitted by applicants. Using this information, we could potentially recommend modifications to take estimates and/or mitigation zones, as appropriate.

Comment 11: The Commission notes that we increased the exclusion zone in shallow water by 3 dB for the proposed survey off North Carolina and for a recent survey recent survey off New Jersey (79 FR 38499). They question our use of the precautionary buffer if, we determined that Lamont-Doherty's model uses the best available science. They questioned why we did not extend the 160-dB buffer zone and re-estimate the number of take of marine mammals as well.

Response: For this survey, Lamont-Doherty developed the exclusion and buffer zones based on the conservative deep-water calibration results and empirically-derived shallow water exclusion zones from Diebold *et al.* (2010). Their current modeling approach represents the best available information to reach our determinations for the Authorization. As described earlier, the comparisons of Lamont-Doherty's model results and the field data collected in the Gulf of Mexico and Washington illustrate a degree of conservativeness built into their model for deep water, which we would expect to offset some of the limited ability of the model to capture the variability resulting from site-specific factors, especially in shallow water. However, in the interest of additional protection, we have required more conservative and precautionary mitigation and monitoring measures within this Authorization. We will require Lamont-Doherty to enlarge the 180-dB and 190-dB exclusion zones for all airgun array configurations in shallow water to further conservatively account for environmental variation within the survey area. The precautionary exclusion zone with the additional buffer would increase the radius of the exclusion zones in shallow water by a factor of approximately 41 percent for the single airgun, approximately 48 percent for the 18-airgun array, and approximately 38 percent for the 36-airgun array. In light of those limitations and in consideration of the practicability of implementation, in this particular case, we recommended a more conservative approach to mitigation specifically tailored to the North Carolina seismic survey that required Lamont-Doherty to enlarge the exclusion zones. As noted previously, though there are limitations with the Lamont-Doherty model, we believe that Lamont-Doherty is able to adequately estimate take for this seismic survey. We have no reason to believe that potential variation in site-specific parameters would result in differences that would change our analysis of the general level or severity of effects or our necessary findings. However, in consideration of the practicability of doing so, we were able to add a precautionary buffer to the mitigation zone. For this Authorization, we will not require Lamont-Doherty to extend the 160-dB buffer zone or re-estimate the number of take of marine mammals for the reasons stated earlier.

Comment 12: The Commission notes that the Strategic Environmental Research and Development Program's (SERDP) spatial decision support system (SDSS) Marine Animal Model Mapper tool based on the U.S. Navy's OPAREA Density Estimates (NODE) model did not provide density estimates for spinner dolphins, Fraser's dolphins, melon-headed whales, pygmy killer whales, false killer whales, and killer whales. Because the potential for taking exists for these species, the Commission recommends that we authorize the taking of on at least the average group size to be consistent with the recent Authorization to the USGS for a seismic survey in the same general geographic area.

The Commission also recommended that we increase the proposed take authorized for the Northern North Carolina Estuarine stock and Southern North Carolina Estuarine stocks of bottlenose dolphins to account for average group size as well.

Response: We agree with the Commission's recommendations and determined that it is appropriate to include coverage for potential takes for those species based on group size. Table 4 in this notice includes the additional authorized take for those species.

For spinner dolphins, Fraser's dolphins, melon-headed whales, pygmy killer whales, false killer whales, and killer whales, we determined the mean group size based on data reported from the Cetacean and Turtle Assessment Program (CeTAP) surveys (CeTAP, 1982) and the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, 2012, and 2013 (NEFSC and SEFSC, 2011, 2012, 2013, 2014). For the Northern North Carolina Estuarine stock and Southern North Carolina Estuarine stocks of bottlenose dolphins, we determined the mean group size based on Read *et al.* (2003). Table 4 in this notice includes the additional authorized take for those species.

Comment 13: The Commission discusses a potential seasonal haul-out site for harbor seals at Oregon Inlet, North Carolina and recommends that we determine the number of harbor seals that could potentially experience harassment incidental to the proposed survey and authorize that number in the final Authorization.

Response: The NMFS 2013 Stock Assessment Report notes that in recent years, small numbers of harbor seals (less than 50) have established winter haulout sites near Oregon Inlet, North Carolina. Other anecdotal sources have identified the haulout site as Green Island Slough on the south side of Oregon Inlet (Star News Online, 2012) and counted as many as 30 harbor seals hauled out at this location which is within Pamlico Sound and not within the proposed survey area.

We agree with the Commission's recommendation and determined that it is appropriate to include coverage for potential takes for harbor seals based upon group size data reported in the AMAPPS 2013 survey (NEFSC and SEFSC, 2014). Table 4 in this notice includes the additional authorized take for harbor seals that could potentially experience harassment incidental to the proposed survey.

Comment 14: The Commission understands the Lamont-Doherty would survey the OBS tracklines twice, once for acquiring OBS data and once for recording source shots with the MCS. Because Lamont-Doherty did not estimate the ensonified area based on repeating the OBS tracklines, the Commission recommends that we require Lamont-Doherty to re-estimate the total numbers of takes based on surveying the OBS portion two times and base our ''small numbers'' and ''negligible impact'' determinations on those revised take estimates.

Response: Lamont-Doherty modeled the number of individuals that could be exposed to airgun sounds with received levels greater than or equal to 160 dB re: 1 μPa on one or more occasions by multiplying the total marine area that would be within the 160-dB radius

around the operating seismic source on at least one occasion (40,968 km²) along with the expected density of animals in the area. However, as the Commission noted, this approach does not account for Lamont-Doherty acquiring data for the ocean bottom seismometer (OBS) portion of the survey tracklines which includes two instances of ensonification (i.e., one pass for acquiring OBS data and a second pass for recording source shots with the multi-channel seismic (MCS). On average, for a 400-km line segment, the Langseth traveling at 8.3 km/hour would take approximately 4 days to complete the acquisition. In total, there are 10 tracklines that would require repeat coverage (see Figure 1 in this notice, Lines 1 through 4b).

Lamont-Doherty estimated the ratio of the ensonified area including overlap (63,367 km²) and the ensonified area excluding overlap (40,968 km²) to be 1.54. Using this ratio, we can obtain an approximation of the number of possible exposures (including repeated exposures of the same individuals).

In considering the likelihood of re-exposure of certain individuals during the survey, the Authorization would include additional coverage for those potential takes of individuals where Lamont-Doherty would repeat those tracklines. However, we expect that most individuals would experience at most a single exposure to the 160 dB re: 1 μPa_{rms} level or higher due to required mitigation and monitoring measures and it is unlikely that a particular animal would remain in the area during the entire survey (Bain and Williams, 2006; MacLeod *et al.,* 2006; McCauley *et al.,* 2000; McDonald *et al.,* 1995).

Because the area including overlap is 1.54 times greater than the area excluding overlap, we estimated instances of exposures when the tracklines overlapped by multiplying the original take estimate by 0.54, which provides the number of instances of exposures above 160 dB. We then multiplied the number of exposure instances by a generalized turnover estimate of 25 percent (Wood *et al.,* 2012) to account for take of additional individuals that could experience Level B harassment within those areas where the tracklines overlap.

We recognize that turnover within the project area would not approach 100 percent per day and that a method that assumes 100% turnover would far overestimate the number of individual marine mammals exposed above the 160 dB re: 1 μPa threshold. We expect that use of a generalized factor of 25 percent would provide a more reasonable estimate of the number of new animals exposed when the *Langseth* repeats tracklines, and then we are assuming that the rest of the instances of take in the repeated tracklines are repeat exposures to previously exposed animals. The explanation for our small numbers and negligible impact determinations based on these revised take estimates for individuals is in the Analysis and Determinations section.

Comment 15: NRDC *et al.* states that Lamont-Doherty provides no justification for the particular trackline configuration (see Addendum) and why that design elected to remove the 25 percent contingency that it typically adds to its tracklines, as opposed to other potential designs represents the least practical adverse impact on marine mammals. They further state that we should limit Lamont-Doherty to both the specified tracklines and the specified number of line-kilometers, and require cessation of the activity when they reach the latter.

Response: See our response to Comment 14. For this survey, Lamont-Doherty assumes that the *Langseth* will not need to repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey. Lamont-Doherty added a 25 percent contingency allowance in their application and draft EA to their ensonified area calculations for additional seismic operations in the survey area associated with infill of missing data, and/or repeat coverage of any areas where initial data quality was sub-standard; however, they have eliminated the contingency from their final calculations. Whereas Lamont-Doherty added this 25 percent contingency to some past seismic surveys, for this particular survey design, the additional contingency was not necessary and removed from the final calculations for the proposed activities. Thus, total tracklines for the proposed survey would not exceed 5,320 km.

We have revised the take estimates to account for the 10 tracklines that would require repeat coverage. The Authorization accounts for the modified number of tracklines (including repeated tracklines) shown in Figure 1 in this notice. We note that unlike previous seismic surveys aboard the *Langseth,* Lamont-Doherty would conduct the 2–D survey as almost one continuous line. Therefore, the ensonified area for the seismic survey does not include a contingency factor (typically increased by 25 percent to accommodate turns and equipment testing, etc.) in line-kilometers. Also, any marine mammal sightings within or near the designated exclusion zones will result in a power-down and/or shut-down of seismic operations as a mitigation measure effecting the least practicable adverse impact on marine mammals.

Comment 16: NRDC *et al.* state that NMFS made erroneous small numbers and negligible impact determinations.

Response: We are required to authorize the take of ''small numbers'' of a species or stock if the taking by harassment will have a negligible impact on the affected species or stocks and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence purposes. See 16 U.S.C. 1371(a)(5)(D). In determining whether to authorize ''small numbers'' of a species or stock, NMFS determines whether the taking will be small relative to the estimated population size and relevant to the behavior, physiology, and life history of the species or stock.

With the exception of sei whales and pantropical spotted dolphins, less than 12 percent of each species stock or population would be taken by harassment. With respect to the type of take, we are authorizing only Level B behavioral harassment and do not anticipate any injury or mortality. Although modeling results indicate that up to 27% of the sei whale population and 24% of the pantropical spotted dolphin population could potentially be exposed to received sound levels ≥160 dB re 1 μPa, we determined that takes resulting from Lamont-Doherty's activities will constitute only a ''small number,'' especially considering that the modeling results do not take into account the implementation of mitigation measures, which would likely further lower the number of animals taken even further.

We discuss our rationale for our negligible impact finding in the Analysis and Determinations section.

Comment 17: Dr. Pabst stated that within the study area, beaked whales have a non-random distribution that is exclusively along the deep continental shelf edge and beyond the shelf. She suggests that beaked whales may not be able to move away from the sound source due to their geographically-specific distribution patterns.

Response: We recognize the acoustic sensitivity of beaked whales to anthropogenic sounds; however, studies on long-term or large-scale displacement of disturbed cetaceans are limited (McSweeney *et al.,* 2007; Schorr *et al.,* 2014).

The Schorr *et al.* (2014) paper discusses site fidelity of Cuvier's beaked whales within the Southern California Anti-submarine Warfare Range (SOAR).

They note that despite the high level of acoustic disturbance from naval exercises present within the area, displacement of the population of Cuvier's beaked whales appeared temporary (Schorr *et al.,* 2014). They also discuss that the prolonged and recurrent use of the area by that particular population of whales suggests that *Ziphius* in this region have likely adapted to life with a certain amount of acoustic disturbance and that local advantages (i.e., foraging) may outweigh the costs it imposes.

Our discussion of avoidance behaviors in the notice of proposed authorization (79 FR 44549, July 31, 2014) supports our expectations that individuals will avoid exposure at higher levels. Also, it is unlikely that animals would encounter repeated exposures at very close distances to the sound source because Lamont-Doherty would implement the required shutdown and power down mitigation measures to ensure that marine mammals do not approach the applicable exclusion zones for Level A harassment. We anticipate only behavioral disturbance to occur primarily in the form of avoidance behavior to the sound source during the conduct of the survey activities.

Comment 18: Dr. Pabst stated that she was uncertain as to how we determined the stock abundances for beaked whales in Table 1 of the notice of proposed Authorization because the stock abundance estimate of 7,092 for *Mesoplodon spp.* does not represent the true abundance of any one species. She also noted that the best estimate for Cuvier's beaked whale (*Z. cavirostris*) is 6,532 individuals not 7,092.

Response: We obtained stock abundances for *Mesoplodon spp.* from the U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Report (SAR)—2013. The SAR includes a description of the stock, including its geographic range and a minimum population estimate. In the case of the three *Mesoplodon* species identified in the proposed notice of Authorization (Blainville's, Gervais', and True's), the 2013 SAR notes that the abundance estimate for each species includes an aggregate of abundance estimates for Gervais' beaked whales and Blainville's beaked whales in the Gulf of Mexico and all species of *Mesoplodon* in the Atlantic. We acknowledge that the estimate of 7,092 does not represent the true abundance of any one species of *Mesoplodon;* however this represents the best available information for each species to make our determinations under section 101(a)(5)(A) of the MMPA. Regarding the best estimate for Cuvier's beaked whale, we have corrected the estimate in this notice to 6,532 individuals.

Mitigation

Comment 19: The Commission states that for some deep-diving cetaceans, the proposed 30-minute clearance time may be inadequate (e.g., Schorr *et al.,* 2014). Because beaked and sperm whales, in particular, can remain submerged for periods far exceeding 30 minutes, they recommend that we require a 60-minute clearance time for deep-diving species, after either a power down or shutdown of the airgun array, if an observer does not see an animal depart the exclusion zone.

Response: For this survey, the Foundation has informed us that they would increase the clearance time after a shutdown or power-down for deep-diving species such as beaked whales and sperm whales from 30 minutes to 60 minutes.

For a shutdown in this particular survey, the Authorization requires the *Langseth* to turn off the airgun(s) if a visual observer detects a marine mammal within, approaching, or entering the relevant exclusion zone for Level A harassment. For this Authorization, if that particular species is either a beaked whale or sperm whale, the observer must visually confirm that the animal has departed the relevant exclusion zone before restarting the airgun array. If the observer does not see the beaked whale or sperm whale depart the exclusion zone, the *Langseth* cannot ramp-up the airguns until 60 minutes has passed from the last sighting of the beaked whale or sperm whale.

For a power down in this particular survey, the Authorization requires the *Langseth* to decrease the number of airguns in use such that the radius of the exclusion zone is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. For this Authorization, if that particular species is either a beaked whale or sperm whale, the observer must visually confirm that the animal has departed the relevant exclusion zone before restarting the airgun array. If the observer does not see the beaked whale or sperm whale depart the exclusion zone, the *Langseth* cannot resume operations at full power until 60 minutes has passed from the last sighting of the beaked whale or sperm whale.

We also considered the Schorr *et al.* (2014) study which used satellite-linked tags to record the diving behavior and locations of eight Cuvier's beaked whales within Southern California Anti-submarine Warfare Range (SOAR) from 2010 to 2012 for periods up to three months. The authors collected over 3,000 hours of dive data with associated regional movements within the study area. In total, tagged whales performed 1,142 deep dives to a group mean depth of 1,401 m (4,596 ft); group mean dive duration of 67.4 minutes; and group mean surfacing bouts that separated back-to-back deep dives of 35.7 minutes. The authors note that the SOAR represents important habitat for the whales despite the high level of acoustic disturbance present within the area. However, they note that given the acoustic sensitivity of beaked whales and other odontocetes, it is likely that sonar use occasionally displaces the whales, but that the level of displacement in this population appeared to be temporary (Schorr *et al.,* 2014). These data better characterize the true behavioral range of this species; however, the authors suggest exercising caution when drawing conclusions about behavior using these short-term tagging records (Schorr *et al.,* 2014).

Comment 20: Dr. Pabst and Mr. McLellan also expressed concern about the proposed seismic survey's effect on beaked whales within the study area. Both noted that the survey lines would occur in areas of high beaked whale abundance due to high numbers of beaked whale sightings and suggest that 30 minutes may not be sufficient for protected species observers to monitor beaked whales within the exclusion zone after a shutdown because of the species' extended diving capability and prolonged breath hold.

Response: See our response to Comment 19.

Comment 21: NRDC *et al.* states that time and area restrictions designed to protect high-value habitat are one of the most effective means to reduce the potential impacts of noise and disturbance. Commenters state that the proposed Authorization does not consider any areas for seasonal planning, trackline avoidance, or closure for any species other than North Atlantic right whales. They also discuss the Cape Hatteras Special Research Area (CHSRA) as crucial habitat for short- and long-finned pilot whales and Risso's dolphins.

Response: We disagree with NRDC *et al.'s* assessment. Regarding seasonal planning, we note that the Foundation's EA considered potential times to carry out the survey taking into consideration key factors such as environmental conditions and species presence. The Authorization's required mitigation measures already require shut-downs and/or power-downs for species of

special concern. Considering the rarity and conservation status for the North Atlantic right whale, Lamont-Doherty will shut down the airguns immediately in the unlikely event that observers see this species, regardless of the distance from the *Langseth*. The airgun array shall not resume firing (with ramp-up) until 30 minutes after the last documented North Atlantic right whale visual sighting. Also, we expect that the North Atlantic right whale would be farther north at the time of the survey, so the current timing of the survey represents the least practical adverse impact for this species. Additionally, the mitigation measures state that concentrations of humpback, sei, fin, blue, and/or sperm whales will be avoided if possible (i.e., exposing concentrations of animals to 160 dB), and that Lamont-Doherty will power-down the array if necessary. For purposes of this planned survey, a concentration or group of whales will consist of six or more individuals visually sighted that do not appear to be traveling (e.g., feeding, socializing, etc.).

Concerning the avoidance of marine mammals through the modification of tracklines, the Authorization states that the *Langseth* should alter speed or course during seismic operation if a marine mammal, based on its position and relative motion, appears likely to enter the relevant exclusion zone. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the exclusion zone, further mitigation measures, such as a power-down or shut-down, shall be taken.

The CHSRA is a special research area offshore of Cape Hatteras, North Carolina designated by NMFS under the Pelagic Longline Take Reduction Plan. The research conducted within the CHSRS results in a better understanding the nature of marine mammal interactions incidental to the commercial pelagic longline fishery. The goal is to reduce serious injuries and mortalities of pilot whales and Risso's dolphins resulting from interactions with pelagic longline gear. The CHSRA designation relates specifically to commercial longline fishing and regulatory and non-regulatory measures to reduce marine mammal and other species bycatch from that fishery. It does not, however, include restrictions on other activities including navigation through the area and, therefore, would not warrant a year-round area closure for other activities including seismic survey research activities. Thus, the research requirements for the CHSRA do not apply to Lamont-Doherty's planned survey because we categorize their activity as a non-commercial fishing activity under the MMPA.

The seismic survey's planned tracklines—designed for the specific objectives of this survey, combined with the transiting vessel and airgun array, make avoiding this particular area impractical and likely would not provide significant reduction in potential impacts from underwater sound or sufficient conservation benefits for this specific project. However, the Foundation's EA considers that slight track adjustments are possible to avoid fisheries conflicts: ''. . . conflicts would be avoided through communication with the fishing community during the survey and publication of a Notice to Mariners about operations in the area. A chase boat would also be employed to assist the Langseth . . .''

Comment 22: NRDC *et al.* state that we should conduct a habitat mapping analysis to determine a time-area restrictions within the study area. Researchers have developed at least two predictive models to characterize densities of marine mammals in the area of interest: The NODE model produced by the Naval Facilities Engineering Command Atlantic and the Duke Marine Lab model produced under contract with the Strategic Environmental Research and Development Program. Until Duke has produced its new cetacean density model, pursuant to NOAA's CetMap program, NRDC *et al.* state that we should use these sources, which represent best available science to identify important marine mammal habitat and ensure the least practicable impact for species of concern.

Response: NMFS used the Navy's NODE model for determining the density data of marine mammal species (where it was available) and calculating estimated take numbers. We were not able to identify any other important habitat areas of specific importance to marine mammals from this dataset that are appropriate for avoidance or time-area restrictions. As stated earlier, the seismic survey's planned tracklines, designed for the specific objectives of this survey, combined with the transiting vessel and airgun array, make time-area restrictions and avoiding specific habitat areas impractical and likely would not provide significant reduction in potential impacts from underwater sound or sufficient conservation benefits for this specific project.

Comment 23: NRDC *et al.* state that we should require that the airgun survey vessel use the lowest practicable source level, minimize horizontal propagation of the sound signal, and minimize the density of tracklines consistent with the purposes of the survey. NRDC *et al.* state that while Lamont-Doherty gives cursory consideration for the source level, there is little explanation of the conclusion that Lamont-Doherty requires a 36-airgun array. NRDC *et al.* would note that for a 2013 study off Spain, Lamont-Doherty used two 18-airgun arrays operating in ping-pong mode rather than a single, high-source-level, 36-gun array.

Response: We encourage all seismic surveys using airguns as a sound source to use the lowest practicable source level to achieve the purposes of the action. In order to fulfill the purpose of the seismic survey, however, Lamont-Doherty's seismic survey requires the use of both the 18-airgun and 36-airgun array configurations. The Principal Investigators (PIs) have proposed to use the full array (6,600 in^3) on the five marine seismic lines where ocean-bottom seismometers would exist (Figure 1 of IHA application) because the geological targets beneath these profiles are deep (up to 40 km beneath the seafloor) structures in the crust and upper mantle will provide essential information on the opening of the Atlantic Ocean. The PIs determined that, based on their experience, using the full array on these lines is necessary to ensure the quality of data collection at the target depths for the OBS and MCS tracklines and thus to meet the primary goal of this research program. The remaining MCS-only lines are primarily targeting sediments and rocks in the upper/middle part of the crust, so a smaller array (3,300 in^3) is adequate for these profiles. As stated previously, we have considered this rationale and Lamont-Doherty's reasons for why the measure may (or may not) be practicable. After taking into consideration the project's purpose, we agree with Lamont-Doherty that there is no practicable alternative for Lamont-Doherty's proposed use of the 36-airgun array for OBS tracklines.

Regarding the comment about minimizing horizontal propagation of the sound signal, the configuration of the airgun array, causes the signals to constructively interfere in the vertical direction and destructively interfere in horizontal direction. This is evident in the elliptical shape of the modeled received signals presented in the Foundation's EA.

Comment 24: NRDC *et al.* states that we should require Lamont-Doherty to use an alternative to the multi-beam echosounder to the one presently proposed.

Response: We disagree with NRDC *et al.'*s recommendation as we do not have the authority to require the incidental take authorization applicant or action proponent to choose a different multi-beam echosounder system for the planned seismic survey. The multi-beam echosounder system currently installed on the *Langseth* is capable of mapping the seafloor in deep water and the characteristics of the system are well suited for meeting the research goals at the action area. It would not be practicable for the Lamont-Doherty and the Foundation to install a different multi-beam echosounder for the planned seismic survey. NRDC *et al.* did not recommend a specific multi-beam echosounder to use as an alternative to the one currently installed on the vessel and planned for operation during the seismic survey. The multi-beam echosounder that is currently installed on the *Langseth* was evaluated in the NSF/USGS PEIS and in the Foundation's EA, and has been used on over 25 research seismic surveys since 2008 without association to any marine mammal strandings.

Regarding the 2002 stranding in the Gulf of California, the multi-beam echosounder system was on a different vessel, the R/V *Maurice Ewing* (*Ewing*), which Lamont-Doherty no longer operates. Although NRDC *et al.* suggests that the multi-beam echosounder system or other acoustic sources on the *Ewing* may have been associated with the 2002 stranding of two beaked whales, as noted in Cox *et al.* (2006), ''whether or not this survey caused the beaked whales to strand has been a matter of debate because of the small number of animals involved and a lack of knowledge regarding the temporal and spatial correlation between the animals and the sound source.'' As noted by Yoder (2002), there was no scientific linkage to the event with the *Ewing'*s activities and the acoustic sources used. Furthermore, Hildebrand (2006) has noted that ''the settings for these stranding are strikingly consistent: An island or archipelago with deep water nearby, appropriate for beaked whale foraging habitat. The conditions for mass stranding may be optimized when the sound source transits a deep channel between two islands, such as in the Bahamas, and apparently in the Madeira incident.'' The activities planned for the seismic survey do not relate to the environmental scenarios noted by Hildebrand (2006).

Regarding the 2008 stranding event in Madagascar and the Final Report of the Independent Scientific Review Panel (ISRP) cited to by NRDC *et al.,* we considered this report in the notice of proposed Authorization. The multi-beam in use on this seismic survey is not operating in the same way as it was in Madagascar. The Authorization requires Lamont-Doherty to plan to conduct the seismic surveys (especially when near land) from the coast (inshore) and proceed towards the sea (offshore) in order to avoid the potential herding ''herding of sensitive species'' into canyons and other similar areas. Given these conditions, NMFS does not anticipate mass strandings from use of the planned multi-beam echosounder.

Comment 25: NRDC *et al.* states that the proposed Authorization does not adequately consider, or fails to consider at all, sound source validation. NRDC *et al.* states that we should require Lamont-Doherty and the Foundation to validate the assumptions about propagation distances used to establish exclusion and buffer zones and calculate take (i.e., at minimum, the 160 dB and 180 dB isopleths). Sound source validation has been required of Arctic operators for several years, as part of their incidental take authorization compliance requirements, and has proven useful for establishing more accurate, in situ measurements of exclusion zones and for acquiring information on noise propagation.

Response: NMFS disagrees with NRDC *et al.'*s assessment that we did not adequately consider or require a sound source validation. Regarding concerns about validating the assumptions about propagation distances used to establish buffer and exclusion zones and calculated take, measuring sound source isopleths requires specialized sensors that are either self-contained buoys (such as those used by Tolstoy *et al.,* 2009), at the seafloor (such as those used by Thode *et al.,* 2010), or deployed from a second ship, such as those used by Mosher *et al.,* 2009). Experiments with these instruments are non-trivial experiments in deep water and generally take several days of ship time (or two vessels) in order to establish shooting patterns, appropriate gain settings, and deployment/recovery of the instruments. Lamont-Doherty has demonstrated that in deep water, the propagation paths are simple and that the sound propagation models are conservative, i.e., they overestimate the distances to the Level A and B harassment isopleths (as demonstrated in Figures 11, 12 and 16 in the NSF/USGS PEIS Appendix H). Consequently, using the model parameters is a precautionary approach that saves considerable time and expense in conducting the seismic survey.

For shallow-water surveys see our response to Comment 6. We are currently pursuing methods that include site-specific components to allow us to better cross-check isopleth and propagation predictions submitted by applicants. Using this information, we could potentially recommend modifications to mitigation zones, as appropriate.

Comment 26: NRDC *et al.* state that we should reconsider the size (distance) of the safety zone. The proposed Authorization proposes establishing a safety zone of 180 dB re 1 μPa (with a 500 m minimum around the airgun array). Gedamke *et al.* (2011) has put traditional means of estimating safety zones in doubt. NRDC *et al.* state that we should consider establishing an exclusion zone for shut-downs for certain target species. Although time/area closures are a more effective means of reducing cumulative exposures of wildlife to disruptive and harmful sound, expanded exclusion zones have value minimizing disruptions, and potentially in reducing the risk of hearing loss and injury, outside the seasonal closure areas. Visual sighting of any individual North Atlantic right whale at any distance should trigger a shut-down; for other species, shut-downs should occur if aggregations are observed within the 160 dB isopleth around the sound source.

Response: We disagree with NRDC *et al.'*s recommendation that we should reconsider the size (distance) of the exclusion zone. We note that the statement that the proposed Authorization proposes establishing a safety zone of 180 dB re: 1 μPa (with a 500 m minimum around the airgun array) is incorrect. NRDC *et al.* may be referring to BOEM/BSEE Joint NTL No. 2012–G02 (available online at: *http://www.boem.gov/Regulations/Notices-To-Lessees/2012/2012-JOINT-G02-pdf.aspx*), which requires an immediate shut-down of the airgun operations ''within an estimated 500 m of the sound source array.'' The 180-dB exclusion zones for Lamont-Doherty's planned survey are:

- 18-Airguns: 1,628 m in shallow water; 675 m in intermediate depths; and 450 m in deep water.
- 36-Airguns: 2,838 in shallow water; 1,391 in in intermediate depths; and 927 m in deep water.

As discussed earlier in Comment 20, the Authorization includes mitigation measures that require shut-downs and/or power-downs for species of special concern including North Atlantic right whales and concentrations of humpback, sei, fin, blue, and/or sperm whales.

Comment 27: NRDC *et al.* state that real-time monitoring effort in the proposed Authorization is inadequate. NRDC *et al.* states that supplemental methods used on certain other projects include hydrophone buoys and other platforms for acoustic monitoring, aerial surveys, shore-based monitoring, and the use of additional small vessels.

Response: We have not included hydrophone buoys for acoustic monitoring, aerial surveys, shore-based monitoring, or the use of additional small/support vessels in the Authorization as they are not practicable for Lamont-Doherty's seismic survey. In certain situations, we have recommended the use of additional support vessels to enhance protected species observer monitoring effort during seismic surveys. For this seismic survey, however, we have not deemed it necessary to employ additional support vessels to monitor the buffer and exclusion zones due to the relatively small distances of the exclusion zones. Finally, the *Langseth* has limited maneuverability during airgun operations and cannot deploy or recover small vessels for activities such as hydrophone acoustic monitoring.

Comment 28: NRDC *et al.* states that the requirements with respect to protected species observers are inconsistent with survey conventions and with prior studies of observer effectiveness. NRDC *et al.* state four hour work cycles are not appropriate and comment that we offer no details about the training requirements of its vessel-based observers.

Response: The general duties of protected species observers required for seismic surveys are to visually observe the immediate environment for protected species whose detection (relative to a sound source) triggers the implementation of mitigation requirements, monitoring compliance with mitigation requirements, collecting data by defined protocols, preparing daily reports, and submitting reports to us. During seismic operations, at least five observers (four visual observers and one acoustic observer are based aboard the *Langseth.* Lamont-Doherty will appoint the observers with our concurrence. The observers aboard the *Langseth* are professional and experienced observers provided to Lamont-Doherty under contract to RPS and have been in place during seismic surveys since 2008. The protected species observers and PAM operators complete in-house training. These candidates must pass a protected species identification test and a mitigation and monitoring practices exam with a minimum grade of 80%. The RPS training program includes, but is not limited to: background on protected species laws in the U.S. and worldwide, an introduction to seismic surveys (purpose, types, and equipment), potential impacts of underwater sound on protected species, protected species in the Gulf of Mexico and other regions, visual monitoring methods, acoustic monitoring methods, protected species detection in the field, implementation of mitigation measures (exclusion and buffer zones, ramp-ups, power-downs, shut-downs, delays, etc.), and data collection and report preparation. In November 2013, NMFS prepared and published, with input from BOEM and BSEE, a technical memorandum (tech memo) titled ''National Standards for a Protected Species Observer and Data Management Program: A Model Using Geological and Geophysical Surveys'' (Baker *et al.,* 2013) that makes recommendations on establishing a training program, PSO eligibility and qualifications, as well as PSO evaluation during permit/authorization approval. The tech memo is available online at: *http://www.nmfs.noaa.gov/pr/publications/techmemo/observers_nmfsopr49.pdf.* Our current practice is to deem protected species observer candidates as NMFS-approved or qualified on a case-by-case or project-by-project basis after review of their resume and/or curriculum vitae. Lamont-Doherty's protected species observers have the necessary education and/or experience requirements and their training generally follows the standard components recommended in NMFS's tech memo.

Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two visual observers will be on duty from the observation tower (i.e., the best available vantage point on the source vessel) to monitor marine mammals near the seismic vessel. Use of two simultaneous visual observers will increase the effectiveness of detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer will be on duty. Regarding the comment about four-hour work shifts, the Authorization states that protected species observer shifts shall not exceed four hours, allowing shifts to be shorter. The observers will rotate through visual watch and the PAM station (see next response) with breaks in between to avoid fatigue and increase the detection of marine mammals present in the area.

The NSF/USGS PEIS identifies PAM as an important tool to augment visual observations (section 2.4.2). As described in the Foundation's EA, the observer would monitor PAM continuously during seismic operations. The Authorization requires that an expert bioacoustician design and set up the PAM system, oversee the PAM, and assist the other observers when technical issues occur during the survey. He/she will monitor the PAM system at all times, in shifts no longer than six hours, with the observers sharing the workload. Hence, observers will rotate through visual watch and the PAM station with breaks in between to avoid fatigue and increase the detection of marine mammals present in the area.

Comment 29: NRDC *et al.* state that the proposed Authorization makes no consideration of limiting activities in low-visibility conditions or at night.

Response: We disagree with the commenters' assessment. The Authorization does consider and address airgun operations during low-visibility and nighttime conditions. No initiation of airgun array operations is permitted from a shut-down position at night or during low-light hours (such as in dense fog or heavy rain) when the entire relevant exclusion zone cannot be effectively monitored by the visual observers on duty. However, survey operations may continue into night and low-light hours if the segment(s) of the survey begins when the entire relevant exclusion zones are visible and the observers can effectively monitor them. Limiting or suspending the seismic survey in low visibility conditions or at night would significantly extend the duration of the seismic survey.

Comment 30: NRDC *et al.* states that we should consider technology-based mitigation.

Response: While we encourage the development of new or alternative technologies to reduce potential impacts to marine mammals from underwater sound, we did not include a requirement in the Authorization to use or test the use of new technologies during Lamont-Doherty's seismic survey as none are currently available or proposed for use by Lamont-Doherty. The NSF/USGS PEIS (Section 2.6), considered alternative technologies to airguns but eliminated those options from further analysis as those technologies were not commercially viable. Lamont-Doherty and the Foundation continue to closely monitor the development and progress of these types of systems; however, at this point and time, these systems are still not commercially available.

Geo-Kinetics, mentioned by NRDC *et al.* as a potentially viable option for marine vibroseis does not have a viable towable array and its current testing is limited to transition zone settings. Other possible vibroseis developments lack even prototypes to test. Similarly, industry is currently developing engineering enhancements to airguns to reduce high frequencies, however, at present; these airguns are still not commercially available. Lamont-Doherty has maintained contact and is in communication with a number of developers and companies to express a willingness to serve as a test-bed for any such new technologies. As noted in the NSF/USGS PEIS, should new technologies to conduct marine seismic surveys become available, USGS and NSF would consider whether they would be effective tools to meet research goals (and assess any potential environmental impacts).

Of the various technologies cited in the 2009 Okeanos workshop report, few if any have reached operational viability. While the marine vibrator technology has been long discussed and evaluated, the technology is still unrealized commercially. According to Pramik (2013), the leading development effort by the Joint Industry Programme ''has the goal of developing three competing designs within the next few years.'' Geo-Kinetics has recently announced a commercial product called AquaVib, but that product produces relatively low-power, and is intended for use in very shallow water depths in sensitive environments and the vicinity of pipelines or other infrastructure. The instrument is entirely unsuited to deep-water, long-offset reflection profiling. The BP North America staggered burst technique would need development well beyond the patent stage to be remotely practicable and would require extensive modification and testing of the *Langseth* sound source and recording systems. None of the other technologies considered (i.e., gravity, electromagnetic, Deep Towed Acoustics/Geophysics System developed by the U.S. Navy [DTAGS], etc.) can produce the resolution or sub-seafloor penetration required to resolve sediment thickness and geologic structure at the requisite scales. Improving the streamer signal to noise through improved telemetry (e.g., fiber optic cable) while desirable, would involve replacing the *Langseth* streamers and acquisition units, requiring a major capital expenditure.

Acoustic Thresholds

Comment 31: NRDC *et al.* state that the current 160-dB threshold for Level B harassment does not reflect the best available science and is not sufficiently conservative. NRDC *et al.* state that our use of a single, non-conservative, bright-line threshold for all species is contrary to recent science and is untenable. They add the 160 dB threshold is non-conservative, since the scientific literature establishes that behavioral disruption can occur at substantially lower received levels for some species. Finally, they state that we should employ a combination of specific thresholds for which sufficient species-specific data are available and generalized thresholds for all other species.

Response: Our practice has been to apply the 160 dB received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Specifically, we derived the 160 dB threshold data from mother-calf pairs of migrating gray whales (Malme *et al.,* 1983, 1984) and bowhead whales (Richardson *et al.,* 1985, 1986) responding to airgun operations. We acknowledge that there is more recent information bearing on behavioral reactions to seismic airguns, but those data only illustrate how complex and context-dependent the relationship is between the two, and do not, as a whole, invalidate the current threshold. Accordingly, it is not a matter of merely replacing the existing threshold with a new one. We discussed the science on this issue qualitatively in our analysis of potential effects to marine mammals in the **Federal Register** notice for the proposed Authorization (79 FR 44549, July 31, 2014) and we are currently developing revised acoustic guidelines for assessing the effects of anthropogenic sound on marine mammals. Until we finalize these guidelines (a process that includes internal agency review, public notice and comment, and peer review), we will continue to rely on the existing criteria for Level A and Level B harassment shutdown of the notice for the proposed Authorization (79 FR page 44572, July 31, 2014).

As mentioned in the **Federal Register** notice for the proposed IHA (79 FR 44549, July 31, 2014), we expect that the onset for behavioral harassment is largely context dependent (e.g., behavioral state of the animals, distance from the sound source, etc.) when evaluating behavioral responses of marine mammals to acoustic sources. Although using a uniform sound pressure level of 160 dB for the onset of behavioral harassment for impulse noises may not capture all of the nuances of different marine mammal reactions to sound, it is an appropriate way to manage and regulate anthropogenic noise impacts on marine mammals until we finalize the acoustic guidelines.

Comment 32: NRDC *et al.* states that we failed to analyze masking effects or set thresholds for masking.

Response: Exposure to seismic sources has been shown to have impacts on marine mammal vocalizations with sometimes animals vocalizing more (e.g., Di Iorio and Clark, 2009) in the presence of these sources and sometimes less (e.g., Blackwell *et al.,* 2013). Additionally, many species have short-term and long-term means of dealing with masking. However, the energetic consequences of these adaptations are unknown. Recent published models have allowed the ability to better quantify the effects of masking on baleen whales for certain underwater sound sources, like shipping (e.g., change in communication space; Clark *et al.,* 2009; Hatch *et al.,* 2012). However, models for other sources have not been published. The notice of the proposed IHA (79 FR 44549, July 31, 2014) described the potential effects of the seismic survey on marine mammals, including masking. In general, we expect the masking effects of airgun pulses to be minor, given the normally intermittent nature of the pulses and the fact that the acoustic footprint of the survey is only expected to overlay a low number of low-frequency hearing specialists and is not in any specifically identified biologically important areas.

Comment 33: NRDC *et al.* assert that our preliminary determinations for Level A take and the likelihood of temporary and or permanent threshold shift do not consider the best available science. NRDC cites several papers, including Lucke *et al.* (2009); Thompson *et al.* (1998); Kastak et al. (2008); Kujawa and Lieberman (2009); Wood et al. (2012); and Cox *et al.* (2006) for our consideration.

Response: We have, in making our determinations, considered the best available science. As explained in the notice of the proposed IHA (79 FR 44549, July 31, 2014), we will require Lamont-Doherty to establish exclusion zones for marine mammals before operating the airgun array. We expect that the required vessel-based visual monitoring of the exclusion zones is appropriate to implement mitigation measures to prevent Level A harassment. First, if the protected species observers see marine mammals approaching the exclusion zone, Lamont-Doherty must shut-down or power-down seismic operations to ensure that the marine mammal does

not approach the applicable exclusion radius. Second, if Lamont-Doherty detects a marine mammal outside the exclusion zone, and the animal, based on its position and the relative motion, is likely to enter the exclusion zone, Lamont-Doherty may alter the vessel's speed and/or course, when practical and safe, in combination with powering-down or shutting-down the airguns, to minimize the effects of the seismic survey. The avoidance behaviors discussed in the notice of the proposed IHA (79 FR 44549, July 31, 2014) support our expectations that individuals will avoid exposure at higher levels. Also, it is unlikely that animals would encounter repeated exposures at very close distances to the sound source because Lamont-Doherty would implement the required shut-down and power-down mitigation measures to ensure that marine mammals do not approach the applicable exclusion zones for Level A harassment.

Our current Level A thresholds, which identify levels above which PTS could be incurred, were designed to be precautionary in that they were based on levels were animals had incurred TTS. We are currently working on finalizing Acoustic Guidance that will identify revised TTS and PTS thresholds that references the studies identified by NRDC *et al.* In order to ensure the best possible product, the process for developing the revised thresholds includes both peer and public review (both of which have already occurred) and NMFS will begin applying the new thresholds once the peer and public input have been addressed and the Acoustic Guidance is finalized.

Regarding the Lucke *et al.* (2009) study, the authors found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise (single pulse) with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re 1 μPa, which corresponds to a sound exposure level of 164.5 dB re 1 μPa2 s after integrating exposure. We currently use the root-mean-square (rms) of received SPL at 180 dB and 190 dB re 1 μPa as the threshold above which permanent threshold shift (PTS) could occur for cetaceans and pinnipeds, respectively. Because the airgun noise is a broadband impulse, one cannot directly extrapolate the equivalent of rms SPL from the reported peak-to-peak SPLs reported in Lucke *et al.* (2009). However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (Harris *et al.,* 2001; McCauley *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke et al. (2009) and rms SPLs; the rms SPL for TTS would be approximately 184 dB re 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. This is still above the current 180 dB rms re 1 μPa threshold for injury. Yet, NMFS recognizes that the temporary threshold shift (TTS) of harbor porpoise is lower than other cetacean species empirically tested (Finneran *et al.,* 2002; Finneran and Schlundt, 2010; Kastelein *et al.,* 2012). We considered this information in the notice of the proposed Authorization (79 FR 44549, July 31, 2014).

The Thompson *et al.* (1998) telemetry study on harbor (Phoca vitulina) and grey seals (*Halichoerus grypus*) suggested that avoidance and other behavioral reactions by individual seals to small airgun sources may at times be strong, but short-lived. The researchers conducted 1-hour controlled exposure experiments exposing individual seals fitted with telemetry devices to small airguns with a reported source level of 215–224 dB re 1 μPa (peak-to-peak) (Thompson *et al.,* 1998; Gordon *et al.,* 2003). The researchers measured dive behavior, swim speed heart rate and stomach temperature (indicator for feeding), but they did not measure hearing threshold shift in the animals. The researchers observed startle responses, decreases in heart rate, and temporary cessation of feeding. In six out of eight trials, harbor seals exhibited strong avoidance behaviors, and swam rapidly away from the source (Thompson *et al.,* 1998; Gordon *et al.,* 2003). One seal showed no detectable response to the airguns, approaching within 300 m (984 ft) of the source (Gordon *et al.,* 2003). However, they note that the behavioral responses were short-lived and the seals' behavior returned to normal after the trials (Thompson *et al.,* 1998; Gordon *et al.,* 2003). The study does not discuss temporary threshold shift or permanent threshold shift in harbor seals and the estimated rms SPL for this survey is approximately 200 dB re 1 μPa, well above NMFS's current 180 dB rms re: 1 μPa threshold for injury for cetaceans and our current 190 dB rms re 1 μPa threshold for injury for pinnipeds (accounting for the fact that the rms sound pressure level (in dB) is typically 16 dB less than the peak-to-peak level).

In a study on the effect of non-impulsive sound sources on marine mammal hearing, Kastak *et al.* (2008) exposed one harbor seal to an underwater 4.1 kHz pure tone fatiguing stimulus with a maximum received sound pressure of 184 dB re 1 μPa for 60 seconds (Kastak *et al.,* 2008; Finneran and Branstetter, 2013). A second 60-second exposure resulted in an estimated threshold shift of greater than 50 dB at a test frequency of 5.8 kHz (Kastak *et al.,* 2008). The seal recovered at a rate of -10 dB per log (min). However, 2 months post-exposure, the researchers observed incomplete recovery from the initial threshold shift resulting in an apparent permanent threshold shift of 7 to 10 dB in the seal (Kastak *et al.,* 2008). We note that seismic sound is an impulsive source, and the context of the study is related to the effect of non-impulsive sounds on marine mammals.

We also considered two other Kastak *et al.* (1999, 2005) studies. Kastak *et al.* (1999) reported TTS of approximately 4–5 dB in three species of pinnipeds (harbor seal, California sea lion, and northern elephant seal) after underwater exposure for approximately 20 minutes to sound with frequencies ranging from 100 to 2,000 Hz at received levels 60 to 75 dB above hearing threshold. This approach allowed similar effective exposure conditions to each of the subjects, but resulted in variable absolute exposure values depending on subject and test frequency. The authors reported recovery to near baseline levels within 24 hours of sound exposure. Kastak *et al.* (2005) followed up on their previous work, exposing the same test subjects to higher levels of sound for longer durations. They exposed the animals to octave-band sound for up to 50 minutes of net exposure. The study reported that the harbor seal experienced TTS of 6 dB after a 25-minute exposure to 2.5 kHz of octave-band sound at 152 dB (183 dB SEL). The California sea lion demonstrated onset of TTS after exposure to 174 dB (206 dB SEL).

We acknowledge that PTS could occur if an animal experiences repeated exposures to TTS levels. However, an animal would need to stay very close to the sound source for an extended amount of time to incur a serious degree of PTS, which in this case, it would be highly unlikely due to the required mitigation measures in place to avoid Level A harassment and the expectation that a mobile marine mammal would generally avoid an area where received sound pulse levels exceed 160 dB re 1 μPa (rms) (review in Richardson *et al.,* 1995; Southall *et al.,* 2007).

We also considered recent studies by Kujawa and Liberman (2009) and Lin *et al.* (2011). These studies found that despite completely reversible threshold shifts that leave cochlear sensory cells intact, large threshold shifts (40 to 50 dB) could cause synaptic level changes

and delayed cochlear nerve degeneration in mice and guinea pigs, respectively. We note that the high level of TTS that led to the synaptic changes shown in these studies is in the range of the high degree of TTS that Southall et al. (2007) used to calculate PTS levels. It is not known whether smaller levels of TTS would lead to similar changes. We, however, acknowledge the complexity of noise exposure on the nervous system, and will re-examine this issue as more data become available.

In contrast, a recent study on bottlenose dolphins (Schlundt, *et al.,* 2013) measured hearing thresholds at multiple frequencies to determine the amount of TTS induced before and after exposure to a sequence of impulses produced by a seismic airgun. The airgun volume and operating pressure varied from 40 to 150 in3 and 1,000 to 2,000 psi, respectively. After three years and 180 sessions, the authors observed no significant TTS at any test frequency, for any combinations of airgun volume, pressure, or proximity to the dolphin during behavioral tests (Schlundt, *et al.,* 2013). Schlundt *et al.* (2013) suggest that the potential for airguns to cause hearing loss in dolphins is lower than previously predicted, perhaps as a result of the low-frequency content of airgun impulses compared to the high-frequency hearing ability of dolphins.

Comment 34: NRDC *et al.* states that the potential impacts on marine species from sound-producing sources other than airguns were not meaningfully evaluated. The commenters state that an independent scientific review panel implicated a 12 kHz multi-beam echosounder operated by an ExxonMobil survey vessel off the coast of Madagascar in the mass stranding of melon-headed whales in 2008. NRDC states that based on the correlation between these previous stranding events and the use of multi-beam echosounder technology, it is imperative that we fully assess the potential for this source to impact marine mammals both on its own and with the operation of the airgun array.

Response: NMFS disagrees with the commenter's assessment that we did not meaningfully evaluate the potential impacts on marine species from sound-producing sources other than airguns. We assessed the potential for the operation of the multi-beam echosounder, sub-bottom profiler, and acoustic Doppler current profiler to impact marine mammals, both on their own and simultaneously with the operation of the airgun array. We assume that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the active sound sources would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, we expect marine mammals to exhibit no more than short-term and inconsequential responses to the multi-beam echosounder and sub-bottom profiler given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously in the notice of the proposed IHA (79 FR 44549, July 31, 2014). Such reactions are not considered to constitute ''taking'' (NMFS, 2001). Therefore, Lamont-Doherty provided no additional allowance for animals that could be affected by sound sources other than airguns and we has not authorized take from these other sound sources. Moreover, the Authorization prohibits the use of the sound sources during transits at the beginning and end of the planned seismic survey; therefore, we do not expect any potential impacts from these sound sources in shallow water or coastal areas.

Comment 35: NRDC *et al.* state that the Foundation fails to adequately assess cumulative impacts of the activity. NRDC *et al.* state that NMFS and the Foundation must analyze both auditory and behavioral impacts of repeated exposure to noise pollution on a population that may alter behavior. NRDC *et al.* also state that the cumulative impact analysis must include a full evaluation of the cumulative impacts of oil and gas seismic surveys planned for and anticipated in the Atlantic; the Lamont-Doherty seismic survey off New Jersey and other Foundation or USGS planned seismic surveys; and military and testing sonar activities.

Response: We disagree with commenters' assessment. The Foundation's EA, our EA, and the documents they incorporate analyze the effects of the seismic survey in light of other human activities in the study area, including the activities the commenters reference. The NSF/USGS PEIS, which the Foundation's EA tiers to, also analyzes the cumulative impacts of NSF-funded and USGS-conducted seismic surveys. Both the Foundation's EA and our EA, conclude that the impacts of Lamont-Doherty's proposed seismic survey in the Atlantic Ocean would be more than minor and short-term with no potential to contribute to cumulatively significant impacts. As explained in our FONSI, we expect the following combination of activities to result in no more than minor and short-term impacts to marine mammals in the survey area in terms of overall disturbance effects: (1) Our issuance of an Authorization with prescribed mitigation and monitoring measures for the seismic survey; (2) past, present, and reasonably foreseeable future research in the northwest Atlantic Ocean; (3) military activities; and (4) oil and gas activities. We also note that section 4.1.2.3 of the NSF/USGS PEIS specifically addresses the cumulative impacts of repeated exposure to noise, including potential exposure to multiple Foundation-sponsored or USGS seismic surveys and potential exposure to their seismic surveys and other activities that produce underwater noise. It states that ''no impacts are anticipated at the regional population level. The few, relatively short, localized Foundation or USGS seismic surveys in the context of the ocean-region basis would not have more than a negligible cumulative effect on marine mammals at the individual or population level. Possible exceptions are local non-migratory populations or populations highly concentrated in one area at one of year (e.g., for breeding). However, the latter scenario would be mitigated by timing and locating proposed seismic surveys to avoid sensitive seasons and/or locations important to marine mammals, especially those that are ESA-listed.'' It further states that ''there is no evidence that [short-term behavioral changes], whether considered alone or in succession, result in long-term adverse impacts to individuals or populations assuming important habitats or activities are not disturbed. Furthermore, long-migrating marine mammals in particular have undoubtedly been exposed to many anthropogenic underwater sound activities for decades in all ocean basins. Many of these populations continue to grow despite a preponderance of anthropogenic marine activities that may have been documented to disturb some individuals behaviorally (e.g., Hildebrand, 2004).''

Monitoring and Reporting

Comment 36: The Commission believes that we misinterpreted our implementing regulations, which require that applicants include ''the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities, and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons

conducting such activity.'' The Commission believes that monitoring and reporting requirements need to be sufficient to provide accurate information on the numbers of marine mammals being taken and the manner in which they are taken, not merely better information on the qualitative nature of the impacts. The Commission continues to believe that appropriate g(0) and f(0) values are essential for making accurate estimates of the numbers of marine mammals taken during surveys. The Commission recommends that we consult with the funding agency (e.g., the Foundation) and individual applicants (e.g., Lamont-Doherty and other related entities) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal takes and the actual numbers of marine mammals taken, accounting for applicable g(0) and f(0) values.

Response: We do not believe that we misinterpreted the MMPA implementing regulations in our previous response that the Commission references. In the sentence quoted by the Commission, if we assume that the phrase ''increased knowledge of'' does not modify ''the level of taking,'' that the phrase it would read: ''the suggested means of accomplishing the necessary monitoring and reporting that will result in . . . the level of taking or impacts on populations,'' which does not make sense. However, even putting the unclear grammatical issue aside, we do not believe that an appropriate interpretation of the regulations suggests that the monitoring of an authorized entity must be able to quantify the exact number of takes that occurred during the action, but rather that the monitoring increase understanding of the level and effects of the action. In fact, the Commission's comment supports this interpretation. As noted by the Commission, section 101(a)(5)(D)(iv) requires that NMFS ''modify, suspend, or revoke an authorization'' if it finds, among other things, that the authorized taking is having more than a negligible impact or that more than small numbers of marine mammals are being taken. Both of these findings, negligible impact and small numbers, may be made using qualitative, or relative (to the stock abundance) information, and the sorts of qualitative, or more relative, information collected during the wide variety of monitoring that is conducted pursuant to MMPA authorizations can either be used to provide broad support for the findings underlying the issuance of an Authorization or can highlight red flags that might necessitate either a reconsideration of an issued Authorization or a change in analyses in future authorizations. Our previous response is included here for reference.

Our implementing regulations require that applicants include monitoring that will result in ''an increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities . . .'' This increased knowledge of the level of taking could be qualitative or relative in nature, or it could be more directly quantitative. Scientists use g(0) and f(0) values in systematic marine mammal surveys to account for the undetected animals indicated above, however, these values are not simply established and the g(0) value varies across every observer based on their sighting acumen. While we want to be clear that we do not generally believe that post-activity take estimates using f(0) and g(0) are required to meet the monitoring requirement of the MMPA, in the context of the Foundation and Lamont-Doherty's monitoring plan, we agree that developing and incorporating a way to better interpret the results of their monitoring (perhaps a simplified or generalized version of g(0) and f(0)) is a good idea. We are continuing to examine this issue with Lamont-Doherty and NSF to develop ways to improve their post-survey take estimates. We will consult with the Commission and NMFS scientists prior to finalizing these recommendations.

We note that current monitoring measures for past and current Authorizations for research seismic surveys require the collection of visual observation data by protected species observers prior to, during, and after airgun operations. This data collection may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers (as well as providing data regarding behavioral responses to seismic operation that are observable at the surface). However, it is unlikely that the information gathered from these cruises along would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

Comment 37: Dr. Pabst expresses uncertainty as to whether the tow depth of the passive acoustic monitoring system (approximately 20 m (60 ft)) is sufficient to detect beaked whale vocalizations, which usually occur only beyond the 400 m (1,312 ft) depth. She requests more information on the effectiveness of monitoring for beaked whales.

Response: The PAM system can detect beaked whales at depth. Selecting a tow depth of 20-m enhances its detection capability because the device would be below swells and surface noise. The *Langseth's* PAM system consists of wide-band hydrophones with a frequency range up to 200 kHz (-3 dB points). An electronics unit provides power and connection for the hydrophone array cable (via the ITT connector) and transfers the sound signal into high and low frequency ranges through internal circuitry to allow for further processing. The system feeds high frequency (analog) sound from each of the hydrophones in the array through an internal National Instruments USB–6251 sampling card capable of sampling audio at 500 kHz. Pamguard, the primary detection and software, operates with a variety of displays configured with detectors, mapping tools, and sound processing modules. A typical Pamguard configuration will consist of spectrograms, low and high frequency click detectors, whistle and moan detectors, and a map module. An acoustician can configure the high frequency click detector to receive raw data directly from the sound card and sample at up to 500 kHz. The operator can classify individual clicks from the click detector using the ''Classifier with frequency sweep,'' which uses parameters suitable for the detection of beaked whales.

Other Environmental Statutes

Comment 38: NRDC *et al.* states that we failed to analyze impacts on fish and other species of concern. NRDC *et al.* state that the proposed Authorization assumes without support that effects on both fish and fisheries would be localized and minor. NRDC *et al.* urges improvement in our analysis.

Response: We disagree with NRDC *et al.'s* assessment. The Foundation's EA, which describes marine fish in section 3, EFH in section 3.2, and considers the impacts of the survey on fish, EFH and fisheries in section 4. The Foundation's EA tiers to the NSF/USGS PEIS, which also analyzes the impacts of seismic surveys on fish. All of the studies cited by NRDC *et al.* regarding fish are cited in the NSF/USGS PEIS (Appendix D) together with numerous additional studies that document the limited and sometimes conflicting knowledge about the acoustic capabilities of fish and the effects of airgun sound on fish. The EA's conclusion that ''the direct effects of the seismic survey and its noise may have minor effects on marine fisheries that

are generally reversible, of limited duration, magnitude, and geographic extent when considering individual fish, and not measurable at the population level'' is well supported. NMFS also evaluated the impacts of the seismic survey on fish and invertebrates in the notice of the proposed Authorization (79 FR 44549, July 31, 2014). We included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates.

Comment 39: NRDC *et al.* states that the Foundation did not provide any meaningful analysis of the proposed action's impacts on essential fish habitat (EFH). NRDC *et al.* states that we have a statutory obligation to consult on the impact of federal activities on EFH under the Magnuson-Stevens Fishery Conservation and Management Act (MSA). NRDC *et al.* states that the EFH consultation for the action is inadequate.

Response: We disagree with the commenters' assessment. As discussed in the response to Comment 38, the NSF/USGS PEIS, the Foundation's EA, and other environmental assessments identify EFH within the project area and evaluate the impacts of the seismic survey on EFH. The Foundation's EA (see section 3) and the NSF/USGS PEIS (see section 3.3.2.1) discuss the seismic survey's impacts on EFH.

The Foundation requested a determination from the NMFS, Habitat Conservation Divisions of the Southeast Regional and Greater Atlantic Regional Fisheries Offices, whether the seismic survey required a formal consultation. In a letter dated August 7, 2014, NMFS stated that in accordance with the MSA, EFH has been identified and described in the EEZ portions of the study area by the Mid-Atlantic and South Atlantic Fishery Management Councils and NMFS. The letter acknowledged that Lamont-Doherty and the Foundation, as the federal action agency for this action, determined the proposed seismic survey may result in minor adverse impacts to water column habitats identified and described as EFH. NMFS stated that the Habitat Conservation Divisions in the Southeast Regional Office reviewed that analysis and the proposed mitigation measures contained in the NSF/USGS PEIS and the EA prepared for this action. Upon considering the design and nature of the seismic survey, NMFS had no EFH conservation recommendations to provide pursuant to section 305(b)(2) of the MSA. NMFS stated additional research and monitoring would help to gain a better understanding of the potential effects these activities may have on EFH, federally managed species, their prey and other NOAA trust resources, and recommended that this type of research should be a component of future NSF-funded seismic surveys. The Foundation agreed that this is an area of needed research. Consistent with other proposals for seismic activities directly affecting areas of the seafloor within a hard-bottom EFH–HAPC, NMFS recommended that Lamont-Doherty maintain a 500-meter buffer from coral/hard bottom habitats before placement of any anchors or anchoring systems.

The issuance of an IHA and the mitigation and monitoring measures required by the Authorization would not affect ocean and coastal habitat or EFH. Therefore, NMFS, Office of Protected Resources, Permits and Conservation Division has determined that an EFH consultation is not required.

Comment 40: NRDC *et al.* states that we must fully comply with the ESA and develop a robust Biological Opinion based on the best available science. They further urge us to establish more stringent mitigation measures to protect ESA-listed species than are currently proposed by the Authorization.

Response: Section 7(a)(2) of the ESA requires that each federal agency insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. Of the species of marine mammals that may occur in the action area, several are listed as endangered under the ESA, including the North Atlantic right, humpback, sei, fin, blue, and sperm whales. Under section 7 of the ESA, the Foundation initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this seismic survey. NMFS's Office of Protected Resources, Permits and Conservation Division, also initiated and engaged in formal consultation under section 7 of the ESA with NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. These two consultations were consolidated and addressed in a single Biological Opinion addressing the effects of the proposed actions on threatened and endangered species as well as designated critical habitat. The Biological Opinion concluded that both actions (i.e., Lamont-Doherty's seismic survey and our issuance of an Authorization) are not likely to jeopardize the existence of cetaceans and sea turtles and would have no effect on critical habitat. NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division relied on the best scientific and commercial data available in conducting its analysis.

Although critical habitat is designated for the North Atlantic right whale, no critical habitat for North Atlantic right whales occurs in the action area. The North Atlantic right whale critical habitat in the northeast Atlantic Ocean can be found online at: *http://www.nmfs.noaa.gov/pr/pdfs/criticalhabitat/n_rightwhale_ne.pdf.* The North Atlantic right whale critical habitat in the southeast Atlantic Ocean can be found online at: *http://www.nmfs.noaa.gov/pr/pdfs/criticalhabitat/n_rightwhale_se.pdf.* The trackline that has the closest approach to the southeast Atlantic Ocean designated critical habitat is approximately 470 km (292 mi) from the area. The Biological Opinion considers the distribution, migration and movement, general habitat, and designated critical habitat of the North Atlantic right whale in its analysis.

NMFS's Office of Protected Resources, Permits and Conservation Division also considered the conservation status and habitat of ESA-listed marine mammals. Included in the Authorization are special procedures for situations or species of concern (see ''Mitigation'' section below). If observers see a North Atlantic right whale during the survey, the airgun array must be shut-down regardless of the distance of the animal(s) to the sound source. The array will not resume firing until 30 minutes after the last documented whale visual sighting. Concentrations of humpback, sei, fin, blue, and/or sperm whales will be avoided if possible (i.e., exposing concentrations of animals to 160 dB), and the array will be powered-down if necessary. For purposes of the survey, a concentration or group of whales will consist of six or more individuals visually sighted that do not appear to be traveling (e.g., feeding, socializing, etc.). NMFS's Office of Protected Resources, Endangered Species Act Interagency Cooperation Division issued an Incidental Take Statement (ITS) incorporating the requirements of the Authorization as Terms and Conditions of the ITS. Compliance with the ITS is likewise a mandatory requirement of the Authorization. NMFS's Office of Protected Resources, Permits and Conservation Division has determined that the mitigation measures required by the Authorization provide the means of

effecting the least practicable impact on species or stocks and their habitat, including ESA-listed species.

Comment 41: NRDC *et al.* states that the Coastal Zone Management Act (CZMA) requires that applicants for federal permits to conduct an activity affecting a natural resource of the coastal zone of a state ''shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program.'' NRDC *et al.* states that the marine mammals and fish that will be affected by the seismic survey are all ''natural resources'' protected by the coastal states' coastal management program, and that states should be given the opportunity to review the Authorization for consistency with their coastal management programs.

Response: As the lead federal agency for the planned seismic survey, the Foundation considered whether the action would have effects on the coastal resources of North Carolina and Virginia and consulted with both states. The state of North Carolina evaluated the proposed project for consistency with their coastal management program and submitted their consistency concurrence to the Foundation on September 8, 2014. The determination requests the Foundation to abide by mitigation measures for marine mammals, including; conducting 60 minutes of visible monitoring for marine mammals prior to starting the airguns; using a passive acoustic monitoring system; and having at least two protected species visual observers on watch during daylight hours. The Foundation has agreed to follow, to the maximum extent practicable, that state's mitigation measures. Therefore, the Foundation has met all of the responsibilities under the CZMA. The Foundation also discussed the proposed seismic survey with NOAA's Office of Ocean and Coastal Resource Management to confirm their responsibilities under CZMA for the planned unlisted activity.

Comment 42: Several private citizens and the Towns of Nags Head and Kill Devil Hills, NC opposed the issuance of an Authorization by us and the conduct of the seismic survey in the Atlantic Ocean offshore North Carolina.

Response: As described in detail in the notice for the proposed Authorization (79 FR 44549, July 31, 2014), as well as in this document, we do not believe that Lamont-Doherty's seismic survey would cause injury, serious injury, or mortality to marine mammals, and no take by injury, serious injury, or mortality is authorized. The required monitoring and mitigation measures that Lamont-Doherty will implement during the seismic survey will further reduce the potential impacts on marine mammals to the lowest levels practicable. We anticipate only behavioral disturbance to occur during the conduct of the seismic survey.

Finally, the NSF/USGS PEIS, the Foundation's EA for this survey, and our EA analyzed the cumulative impacts of NSF-funded seismic surveys. These documents supported our analyses that the impacts of Lamont-Doherty's proposed seismic survey in the Atlantic Ocean would be more than minor and short-term with no potential to contribute to cumulatively significant impacts.

Description of Marine Mammals in the Area of the Specified Activity

We provided information on the occurrence of marine mammals with possible or confirmed occurrence in the survey area in the notice of proposed Authorization on July 31, 2014 (79 FR 44549). The marine mammals most likely to be harassed in the action include 6 mysticetes, 23 odontocetes, and 1 pinniped species under our jurisdiction. Table 2 in this notice provides information on those species' regulatory status under the MMPA and the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; occurrence and seasonality in the activity area.

TABLE 2—MARINE MAMMALS MOST LIKELY TO BE HARASSED INCIDENTAL TO LAMONT-DOHERTY'S SURVEY

Species	Stock name	Regulatory status[1 2]	Stock/species abundance[3]	Range	Seasonal occurrence
North Atlantic right whale	Western Atlantic	MMPA—D ESA—EN	455	Coastal/shelf	Uncommon.
Humpback whale	Gulf of Maine	MMPA—D ESA—EN	823	Pelagic	Uncommon.
Minke whale	Canadian East Coast	MMPA—D ESA—NL	20,741	Coastal/shelf	Uncommon.
Sei whale	Nova Scotia	MMPA—D ESA—EN	357	Offshore	Rare.
Fin whale	Western North Atlantic	MMPA—D ESA—EN	3,522	Pelagic	Rare.
Blue whale	Western North Atlantic	MMPA—D ESA—EN	[4] 440	Coastal/pelagic	Rare.
Bryde's whale	NA	MMPA—D ESA—NL	[5] 11,523	Shelf/pelagic	Uncommon.
Sperm whale	Nova Scotia	MMPA—D ESA—EN	2,288	Pelagic	Common.
Dwarf sperm whale	Western North Atlantic	MMPA—NC ESA—NL	3,785	Off Shelf	Uncommon.
Pygmy sperm whale	Western North Atlantic	MMPA—NC ESA—NL	3,785	Off Shelf	Uncommon.
Blainville's beaked whale	Western North Atlantic	MMPA—NC ESA—NL	7,092	Pelagic	Rare.
Cuvier's beaked whale	Western North Atlantic	MMPA—NC ESA—NL	6,532	Pelagic	Uncommon.
Gervais' beaked whale	Western North Atlantic	MMPA—NC ESA—NL	7,092	Pelagic	Rare.
True's beaked whale	Western North Atlantic	MMPA—NC ESA—NL	7,092	Pelagic	Rare.

TABLE 2—MARINE MAMMALS MOST LIKELY TO BE HARASSED INCIDENTAL TO LAMONT-DOHERTY'S SURVEY—Continued

Species	Stock name	Regulatory status[1 2]	Stock/species abundance[3]	Range	Seasonal occurrence
Rough-toothed dolphin	Western North Atlantic	MMPA—NC ESA—NL	271	Pelagic	Uncommon.
Bottlenose dolphin	Western North Atlantic Offshore.	MMPA—NC ESA—NL	77,532	Pelagic	Common.
	Western North Atlantic Southern Migratory Coastal.	MMPA—D, S ESA—NL	9,173	Coastal	Common.
	WNA Southern NC Estuarine System.	MMPA—D, S ESA—NL	188	Coastal	Common.
	WNA Northern NC Estuarine System.	MMPA—D, S ESA—NL	950	Coastal	Common.
Pantropical spotted dolphin	Western North Atlantic	MMPA—NC ESA—NL	3,333	Pelagic	Common.
Atlantic spotted dolphin	Western North Atlantic	MMPA—NC ESA—NL	44,715	Shelf/slope pelagic	Common.
Spinner dolphin	Western North Atlantic	MMPA—NC ESA—NL	[6] 11,441	Coastal/pelagic	Rare.
Striped dolphin	Western North Atlantic	MMPA—NC ESA—NL	54,807	Off shelf	Common.
Clymene dolphin	Western North Atlantic	MMPA—NC ESA—NL	[7] 6,086	Slope	Uncommon.
Short-beaked common dolphin.	Western North Atlantic	MMPA—NC ESA—NL	173,486	Shelf/pelagic	Common.
Atlantic white-sided-dolphin	Western North Atlantic	MMPA—NC ESA—NL	48,819	Shelf/slope	Rare.
Fraser's dolphin	Western North Atlantic	MMPA—NC ESA—NL	[8] 726	Pelagic	Rare.
Risso's dolphin	Western North Atlantic	MMPA—NC ESA—NL	18,250	Shelf/slope	Common.
Melon-headed whale	Western North Atlantic	MMPA—NC ESA—NL	[9] 2,283	Pelagic	Rare.
False killer whale	Northern Gulf of Mexico	MMPA—NC ESA—NL	[10] 177	Pelagic	Rare.
Pygmy killer whale	Western North Atlantic	MMPA—NC ESA—NL	[11] 1,108	Pelagic	Rare.
Killer whale	Western North Atlantic	MMPA—NC ESA—NL	[12] 28	Coastal	Rare.
Long-finned pilot whale	Western North Atlantic	MMPA—NC ESA—NL	26,535	Pelagic	Common.
Short-finned pilot whale	Western North Atlantic	MMPA—NC ESA—NL	21,515	Pelagic	Common.
Harbor porpoise	Gulf of Maine/ Bay of Fundy	MMPA—NC ESA—NL	79,883	Coastal	Rare.
Harbor seal	Western North Atlantic	MMPA—NC ESA—NL	70,142	Coastal	Uncommon.

[1] MMPA: D = Depleted, S = Strategic, NC = Not Classified.
[2] ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.
[3] 2013 NMFS Stock Assessment Report (Waring *et al.,* 2014) unless otherwise noted. NA = Not Available.
[4] Minimum population estimate based on photo identification studies in the Gulf of St. Lawrence (Waring *et al.,* 2010).
[5] There is no stock designation for this species in the Atlantic. Abundance estimate derived from the ETP stock = 11,163 (Wade and Gerodette, 1993); Hawaii stock = 327 (Barlow, 2006); and Northern Gulf of Mexico stock = 33 (Waring *et al.,* 2013).
[6] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico Stock = 11,441 (Waring *et al.,* 2014).
[7] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 6,086 (CV = 0.93) (Mullin and Fulling, 2003).
[8] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 726 (CV = 0.70) for the Gulf of Mexico stock (Mullin and Fulling, 2004).
[9] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 2,283 (CV = 0.76) for the Gulf of Mexico stock (Mullin, 2007).
[10] There is no abundance information for this species in the Atlantic. The best available estimate of abundance was 177 (CV = 0.56) for the Gulf of Mexico stock (Mullin, 2007).
[11] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico stock = 152 (Mullin, 2007) and the Hawaii stock = 956 (Barlow, 2006).
[12] There is no abundance information for this species in the Atlantic. Abundance estimate derived from the Northern Gulf of Mexico stock = 28 (Waring *et al.,* 2014).

Lamont-Doherty presented species information in Table 2 of their application but excluded information on pinnipeds because they anticipated that these species would have a more northerly distribution during the summer and thus have a low likelihood of occurring in the survey area. Based on the best available information, we expect that harbor seals, however, have the potential to occur within the survey area and we have therefore included

additional information for these species. For the Authorization, we are authorizing take for pinnipeds based upon the best available information (Read *et al.,* 2003).

We refer the public to Lamont-Doherty's application, the Foundation's EA (see **ADDRESSES**), our EA, and the 2013 NMFS Marine Mammal Stock Assessment Report available online at: *http://www.nmfs.noaa.gov/pr/sars/species.htm* for further information on the biology and local distribution of these species.

Potential Effects of the Specified Activities on Marine Mammals

We provided a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., seismic airgun operations, vessel movement, and entanglement) impact marine mammals (via observations or scientific studies) in the notice of proposed Authorization on July 31, 2014 (79 FR 44549).

The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative discussion of the number of marine mammals that we anticipate may be taken by this activity. The ''Negligible Impact Analysis'' section will include a discussion of how this specific activity will impact marine mammals. The Negligible Impact analysis considers the anticipated level of take and the effectiveness of mitigation measures to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

Operating active acoustic sources, such as airgun arrays, has the potential for adverse effects on marine mammals. The majority of anticipated impacts would be from the use of acoustic sources. The effects of sounds from airgun pulses might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.,* 1995). However, for reasons discussed in the proposed Authorization, it is very unlikely that there would be any cases of temporary or permanent hearing impairment resulting from Lamont-Doherty's activities. As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, often depending on species and contextual factors (based on Richardson *et al.,* 1995).

In the ''Potential Effects of the Specified Activity on Marine Mammals'' section of the notice of proposed Authorization on July 31, 2014 (79 FR 44549), we included a qualitative discussion of the different ways that Lamont-Doherty's seismic survey may potentially affect marine mammals. Marine mammals may behaviorally react to sound when exposed to anthropogenic noise. These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (e.g., pinnipeds flushing into water from haulouts or rookeries).

Masking is the obscuring of sounds of interest by other sounds, often at similar frequencies. Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, avoiding predators, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency as, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations. For the airgun sound generated from Lamont-Doherty's seismic survey, sound will consist of low frequency (under 500 Hz) pulses with extremely short durations (less than one second). Masking from airguns is more likely in low-frequency marine mammals like mysticetes. There is little concern that masking would occur near the sound source due to the brief duration of these pulses and relative silence between air gun shots (approximately 22 during the MCS portion of the survey and approximately 65 seconds during the OBS portion). Masking is less likely for mid- to high-frequency cetaceans and pinnipeds.

Hearing impairment (either temporary or permanent) is also unlikely. Given the higher level of sound necessary to cause permanent threshold shift as compared with temporary threshold shift, it is considerably less likely that permanent threshold shift would occur during the seismic survey. Cetaceans generally avoid the immediate area around operating seismic vessels, as do some other marine mammals. Some pinnipeds show avoidance reactions to airguns.

The *Langseth* will operate at a relatively slow speed (typically 4.6 knots (8.5 km/h; 5.3 mph)) when conducting the survey. Protected species observers would implement mitigation measures to ensure the least practicable adverse effect to marine mammals. Therefore, we neither anticipate nor will we authorize takes of marine mammals from ship strikes.

We refer the reader to Lamont-Doherty's application, our EA, and the Foundation's EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels. We have reviewed these data along with new information submitted during the public comment period and determined them to be the best available information for the purposes of the Authorization.

Anticipated Effects on Marine Mammal Habitat

We included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine mammal prey items (e.g., fish and invertebrates) in the notice of proposed Authorization on July 31, 2014 (79 FR 44549) and in our EA. While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, the impact to habitat is temporary and reversible. Further, we also considered these impacts to marine mammals in detail in the notice of proposed Authorization as behavioral modification. The main impact associated with the activity would be temporarily elevated noise levels and the associated direct effects on marine mammals.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, we must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stocks and their habitat (i.e., mitigation), paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant). Our duty under this

least practicable adverse impact standard is to prescribe mitigation reasonably designed to minimize, to the extent practicable, any adverse population level impacts, as well as habitat impacts. While one can minimize population-level impacts only by reducing impacts on individual marine mammals, not all take translates to population-level impacts. Thus, our objective under the least practicable adverse impact standard is to design mitigation targeting those impacts on individual marine mammals that would most likely to lead to adverse population-level effects (78 FR at 78113 and 78135).

Lamont-Doherty has reviewed the following source documents and has incorporated a suite of proposed mitigation measures into their project description.

(1) Protocols used during previous Foundation and Lamont-Doherty-funded seismic research cruises as approved by us and detailed in the Foundation's 2011 PEIS and 2014 EA;

(2) Previous incidental harassment authorization applications and authorizations that we have approved and authorized; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, Lamont-Doherty, and/or its designees have proposed to implement the following mitigation measures for marine mammals:

(1) Vessel-based visual mitigation monitoring;

(2) Proposed exclusion zones and expanded exclusion zones in shallow water;

(3) Power-down procedures;

(4) Shutdown procedures;

(5) Ramp-up procedures;

(6) Special procedures for situations or species of concern; and

(7) Speed and course alterations.

Vessel-Based Visual Mitigation Monitoring

Lamont-Doherty would position observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any start-ups at night. Observers would also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shutdown (i.e., greater than approximately eight minutes for this proposed cruise). When feasible, the observers would conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on the observations, the *Langseth* would power down or shutdown the airguns when marine mammals are observed within or about to enter a designated 180–dB with buffer or 190–dB with buffer exclusion zone in shallow water depths or the designated 180—dB or 190–dB exclusion zone in intermediate or deep water depths.

During seismic operations, at least four protected species observers would be aboard the *Langseth.* Lamont-Doherty would appoint the observers with our concurrence and they would conduct observations during ongoing daytime operations and nighttime ramp-ups of the airgun array. During the majority of seismic operations, two observers would be on duty from the observation tower to monitor marine mammals near the seismic vessel. Using two observers would increase the effectiveness of detecting animals near the source vessel. However, during mealtimes and bathroom breaks, it is sometimes difficult to have two observers on effort, but at least one observer would be on watch during bathroom breaks and mealtimes. Observers would be on duty in shifts of no longer than four hours in duration.

Two observers on the *Langseth* would also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third observer would monitor the passive acoustic monitoring equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two observers (visual) on duty from the observation tower, and an observer (acoustic) on the passive acoustic monitoring system. Before the start of the seismic survey, Lamont-Doherty would instruct the vessel's crew to assist in detecting marine mammals and implementing mitigation requirements.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level would be approximately 21.5 m (70.5 ft) above sea level, and the observer would have a good view around the entire vessel. During daytime, the observers would scan the area around the vessel systematically with reticle binoculars (e.g., 7x50 Fujinon), Big-eye binoculars (25x150), and with the naked eye. During darkness, night vision devices would be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) would be available to assist with distance estimation. They are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly. The user measures distances to animals with the reticles in the binoculars.

When the observers see marine mammals within or about to enter the designated exclusion zone the *Langseth* would immediately power down or shutdown the airguns. The observer(s) would continue to maintain watch to determine when the animal(s) are outside the exclusion zone by visual confirmation. Airgun operations would not resume until the observer has confirmed that the animal has left the zone, or if not observed after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds); 30 minutes for mysticetes and large odontocetes; and 60 minutes for sperm and beaked whales.

Exclusion Zones: Lamont-Doherty would use safety radii to designate exclusion zones and to estimate take for marine mammals. Table 3 shows the distances at which a marine mammal could potentially receive sound from the 18-airgun array, 36-airgun array, and a single airgun.

TABLE 3—DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160, 180, AND 190 dB RE: 1 μPa COULD BE RECEIVED DURING THE PROPOSED SURVEY OFFSHORE NORTH CAROLINA IN THE ATLANTIC OCEAN, SEPTEMBER–OCTOBER, 2014

Source and volume (in^3)	Tow depth (m)	Water depth (m)	Predicted RMS distances [1] (m)				
			190 dB with Buffer	190 dB	180 dB with Buffer	180 dB	160 dB
Single Bolt airgun (40 in^3)	6 or 9	<100	[3] 37	[3] 27	[3] 121	[3] 86	[3] 938

TABLE 3—DISTANCES TO WHICH SOUND LEVELS GREATER THAN OR EQUAL TO 160, 180, AND 190 dB RE: 1 μPa COULD BE RECEIVED DURING THE PROPOSED SURVEY OFFSHORE NORTH CAROLINA IN THE ATLANTIC OCEAN, SEPTEMBER–OCTOBER, 2014—Continued

Source and volume (in³)	Tow depth (m)	Water depth (m)	Predicted RMS distances [1] (m)				
			190 dB with Buffer	190 dB	180 dB with Buffer	180 dB	160 dB
		1000–1,0000	.....	.....	100	100	[2] 582
		>1000	.....	.....	≤100	100	[1] 388
18-Airgun array (3,300 in³).	6	<100	[4] 436	[4] 294	[4] 1,628	[4] 1,097	[4] 15,280
		100–1000	.....	.....	.....	[2] 675	[2] 5,640
		>1000	.....	.....	.....	[1] 450	[1] 3,760
36-Airgun array (6,600 in³).	9	<100	[3] 877	[3] 645	[3] 2,838	[3] 2,060	[3] 22,600
		100–1000	.....	.....	.....	[2] 1,391	[2] 8,670
		>1000	.....	.....	.....	[1] 927	[1] 5,780

[1] Based on Lamont-Doherty modeling results.
[2] Predicted distances based on model results with a 1.5 correction factor between deep and intermediate water depths.
[3] Predicted distances based on empirically-derived measurements in the Gulf of Mexico with scaling factor applied to account for differences in tow depth.
[4] Predicted distances based on empirically-derived measurements in the Gulf of Mexico.

The 180– or 190–dB level shutdown criteria are applicable to cetaceans and pinnipeds as specified by NMFS (2000). To be conservative, we are requiring Lamont-Doherty to also establish exclusion zones for the shallow water (less than 100 m) portion of the survey based upon the 190–dB with buffer and 180–dB with buffer isopleths which are approximately 3–dB lower than NMFS' existing shutdown criteria.

If the protected species visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew would immediately power down the airgun array, or perform a shutdown if necessary (see Shut-down Procedures).

Power Down Procedures—A power down involves decreasing the number of airguns in use such that the radius of the 180–dB with buffer or 190–dB with buffer exclusion zone in shallow water depths or the designated 180–dB or 190–dB exclusion zone in intermediate or deep water is smaller to the extent that marine mammals are no longer within or about to enter the exclusion zone. A power down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power down for mitigation, the *Langseth* would operate one airgun (40 in³). The continued operation of one airgun would alert marine mammals to the presence of the seismic vessel in the area. A shutdown occurs when the *Langseth* suspends all airgun activity.

If the observer detects a marine mammal outside the exclusion zone and the animal is likely to enter the zone, the crew would power down the airguns to reduce the size of the of the 180–dB with buffer or 190–dB with buffer exclusion zone in shallow water depths or the designated 180–dB or 190–dB exclusion zone in intermediate or deep water before the animal enters that zone. Likewise, if a mammal is already within the zone after detection, the crew would power-down the airguns immediately. During a power down of the airgun array, the crew would operate a single 40-in³ airgun which has a smaller exclusion zone. If the observer detects a marine mammal within or near the smaller exclusion zone around the airgun (Table 2), the crew would shut down the single airgun (see next section).

Resuming Airgun Operations After a Power Down—Following a power-down, the Langseth crew would not resume full airgun activity until the marine mammal has cleared the 180–dB with buffer or 190–dB with buffer exclusion zone in shallow water depths or the designated 180–dB or 190–dB exclusion zone (see Table 2). The observers would consider the animal to have cleared the exclusion zone if:

- The observer has visually observed the animal leave the exclusion zone; or
- An observer has not sighted the animal within the exclusion zone for 15 minutes for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 minutes for mysticetes and large odontocetes; or 60 minutes for sperm and beaked whales.

The *Langseth* crew would resume operating the airguns at full power after 15 minutes for species with shorter dive durations (small odontocetes and pinnipeds); 30 minutes for mysticetes and large odontocetes; and 60 minutes for sperm and beaked whales.

We estimate that the *Langseth* would transit outside the original the 180–dB with buffer or 190–dB with buffer exclusion zone in shallow water depths or the designated 180–dB or 190–dB exclusion zone after an 8-minute wait period. This period is the average speed of the *Langseth* while operating the airguns (8.5 km/h; 5.3 mph). Because the vessel has transited away from the vicinity of the original sighting during the 8-minute period, implementing ramp-up procedures for the full array after an extended power down (i.e., transiting for an additional 35 minutes from the location of initial sighting) would not meaningfully increase the effectiveness of observing marine mammals approaching or entering the exclusion zone for the full source level and would not further minimize the potential for take. The *Langseth's* observers are continually monitoring the exclusion zone for the full source level while the mitigation airgun is firing. On average, observers can observe to the horizon (10 km; 6.2 mi) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming airgun operations at full power.

Shutdown Procedures—The *Langseth* crew would shut down the operating airgun(s) if they see a marine mammal within or approaching the exclusion zone for the single airgun. The crew would implement a shutdown:

(1) If an animal enters the exclusion zone of the single airgun after the crew has initiated a power down; or

(2) If an observer sees the animal is initially within the exclusion zone of

the single airgun when more than one airgun (typically the full airgun array) is operating.

Considering the conservation status for North Atlantic right whales, the *Langseth* crew would shut down the airgun(s) immediately in the unlikely event that observers detect this species, regardless of the distance from the vessel. The *Langseth* would only begin ramp-up if observers have not seen the North Atlantic right whale for 30 minutes.

Resuming Airgun Operations After a Shutdown—Following a shutdown in excess of eight minutes, the Langseth crew would initiate a ramp-up with the smallest airgun in the array (40-in^3). The crew would turn on additional airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five-minute period over a total duration of approximately 30 minutes. During ramp-up, the observers would monitor the exclusion zone, and if he/she sees a marine mammal, the *Langseth* crew would implement a power down or shutdown as though the full airgun array were operational.

During periods of active seismic operations, there are occasions when the *Langseth* crew would need to temporarily shut down the airguns due to equipment failure or for maintenance. In this case, if the airguns are inactive longer than eight minutes, the crew would follow ramp-up procedures for a shutdown described earlier and the observers would monitor the full exclusion zone and would implement a power down or shutdown if necessary.

If the full exclusion zone is not visible to the observer for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* crew would not commence ramp-up unless at least one airgun (40-in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the vessel's crew would not ramp up the airgun array from a complete shutdown at night or in thick fog, because the outer part of the zone for that array would not be visible during those conditions.

If one airgun has operated during a power down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals, alerted to the approaching seismic vessel by the sounds from the single airgun, could move away from the vessel. The vessel's crew would not initiate a ramp-up of the airguns if an observer sees the marine mammal within or near the applicable exclusion zones during the day or close to the vessel at night.

Ramp-up Procedures—Ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume of the airgun array is achieved. The purpose of a ramp-up is to ''warn'' marine mammals in the vicinity of the airguns, and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. Lamont-Doherty would follow a ramp-up procedure when the airgun array begins operating after an 8-minute period without airgun operations or when shut down has exceeded that period. Lamont-Doherty has used similar waiting periods (approximately eight to 10 minutes) during previous seismic surveys.

Ramp-up would begin with the smallest airgun in the array (40 in^3). The crew would add airguns in a sequence such that the source level of the array would increase in steps not exceeding 6 dB per five minute period over a total duration of approximately 30 to 35 minutes. During ramp-up, the observers would monitor the exclusion zone, and if marine mammals are sighted, Lamont-Doherty would implement a power-down or shut-down as though the full airgun array were operational.

If the complete exclusion zone has not been visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, Lamont-Doherty would not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the crew would not ramp up the airgun array from a complete shut-down at night or in thick fog, because the outer part of the exclusion zone for that array would not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power would be permissible at night or in poor visibility, on the assumption that marine mammals, alerted to the approaching seismic vessel by the sounds from the single airgun, could move away from the vessel. Lamont-Doherty would not initiate a ramp-up of the airguns if an observer sights a marine mammal within or near the applicable exclusion zones.

Special Procedures for Situations or Species of Concern—Lamont-Doherty will avoid concentrations of humpback, sei, fin, blue, and/or sperm whales if possible (i.e., exposing concentrations of animals to 160 dB), and will power down the array, if necessary. For purposes of this planned survey, a concentration or group of whales will consist of six or more individuals visually sighted that do not appear to be traveling (e.g., feeding, socializing, etc.).

Speed and Course Alterations—If during seismic data collection, Lamont-Doherty detects marine mammals outside the exclusion zone and, based on the animal's position and direction of travel, is likely to enter the exclusion zone, the *Langseth* would change speed and/or direction if this does not compromise operational safety. Due to the limited maneuverability of the primary survey vessel, altering speed and/or course can result in an extended period of time to realign the vessel. However, if the animal(s) appear likely to enter the exclusion zone, the *Langseth* would undertake further mitigation actions, including a power down or shut down of the airguns.

Mitigation Conclusions

We have carefully evaluated Lamont-Doherty's proposed mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by us should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to airgun operations that we expect to result in the take of

marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to airgun operations that we expect to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of Lamont-Doherty's proposed measures, as well as other measures considered, we have determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that we expect to be present in the proposed action area.

Lamont-Doherty submitted a marine mammal monitoring plan in section XIII of the Authorization application. We not repeat the description here as we have not changed the monitoring plan between the notice of proposed Authorization (79 FR 44549, July 31, 2014) and our final Authorization.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and during other times and locations, in order to generate more data to contribute to the analyses mentioned later;

2. An increase in our understanding of how many marine mammals would be affected by seismic airguns and other active acoustic sources and the likelihood of associating those exposures with specific adverse effects, such as behavioral harassment, temporary or permanent threshold shift;

3. An increase in our understanding of how marine mammals respond to stimuli that we expect to result in take and how those anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

a. Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

b. Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (i.e., we need to be able to accurately predict received level, distance from source, and other pertinent information);

c. Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring Measures

Lamont-Doherty proposes to sponsor marine mammal monitoring during the present project to supplement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the Authorization. We have not changed the monitoring plan between the proposed Authorization and our final Authorization. Lamont-Doherty planned the monitoring work as a self-contained project independent of any other related monitoring projects that may occur in the same regions at the same time. Further, Lamont-Doherty is prepared to discuss coordination of its monitoring program with any other related work that might be conducted by other groups working insofar as it is practical for them.

Vessel-Based Passive Acoustic Monitoring

Passive acoustic monitoring would complement the visual mitigation monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Passive acoustical monitoring can improve detection, identification, and localization of cetaceans when used in conjunction with visual observations. The passive acoustic monitoring would serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. The acoustic observer would monitor the system in real time so that he/she can advise the visual observers if they acoustic detect cetaceans.

The passive acoustic monitoring system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array connected to the vessel by a tow cable. The tow cable is 250 m (820.2 ft) long and the hydrophones fit within in the last 10 m (32.8 ft) of cable. A depth gauge, attached to the free end of the cable, is typically towed at depths less than 20 m (65.6 ft). The *Langseth* crew would deploy the array from a winch located on the back deck. A deck cable would connect the tow cable to the electronics unit in the main computer lab where the acoustic station, signal conditioning, and processing system would be located. The Pamguard software amplifies, digitizes, and then processes the acoustic signals received by the hydrophones. The system can detect marine mammal vocalizations at frequencies up to 250 kHz.

One acoustic observer, an expert bioacoustician with primary responsibility for the passive acoustic monitoring system would be aboard the *Langseth* in addition to the four visual observers. The acoustic observer would monitor the towed hydrophones 24 hours per day during airgun operations and during most periods when the Langseth is underway while the airguns are not operating. However, passive acoustic monitoring may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary passive acoustic monitoring streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer

fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone.

One acoustic observer would monitor the acoustic detection system by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. The observer monitoring the acoustical data would be on shift for one to six hours at a time. The other observers would rotate as an acoustic observer, although the expert acoustician would be on passive acoustic monitoring duty more frequently.

When the acoustic observer detects a vocalization while visual observations are in progress, the acoustic observer on duty would contact the visual observer immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), so that the vessel's crew can initiate a power down or shutdown, if required. During non-daylight hours, when the acoustic monitoring system detects a cetacean which may be close to the source vessel, the acoustic observer would notify the *Langseth* crew immediately so that the proper mitigation measure may be implemented. The observer would enter the information regarding the call into a database. Data entry would include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. Acousticians record the acoustic detection for further analysis.

Observer Data and Documentation

Observers would record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. They would use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power down or shut down of the airguns when a marine mammal is within or near the exclusion zone.

When an observer makes a sighting, they will record the following information:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The observer will record the data listed under (2) at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Observers will record all observations and power downs or shutdowns in a standardized format and will enter data into an electronic database. The observers will verify the accuracy of the data entry by computerized data validity checks during data entry and by subsequent manual checking of the database. These procedures will allow the preparation of initial summaries of data during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power down or shutdown).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which Lamont-Doherty must report to the Office of Protected Resources.

3. Data on the occurrence, distribution, and activities of marine mammals and turtles in the area where Lamont-Doherty would conduct the seismic study.

4. Information to compare the distance and distribution of marine mammals and turtles relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals detected during non-active and active seismic operations.

Reporting

Lamont-Doherty would submit a report to us and to the Foundation within 90 days after the end of the cruise. The report would describe the operations conducted and sightings of marine mammals and turtles near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), Lamont-Doherty shall immediately cease the specified activities and immediately report the take to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov.* Lamont-Doherty must also contact the NMFS Greater Atlantic Region Marine Mammal Stranding Network at 866–755–6622 (*Mendy.Garron@noaa.gov*), and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Lamont-Doherty shall not resume its activities until we are able to review the circumstances of the prohibited take. We shall work with Lamont-Doherty to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Lamont-Doherty may not resume their activities until notified by us via letter, email, or telephone.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we

describe in the next paragraph), Lamont-Doherty will immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov.* Lamont-Doherty must also contact the NMFS Greater Atlantic Region Marine Mammal Stranding Network at 866–755–6622 (*Mendy.Garron@noaa.gov*), and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We would work with Lamont-Doherty to determine whether modifications in the activities are appropriate.

In the event that Lamont-Doherty discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Lamont-Doherty would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* within 24 hours of the discovery . Lamont-Doherty must also contact the NMFS Greater Atlantic Region Marine Mammal Stranding Network at 866–755–6622 (*Mendy.Garron@noaa.gov*) and the NMFS Southeast Region Marine Mammal Stranding Network at 877–433–8299 (*Blair.Mase@noaa.gov* and *Erin.Fougeres@noaa.gov*) within 24 hours of the discovery. Activities may continue while NMFS reviews the circumstances of the incident. The Observatory would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the airgun sub-arrays have the potential to result in the behavioral disturbance of some marine mammals. Thus, we propose to authorize take by Level B harassment resulting from the operation of the sound sources for the proposed seismic survey based upon the current acoustic exposure criteria shown in Table 4. Our practice has been to apply the 160 dB re: 1 μPa received level threshold for underwater impulse sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provides a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall et al. [2007]).

TABLE 4—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).

The probability of vessel and marine mammal interactions (i.e., ship strike) occurring during the proposed survey is unlikely due to the *Langseth's* slow operational speed, which is typically 4.6 kts (8.5 km/h; 5.3 mph). Outside of seismic operations, the *Langseth's* cruising speed would be approximately 11.5 mph (18.5 km/h; 10 kts) which is generally below the speed at which studies have noted reported increases of marine mammal injury or death (Laist et al., 2001). In addition, the *Langseth* has a number of other advantages for avoiding ship strikes as compared to most commercial merchant vessels, including the following: the *Langseth's* bridge offers good visibility to visually monitor for marine mammal presence; observers posted during operations scan the ocean for marine mammals and must report visual alerts of marine mammal presence to crew; and the observers receive extensive training that covers the fundamentals of visual observing for marine mammals and information about marine mammals and their identification at sea. Thus, we do not anticipate that take, in the form of vessel strike, would result from the movement of the vessel.

Lamont-Doherty did not estimate any additional take allowance for animals that could be affected by sound sources other than the airguns and they will not operate the multibeam echosounder, sub-bottom profiler, and acoustic Doppler current profiler during transits to and from the survey area. We do not expect that the sound levels produced by the multi-beam echosounder, sub-bottom profiler, and the acoustic Doppler current profiler would exceed the sound levels produced by the airguns for the majority of the time. Because of the beam pattern and directionality of these sources, combined with their lower source levels, it is not likely that these sources would take marine mammals independently from the takes that Lamont-Doherty has estimated to result from airgun operations. Therefore, we do not believe it is necessary to authorize additional takes for these sources for the action at this time. We are currently evaluating the broader use of these types of sources to determine under what specific circumstances coverage for incidental take would or would not be advisable. We are working on guidance that would outline a consistent recommended approach for applicants to address the potential impacts of these types of sources.

NMFS considers the probability for entanglement of marine mammals to be low because of the vessel speed and the monitoring efforts onboard the survey vessel. Therefore, NMFS does not believe it is necessary to authorize additional takes for entanglement at this time.

There is no evidence that planned activities could result in serious injury or mortality within the specified geographic area for the requested Authorization. The required mitigation and monitoring measures would minimize any potential risk for serious injury or mortality.

The following sections describe Lamont-Doherty's methods to estimate take by incidental harassment. Lamont-Doherty based their estimates on the number of marine mammals that could be harassed by seismic operations with the airgun array during approximately 5,320 km (3,305 mi) of transect lines in the Atlantic Ocean.

Ensonified Area Calculations: In order to estimate the potential number of marine mammals exposed to airgun sounds, Lamont-Doherty considers the total marine area within the 160–dB radius around the operating airguns. This ensonified area includes areas of overlapping transect lines. They determine the ensonified area by entering the planned survey lines into a MapInfo GIS, using the software to identify the relevant areas by ''drawing'' the applicable 160–dB buffer (see Table 2) around each seismic line, and then calculating the total area within the buffers. The revised total ensonified area without overlap is approximately 40,968 km² (25,456 mi).

For this survey, Lamont-Doherty assumes that the *Langseth* will not need to repeat some tracklines, accommodate the turning of the vessel, address equipment malfunctions, or conduct equipment testing to complete the survey. Lamont-Doherty added a 25 percent contingency allowance in their application and draft EA to their ensonified area calculations for additional seismic operations in the survey area associated with infill of missing data, and/or repeat coverage of any areas where initial data quality was sub-standard; however, they have eliminated the contingency from their final calculations. Whereas Lamont-Doherty added this 25 percent contingency to some past seismic surveys, for this particular survey design, the additional contingency was not necessary and removed from the final calculations for the proposed activities. Thus, total tracklines for the proposed survey would not exceed 5,320 km.

Exposure Estimates: Lamont-Doherty calculates the numbers of different individuals potentially exposed to approximately 160 dB re: 1 μPa by multiplying the expected species density estimates (number/km²) for that area in the absence of a seismic program times the estimated area of ensonification (i.e., 40,968 km²; 25,456 mi).

Table 3 of their application presents their original estimates of the number of different individual marine mammals that could potentially experience exposures greater than or equal to 160 dB re: 1 μPa during the seismic survey if no animals moved away from the survey vessel. Lamont-Doherty used the Strategic Environmental Research and Development Program's (SERDP) spatial decision support system (SDSS) Marine Animal Model Mapper tool (Read et al. 2009) to calculate cetacean densities within the survey area based on the U.S. Navy's ''OPAREA Density Estimates'' (NODE) model (DoN, 2007). The NODE model derives density estimates using density surface modeling of the existing line-transect data, which uses sea surface temperature, chlorophyll a, depth, longitude, and latitude to allow extrapolation to areas/seasons where marine mammal survey data collection did not occur. Lamont-Doherty used the SERDP SDSS tool to obtain mean densities within three polygons for each depth strata within seismic survey area for the cetacean species during the fall (September through November).

For the Authorization, we reviewed Lamont-Doherty's take estimates presented in their application and addendum and revised the take calculations for several species based upon the best available information from additional sources including the Cetacean and Turtle Assessment Program (CeTAP) surveys (CeTAP, 1982); the Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys in 2010, 2011, 2012, and 2013; the Navy's Marine Species Density Database (NMSDD); Read *et al.,* 2003; and communications with regional experts. These include takes for blue, fin, minke, North Atlantic right, and sei whales; spinner dolphins, Fraser's dolphins, bottlenose dolphins, melon-headed whales, pygmy killer whales, false killer whales, and killer whales; and harbor seals (see Table 4 for information sources).

Table 5 presents the revised estimates of the possible numbers of marine mammals exposed to sound levels greater than or equal to 160 dB re: 1 μPa during the proposed seismic survey.

TABLE 5—PROPOSED LEVEL B HARASSMENT TAKE LEVELS, SPECIES OR STOCK ABUNDANCE, AND PERCENTAGE OF POPULATION PROPOSED FOR TAKE DURING THE PROPOSED SEISMIC SURVEY IN THE ATLANTIC OCEAN, SEPTEMBER THROUGH OCTOBER, 2014

Species	Density estimate [1] (#/1000 km [2])	Modeled number of individuals exposed to sound levels ≥ 160 dB[2]	Proposed take authorization [3]	Percent of species or stock [4]	Population trend [5]
North Atlantic right whale	[6] 0.13, 0.01, 0.001	5	5	1.25	Increasing.
Humpback whale	0.73, 0.56, 1.06	38	44	5.24	Increasing.
Minke whale	0.03, 0.02, 0.04	2	2	0.01	No data.
Sei whale	[6,7] 1.69, 2.24, 2.19	86	98	27.34	No data.
Fin whale	[6,7] 0.98, 0.48,0.14	16	19	0.52	No data.
Blue whale	[6,7] 0.003, 0.02, 0.03	2	3	0.52	No data.
Bryde's whale	[6] 0.429, 0.429, 0.429	18	20	No data	No data.
Sperm whale	0.03, 0.68, 3.23	91	104	6.48	No data.
Dwarf sperm whale	0.64, 0.49, 0.93	34	39	1.01	No data.
Pygmy sperm whale	0.64, 0.49, 0.93	34	39	1.01	No data.
Cuvier's beaked whale	0.01, 0.14, 0.58	17	19	0.29	No data.
Blainville's beaked whale	0.01, 0.14, 0.58	17	19	0.26	No data.
Gervais' beaked whale	0.01, 0.14, 0.58	17	19	0.26	No data.
True's beaked whale	0.01, 0.14, 0.58	17	19	0.26	No data.
Rough-toothed dolphin	0.30, 0.23, 0.44	16	18	6.62	No data.
Bottlenose dolphin (Offshore)	70.4, 331, 49.4	3,374	3,829	4.94	No data.
Bottlenose dolphin (SMC)	70.4, 0, 0	686	778	8.01	No data.
Bottlenose dolphin (SNCES)	70.4, 0, 0	[7] 1	[8] 23	12.07	No data.
Bottlenose dolphin (NNCES)	70.4, 0, 0	[7] 1	[8] 7	0.72	No data.
Pantropical spotted dolphin	14, 10.7, 20.4	732	830	24.9	No data.

TABLE 5—PROPOSED LEVEL B HARASSMENT TAKE LEVELS, SPECIES OR STOCK ABUNDANCE, AND PERCENTAGE OF POPULATION PROPOSED FOR TAKE DURING THE PROPOSED SEISMIC SURVEY IN THE ATLANTIC OCEAN, SEPTEMBER THROUGH OCTOBER, 2014—Continued

Species	Density estimate [1] (#/1000 km [2])	Modeled number of individuals exposed to sound levels ≥ 160 dB[2]	Proposed take authorization [3]	Percent of species or stock [4]	Population trend [5]
Atlantic spotted dolphin	216.5, 99.7, 77.4	4,616	5,239	11.72	No data.
Spinner dolphin	0, 0, 0	[8] 65	74	No data	No data.
Striped dolphin	0, 0.4, 3.53	98	112	0.20	No data.
Clymene dolphin	6.7, 5.12, 9.73	351	398	No data	No data.
Short-beaked comm. dolphin	5.8, 138.7, 26.4	1,338	1,519	0.88	No data.
Atlantic white-sided dolphin	0, 0, 0	0	0	0	No data.
Fraser's dolphin	0, 0, 0	[8] 100	114	No data	No data.
Risso's dolphin	1.18, 4.28, 2.15	88	100	0.54	No data.
Melon-headed whale	0, 0, 0	[8] 100	100	No data	No data.
False killer whale	0, 0, 0	[8] 15	18	No data	No data.
Pygmy killer whale	0, 0, 0	[8] 25	29	No data	No data.
Killer whale	0, 0, 0	[8] 6	7	No data	No data.
Long-finned pilot whale	3.74, 58.9, 19.1	795	903	3.4	No data.
Short-finned pilot whale	3.74, 58.9, 19.1	795	903	4.19	No data.
Harbor porpoise	0, 0, 0	0	0	0	No data.
Harbor seal	0, 0, 0	[8] 4	5	0.01	No data.

[1] Except where noted, densities are the mean values for the shallow (<100 m), intermediate (100–1,000m), and deep (>1,000m) water stratum in the survey area calculated from the SERDP SDSS NODES fall model (Read *et al.,* 2009) as presented in Table 3 of Lamont-Doherty's application.

[2] Modeled take in this table corresponds to the total modeled take over all depth ranges within a total ensonified area of 40,968 km [2]. See Table 3 of Lamont-Doherty's application for their original take estimates by shallow, intermediate, and deep strata. See Table 9 in Lamont-Doherty's EA for revised take estimates based on modifications to the tracklines to reduce the total ensonified area (40,968 km [2]).

[3] The Authorization includes additional coverage for those potential takes of individuals where Lamont-Doherty would repeat tracklines. This estimate accounts for overlap and turnover within the area to account for take of additional individuals that could experience Level B harassment within those areas where the tracklines overlap.

[4] Stock/species abundance estimates from Table 1 in this notice used in calculating the percentage of species/stock.

[5] Population trend information is from Waring *et al.,* 2014. No data = Insufficient data to determine population trend.

[6] Density data derived from the Navy's NMSDD.

[7] Density estimates revised from proposed density estimate (79 FR 44549, July 31, 2014).

[6] Density estimates revised from proposed density based on information from ESA section 7 consultation.

[7] Modeled estimate includes the area that is less than 3 km from shore ensonified to greater than or equal to 160 dB (10 km [2] total).

[8] Species presence offshore NC based on pers. com. with Dr. Caroline Good (2014) and Mr. McLellan (2014); group size estimates based on CETAP (1982) and AMAPPS surveys (NMFS, 2011, 2012, 2013, 2014) for odontocetes and pinnipeds; and Read *et al.,* 2003 for bottlenose dolphins.

Encouraging and Coordinating Research

Lamont-Doherty would coordinate the planned marine mammal monitoring program associated with the seismic survey in the Atlantic Ocean with applicable U.S. agencies.

Analysis and Determinations

Negligible Impact

'Negligible impact' is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (i.e., population level effects) forms the basis of a negligible impact finding. Thus, an estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, we must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, and the number of estimated mortalities, effects on habitat, and the status of the species.

In making a negligible impact determination, we consider:

- The number of anticipated injuries, serious injuries, or mortalities;
- The number, nature, and intensity, and duration of Level B harassment; and
- The context in which the takes occur (e.g., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);
- The status of stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);
- Impacts on habitat affecting rates of recruitment/survival; and
- The effectiveness of monitoring and mitigation measures to reduce the number or severity of incidental take.

For reasons stated previously in this document and based on the following factors, Lamont-Doherty's specified activities are not likely to cause long-term behavioral disturbance, permanent threshold shift, or other non-auditory injury, serious injury, or death. They include:

- The anticipated impacts of Lamont-Doherty's survey activities on marine mammals are temporary behavioral changes due to avoidance of the area.
- The likelihood that marine mammals approaching the survey area will likely travel through the area or opportunistically foraging within the vicinity. Marine mammals transiting within the vicinity of survey operations will be transient as no breeding, calving, pupping, or nursing areas, or haul-outs, overlap with the survey area.
- The low likelihood that North Atlantic right whales would be exposed

to sound levels greater than or equal to 160 dB re: 1 μPa due to the requirement that the *Langseth* crew must shutdown the airgun(s) immediately if observers detect this species, at any distance from the vessel.

- The anticipated impacts of Lamont-Doherty's survey activities on marine mammals are temporary behavioral changes due to avoidance of the area.
- The likelihood that, given sufficient notice through relatively slow ship speed, we expect marine mammals to move away from a noise source that is annoying prior to its becoming potentially injurious;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the operation of the airgun(s) to avoid acoustic harassment;
- The expectation that the seismic survey would have no more than a temporary and minimal adverse effect on any fish or invertebrate species that serve as prey species for marine mammals, and therefore consider the potential impacts to marine mammal habitat minimal;
- The relatively low potential for temporary or permanent hearing impairment and the likelihood that Lamont-Doherty would avoid this impact through the incorporation of the required monitoring and mitigation measures (including the incorporation of larger exclusion zones for Level A Harassment in shallow water, power-downs, and shutdowns); and
- The high likelihood that trained visual protected species observers would detect marine mammals at close proximity to the vessel.

NMFS does not anticipate that any injuries, serious injuries, or mortalities would occur as a result of Lamont-Doherty's proposed activities, and NMFS does not propose to authorize injury, serious injury, or mortality at this time.

We anticipate only behavioral disturbance to occur primarily in the form of avoidance behavior to the sound source during the conduct of the survey activities. Further, the increased size of the Level A harassment exclusion zones in shallow water would effect the least practicable impact marine mammals.

Table 5 in this document outlines the number of requested Level B harassment takes that we anticipate as a result of these activities. NMFS anticipates that 30 marine mammal species (6 mysticetes, 23 odontocetes, and 1 pinniped) under our jurisdiction would likely occur in the proposed action area. Of the marine mammal species under our jurisdiction that are known to occur or likely to occur in the study area, six of these species are listed as endangered under the ESA and depleted under the MMPA, including: the blue, fin, humpback, north Atlantic right, sei, and sperm whales.

Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section in this notice), we do not expect the activity to impact rates of recruitment or survival for any affected species or stock. In addition, the seismic surveys would not take place in areas of significance for marine mammal feeding, resting, breeding, or calving and would not adversely impact marine mammal habitat.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). While we anticipate that the seismic operations would occur on consecutive days, the estimated duration of the survey would last no more than 33 days. Specifically, the airgun array moves continuously over 10s of kilometers daily, as do the animals, making it unlikely that the activity would continuously expose the same animals over multiple consecutive days. Additionally, the seismic survey would increase sound levels in the marine environment in a relatively small area surrounding the vessel (compared to the range of the animals), which is constantly travelling over distances, and some animals may only be exposed to and harassed by sound for less than a day.

In summary, we expect marine mammals to avoid the survey area, thereby reducing the risk of exposure and impacts. We do not anticipate disruption to reproductive behavior and there is no anticipated effect on annual rates of recruitment or survival of affected marine mammals.

Based on our analysis of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the take resulting from Lamont-Doherty's proposed seismic survey would have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that Lamont-Doherty's activities could potentially affect, by Level B harassment only, 30 species of marine mammals under our jurisdiction. For each species, these estimates constitute small numbers relative to the population size and we have provided the regional population estimates for the marine mammal species that may be taken by Level B harassment in Table 5 in this notice.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that Lamont-Doherty's proposed activity would take small numbers of marine mammals relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action.

Endangered Species Act (ESA)

There are six marine mammal species that may occur in the proposed survey area, several are listed as endangered under the Endangered Species Act, including the blue, fin, humpback, north Atlantic right, sei, and sperm whales. Under section 7 of the ESA, the Foundation has initiated formal consultation with NMFS on the proposed seismic survey. NMFS (i.e., National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) also consulted with NMFS on the proposed issuance of an Authorization under section 101(a)(5)(D) of the MMPA. NMFS consolidated those consultations in a single Biological Opinion.

On September 12, 2014 the Endangered Species Act Interagency Cooperation Division issued an Opinion to us and the Foundation which concluded that the issuance of the Authorization and the conduct of the seismic survey were not likely to jeopardize the continued existence of blue, fin, humpback, North Atlantic right, sei, and sperm whales. The Opinion also concluded that the issuance of the Authorization and the conduct of the seismic survey would not affect designated critical habitat for these species.

National Environmental Policy Act (NEPA)

The Foundation has prepared an EA titled, ''Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Atlantic Ocean off Cape Hatteras, September—October, 2014,'' prepared by LGL, Ltd. environmental research associates, on behalf of the Foundation and the Observatory. We have also prepared an EA titled, ''Issuance of an Incidental Harassment Authorization to Lamont-Doherty Earth Observatory to Take Marine Mammals by Harassment Incidental to a Marine Geophysical Survey in the Atlantic Ocean Offshore North Carolina, September through October, 2014,'' and FONSI in accordance with NEPA and NOAA Administrative Order 216–6. We provided relevant environmental information to the public through our notice of proposed Authorization (79 FR 44549, July 31, 2014) and considered public comments received prior to finalizing our EA and deciding whether or not to issue a Finding of No Significant Impact (FONSI). We concluded that issuance of an Incidental Harassment Authorization would not significantly affect the quality of the human environment and have issued a FONSI. Because of this finding, it is not necessary to prepare an environmental impact statement for the issuance of an Authorization to the Observatory for this activity. Our EA and FONSI for this activity are available upon request (see **ADDRESSES**).

Authorization

We have issued an Incidental Harassment Authorization to Lamont-Doherty for the take of marine mammals, incidental to conducting a marine seismic survey in the Atlantic Ocean, September 15, 2014 to October 31, 2014.

Dated: September 19, 2014.

Perry F. Gayaldo,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–22730 Filed 9–24–14; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Monday, September 29, 2014, 4:00–5:00 p.m. (ET).

PLACE: Corporation for National and Community Service, 1201 New York Avenue NW., Suite 8312, Washington, DC 20525 (Please go to 10th floor reception area for escort).

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–988–9777 conference call access code number 6764819. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and CNCS will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 866–441–0996 TTY: 800–833–3722. The end replay date is October 29, 2014, 10:59 p.m. (CT).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Comments
  a. Call to Order, Welcome, and Preview of Today's Meeting Agenda
  b. Introduction and Acknowledgements
  c. Summary Status of Board Interaction
II. Consideration of Previous Meeting's Minutes
III. CEO Report
IV. Acknowledgement of Board Member Transitions
V. Discussions, Deliberations and Official Actions
VI. Public Comments
VII. Final Comments and Adjournment

Members of the public who would like to comment on the business of the Board may do so in writing or in person. Individuals may submit written comments to *jmauk@cns.gov* subject line: SEPTEMBER 2014 CNCS BOARD MEETING by 4:00 p.m. (ET) on September 24, 2014. Individuals attending the meeting in person who would like to comment will be asked to sign-in upon arrival. Comments are requested to be limited to 2 minutes.

REASONABLE ACCOMMODATIONS: The Corporation for National and Community Service provides reasonable accommodations to individuals with disabilities where appropriate. Anyone who needs an interpreter or other accommodation should notify Ida Green at *igreen@cns.gov* or 202–606–6861 by 5 p.m. (ET) on September 25, 2014.

CONTACT PERSON FOR MORE INFORMATION: Jenny Mauk, Special Assistant to the CEO, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525. Phone: 202–606–6615. Fax: 202–606–3460. TTY: 800–833–3722. Email: *jmauk@cns.gov.*

Dated: September 22, 2014.

Wilsie Y. Minor,

Deputy General Counsel.

[FR Doc. 2014–22856 Filed 9–22–14; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0137]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records notice, T7340, entitled ''Defense Joint Military Pay System—Active Component'' in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This system will ensure accurate and timely military pay and allowances to active component military members (including those who are enrolled at a military academy and those who participate in voluntary separation pay, Armed Forces Health Professions Scholarship Program, basic military trainees or payment to a financial organization through electronic fund transfer program (including allotments and issuance and cancellation of United States treasury checks and bonds)); to document and account for military pay and allowance disbursements and collections; to verify and account for system input transactions; to identify, correct, and collect overpayment; to establish, control, and maintain member indebtedness notices and levies; and to provide timely, complete master individual pay account review; and to provide internal and external managers with statistical and monetary reports and to maintain a record of related personnel data.

DATES: Comments will be accepted on or before October 27, 2014. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on September 4, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7340

SYSTEM NAME:

Defense Joint Military Pay System-Active Component (March 5, 2013, 78 FR 14283).

* * * * *

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS:

Delete entry and replace with ''All active duty service members to include members enrolled at military academies.''

* * * * *

[FR Doc. 2014–22812 Filed 9–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2014–0028]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete two Systems of Records.

SUMMARY: The Department of the Air Force is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system notices are entitled ''F036 AETC U, Flying Training Records—Student'' and ''F044 AETC A, Drug Abuse Control Case Files''.

DATES: Comments will be accepted on or before October 27, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended, has been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/.* The Department of the Air Force proposes to delete two systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, which requires the submission of a new or altered system report.

Dated: September 19, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

F044 AETC A

SYSTEM NAME:

Drug Abuse Control Case Files (February 24, 2010, 75 FR 8313)

REASON:

The position which provided this service was deleted from the Unit Manpower Document in October 2012. A system of records did not exist and was not maintained for any related correspondence and no collection of records was ever made.

Deletion:

F036 AETC U

SYSTEM NAME:

Flying Training Records—Student (June 11, 1997, 62 FR 31793)

REASON:

This system and its records are a duplicate of records maintained in a system of records covered under F036 AETC Y, Training Integration Management System (TIMS) Records (November 12, 2008, 73 FR 66873) and F036 AF AETC B, Graduate Training Integration Management System (GTIMS) (June 30, 2009, 74 FR 31261).

[FR Doc. 2014–22753 Filed 9–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2014–0029]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete five Systems of Records.

SUMMARY: The Department of the Air Force is deleting five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system notices are entitled ''F071 AF OSI C, Criminal Records''; ''F036 AFOSI C, Internal Personnel Data System''; ''F036 AFOSI A, Career Development Folder''; ''F036 AFOSI D, Air Force Special Investigations Academy Individual Academic Records''; and ''F036 AFOSI B, Informational Personnel Records''.

DATES: Comments will be accepted on or before October 27, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, as amended, has been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/.* The Department of the Air Force proposes to delete five systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, as amended, which requires the submission of a new or altered system report.

Dated: September 22, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

F071 AF OSI C

SYSTEM NAME:

Criminal Records (June 11, 1997, 62 FR 31793)

REASON:

This is a duplicate system of records; active records are covered under SORN F071 AF OSI D, Investigative Information Management System (I2MS) (August 28, 2006, 71 FR 50894). Duplicate paper copies at HQ AFOSI were destroyed by pulping, macerating, or burning. Therefore, SORN F071 AF OSI C, Criminal Records (June 11, 1997, 62 FR 31793) can be deleted.

Deletion:

F036 AFOSI C

SYSTEM NAME:

Internal Personnel Data System (June 11, 1997, 62 FR 31793)

REASON:

This system no longer exists. There is no data available as to when the system became obsolete. All records have been properly destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Therefore, SORN F036 AFOSI C, Internal Personnel Data System (June 11, 1997, 62 FR 31793) can be deleted.

Deletion:

F036 AFOSI A

SYSTEM NAME:

Career Development Folder (June 11, 1997, 62 FR 31793)

REASON:

This is a duplicate system of records; active records are covered under SORN F036 AF PC C, Military Personnel Records System (October 13, 2000, 65 FR 60916). Duplicate paper copies at HQ AFOSI were destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Therefore, SORN F036 AFOSI A, Career Development Folder (June 11, 1997, 62 FR 31793) can be deleted.

Deletion:

F036 AFOSI D

SYSTEM NAME:

Air Force Special Investigations Academy Individual Academic Records (June 11, 1997, 62 FR 31793)

REASON:

This is a duplicate system of records; active records are covered under SORN F036 AFOSI E, Command Learning Management System (October 21, 2010, 75 FR 65007).

Duplicate paper copies at HQ AFOSI were destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Therefore, SORN F036 AFOSI D, Air Force Special Investigations Academy Individual Academic Records (June 11, 1997, 62 FR 31793) can be deleted.

Deletion:

F036 AFOSI B

SYSTEM NAME:

Informational Personnel Records (June 11, 1997, 62 FR 31793)

REASON:

This system no longer exists. There is no data available as to when the system became obsolete. All records have been properly destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Therefore, SORN F036 AFOSI B, Informational Personnel Records (June 11, 1997, 62 FR 31793) can be deleted.

[FR Doc. 2014–22843 Filed 9–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting and hearing.

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public meeting and hearing described below. The Board invites any interested persons or groups to present any comments, technical

information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 8:30 a.m.–11:45 p.m., October 7, 2014.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 352, Washington, DC 20004–2901.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in an open meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Government in the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: This public meeting and hearing is the third in a series of five hearings the Board will convene to address safety culture at Department of Energy (DOE) defense nuclear facilities and the Board's Recommendation 2011–1, *Safety Culture at the Waste Treatment and Immobilization Plant.* The final two hearings will be announced by separate notices at a future date. In the first hearing convened on May 28, 2014, the Board received testimony from recognized industry and federal government experts in the field of safety culture, with a focus on the tools used for assessing safety culture, approaches for interpreting the assessment results, and how results can be used for improving safety culture. In the second hearing convened on August 27, 2014, the Board received testimony from current and former United States Navy officers concerning the Navy's approach to ensuring a strong safety culture in its nuclear fleet operations. The Board also received testimony from federal government and academic experts on the role of organizational leaders in establishing and maintaining an effective, positive safety culture. In this third hearing, the Board will continue to address significant safety culture issues. The hearing will be convened in a morning session with three witness panels. In the first panel the Honorable Ernest J. Moniz, Secretary, U.S. Department of Energy, will provide testimony concerning his vision for establishing a strong safety culture in DOE. Secretary Moniz will also discuss his views on other Departmental priorities. In the second panel, the Board will receive testimony from the Honorable Frank G. Klotz (USAF Ret.), Administrator, National Nuclear Security Administration (NNSA). Administrator Klotz is expected to discuss concerns identified in NNSA safety culture assessments and present his approaches to address those concerns. He is also expected to offer his perspective on the safety culture of NNSA contractor organizations, his expectations for safety culture, and his approaches to address any identified safety culture concerns. In the third and final panel, the Board will receive testimony from Mr. David M. Klaus, Deputy Under Secretary for Management and Performance, DOE. Mr. Klaus is similarly expected to examine concerns identified in DOE safety culture assessments and his approaches to address those concerns. He will also discuss his perspective on the safety culture of DOE contractor organizations, his expectations for safety culture, and his approaches to address any identified safety culture concerns.

CONTACT PERSON FOR MORE INFORMATION: Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. The Board is setting aside time at the end of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on October 3, 2014, will be scheduled to speak at the conclusion of the hearing at approximately 11:25 a.m. The Board will post a schedule for speakers at the entrance to the hearing room. Commenters may also sign up to speak the day of the hearing at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC office. The Board will hold the record open until November 7, 2014, for the receipt of additional materials. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: September 22, 2014.

Peter S. Winokur,

Chairman.

[FR Doc. 2014–22941 Filed 9–23–14; 11:15 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–549–000]

Dominion Transmission, Inc., Tennessee Gas Pipeline Company, L.L.C.; Notice of Application

Take notice that on September 5, 2014, Dominion Transmission, Inc. (Dominion), 120 Tredegar Street, Richmond, VA 23219 and Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Suite 1000, Houston, TX 77002, jointly filed an application in Docket No. CP14–549–000 pursuant to section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations, for a certificate of public convenience and/or necessity requesting authorization to revise the active boundary and establish a protective boundary for the Harrison Storage Pool located in Potter and Tioga Counties, Pennsylvania and Steuben County, New York. The proposed expansion would increase the storage reservoir by 1,317.02 acres and establish a 2,000-foot buffer area around the reservoir containing 5,895.36 acres, all as more fully set forth in the application which is on file with the Commission and open for public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Richard Jessee, Regulatory and Certificate Analyst, Dominion Transmission, Inc., 701 East Cary Street, Richmond, Virginia 23219, or by calling 804–771–3704, facsimile no. 804–771–4804, or email at *richard.jessee@dom.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9,

within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: October 6, 2014.

Dated: September 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22800 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 308–007]

PacifiCorp Energy; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License (Minor Project).

b. *Project No.:* 308–007.

c. *Date filed:* February 28, 2014.

d. *Applicant:* PacifiCorp Energy (PacifiCorp).

e. *Name of Project:* Wallowa Falls Hydroelectric Project.

f. *Location:* The existing project is located on Royal Purple Creek and the East and West Forks of the Wallowa River in Wallowa County, Oregon. The project would occupy 12.68 acres of Federal land managed by the United States Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Russ Howison, Relicensing Project Manager, PacifiCorp Energy, 825 NE Multnomah, Suite 1500, Portland, OR 97232; Telephone (503) 813–6626.

i. *FERC Contact:* Matt Cutlip, (503) 552–2762 or *matt.cutlip@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–308–007.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Project Description:* The existing Wallowa Falls Hydroelectric Project consists of the following existing facilities: (1) A 2-foot-high, 9-foot-long concrete diversion dam with a 1-foot-wide spillway on Royal Purple Creek; (2) a 240-foot-long, 8-inch-diameter wood-stave and polyvinylchloride pipeline conveying water from the Royal Purple Creek diversion dam to a de-silting pond; (3) an 18-foot-high, 125-foot-long, buttressed rock-filled timber crib dam with impervious gravel and asphalt core and a 30-foot-wide spillway on the East Fork Wallowa River; (4) a 0.2-acre de-silting pond; (5) a 2-foot-high by 2-foot-wide concrete intake structure with a headgate and steel trash rack; (6) a low-level sluiceway with a steel trash rack and cast iron gate connecting to a 2-foot-diameter steel pipe passing through the dam to provide instream flow releases to the bypassed

reach; (7) a 5,688-foot-long steel penstock varying in diameter from 24 to 16 inches and consisting of buried sections or above-ground sections supported on timber crib trestles; (8) a powerhouse containing one impulse turbine-generator unit with an installed capacity of 1,100 kilowatts; (9) a 40-foot-long concrete-lined tailrace which conveys powerhouse flows to a 1,000-foot-long unlined and braided tailrace channel discharging into the West Fork Wallowa River; (10) a 20-foot-long, 7.2-kilovolt transmission line which connects to the Wallowa Falls substation; and (11) appurtenant facilities.

The project is operated run-of-river. Up to 1 cubic feet per second (cfs) of flow is diverted from Royal Purple Creek and discharged into the de-silting pond. Up to 16 cfs of water (i.e., 15 cfs maximum from East Fork Wallowa River and 1 cfs from Royal Purple Creek) is diverted through the intake structure at the East Fork Wallow River dam into the steel penstock and conveyed to the powerhouse where it flows through the single impulse turbine and discharges through the tailrace into the West Fork Wallowa River. The project's current license requires a minimum instream flow release of 0.5 cfs or inflow, whichever is less, in the bypassed reach. The current license also mandates that PacifiCorp restrict sediment flushing from the de-silting pond to the period from May 1 to August 30 to protect kokanee salmon.

PacifiCorp proposes to modify the existing facilities by constructing a buried 30-inch-diameter, 1,000-foot-long pipe and rerouting powerhouse flows from the current discharge location in the West Fork to the East Fork Wallowa River. PacifiCorp also proposes to: Increase the minimum flow release in the bypassed reach to 4 cfs or inflow, whichever is less; modify the sediment management program to only enable sediment flushing during the high-flow month of June; upgrade the instream flow compliance monitoring equipment in the bypassed reach; upgrade recreational facilities at the non-project Pacific Park Campground; and install new signage and interpretive displays at the project.

PacifiCorp proposes to amend the project boundary by adding 28.3 acres to incorporate the Pacific Park Campground, forebay access road, buried tailrace pipe, and other new project features.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''MOTION TO INTERVENE'' or ''PROTEST''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 18, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22795 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OR14–41–000]

American Airlines, Inc. v. Buckeye Pipe Line Company, L.P.; Notice of Complaint

Take notice that on September 17, 2014, pursuant to section 1(5), 8, 9, 13, 15, and 16 of the Interstate Commerce Act, 49 U.S.C. App. 1(5), 8, 9, 13, 15 and 16; section 1803 of the Energy Policy Act of 1992; Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2014); and Rules 343.1(a) and 343.2(c) of the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.1(a) and 343.2(c), American Airlines, Inc. (Complainant) filed a formal complaint against Buckeye Pipe Line Company, L.P. (Buckeye or Respondent), challenging the justness and reasonableness of Buckeye's jurisdictional rates and charges for transportation of jet or aviation turbine fuel on its interstate pipeline system, as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the

Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 7, 2014.

Dated: September 18, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22797 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL14–101–000]

Utah Associated Municipal Power Systems v. PacificCorp; Notice of Complaint

Take notice that on September 12, 2014, pursuant to section 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, and section 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825(e) Utah Associated Municipal Power Systems (Complainant), filed a formal complaint against Pacificorp (Respondent) alleging that the fixed annual expense for post-retirement benefits other than pensions contained in Respondent's formula transmission rate as accepted by the Commission in Docket No. ER11–3643–000 overstates Respondent's actual and reasonably foreseeable expenses and results in unjust and unreasonable transmission rates.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 2, 2014.

Dated: September 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22801 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–497–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed New Market Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the New Market Project (Project) involving construction and operation of facilities by Dominion Transmission, Inc. (Dominion) in multiple counties in upstate New York (NY). The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on October 20, 2014.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows:

October 8, 2014, 7:30 p.m., FERC Public Scoping Meeting—New Market Project, Town of Georgetown Town Hall, 995 State Route 26, Georgetown, NY 13072

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Dominion provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Dominion proposes to construct and operate 2 new compressor stations (CS) and add additional compression and minor changes at 3 existing CS. Dominion would also modify a meter station in Schenectady County, NY. Specifically, the New Market Project would consist of the following proposed facilities:

- Construction of the new Horseheads CS in Chemung County;
- installation of gas coolers and filter/separator at the existing Borger CS in Tompkins County;

• construction of the new Sheds CS in Madison County;
• installation of gas coolers and filter/separator at the existing Utica CS in Herkimer County;
• installation of additional engine and turbine driven compressor units at the existing Brookman CS in Montgomery County; and
• modifications to the existing West Schenectady Meter Station in Schenectady County.

The general location of the Project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 200 acres of land for the aboveground facilities. Following construction, Dominion would maintain about 78 acres for permanent operation of the Project facilities; the remaining acreage would be restored and revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:
• Geology and soils;
• water resources, fisheries, and wetlands;
• cultural resources;
• socioeconomics;
• land use;
• vegetation and wildlife;
• air quality and noise; and
• public safety.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through the FERC's eLibrary system. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the New York State Department of Agriculture and Markets has expressed its intention to participate as a cooperating agency in the preparation of the EA.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities, comments received from the public, and the environmental information provided by Dominion. This preliminary list of issues may be changed based on your comments and our analysis.
• Air quality—health impacts from emissions;
• Socioeconomic issues—traffic, home values;
• Noise and vibration;
• Land use—industrialization; and
• Public safety.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before October 20, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP14–497–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on the Project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP14–497). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: September 18, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22796 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–1653–005]

New York Independent System Operator, Inc.; Notice of Compliance Filing

Take notice that, on August 26, 2014, the New York Independent System Operator, Inc. (NYISO) submitted a filing containing a demonstration of how its interim market power mitigation proposal meets the requirements of Order No. 755 [1] and the Commission's November 6, 2012 order [2] as a permanent market power mitigation method, to comply with Ordering Paragraph (B) of the Commission's May 31, 2013 Order.[3]

[1] *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Order No. 755, FERC Stats. & Regs. ¶ 31,324 (2011), *order denying reh'g,* Order No. 755–A, 138 FERC ¶ 61,123 (2012).

[2] *New York Independent System Operator, Inc.,* 141 FERC ¶ 61,105 (2012).

[3] *New York Independent System Operator, Inc.* 143 FERC ¶ 61,194 (2013).

Any person desiring to intervene or to protest the foregoing compliance portion of this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 9, 2014.

Dated: September 18, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22794 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP12–509–000; CP12–29–000]

Freeport LNG Liquefaction Project, Phase II Modification Project; Notice of Availability of Final General Conformity Determination

In accordance with the National Environmental Policy Act of 1969, the Clean Air Act and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, Commission

staff has prepared this final General Conformity Determination (GCD) for the Freeport LNG Liquefaction and Phase II Modification Projects (collectively called Projects) to ensure that the Projects do not violate the Texas State Implementation Plan and address the potential air quality impacts associated with the construction and operation of liquefied natural gas facilities proposed by Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, and FLNG Liquefaction 3, LLC (collectively known as Freeport LNG).

The FERC staff concludes that the Projects will achieve conformity with the Texas State Implementation Plan and has received concurrence from the Texas Commission on Environmental Quality.

Freeport LNG's development is composed of multiple components in Brazoria County, Texas. The main Liquefaction Plant, located on Quintana Island, will be three propane pre-cooled mixed refrigerant trains, each with a capacity of 4.4 million metric tons per year of liquefied natural gas (LNG) for export, which equates to a total liquefaction capacity of approximately 1.8 billion cubic feet per day of natural gas. The trains and their support facilities are collectively referred to as the Liquefaction Plant.

In addition to the Liquefaction Plant described above, Freeport LNG proposes to construct various facilities, both at and adjacent to the Quintana Island Terminal and beyond Quintana Island, to support the liquefaction and export operation. These facilities include a natural gas Pretreatment Plant located about 3.5 miles north of the Terminal, and several interconnecting pipelines and utility lines called the Pipeline/Utility Line System.

In addition, for additional information on the Projects, the public can view the final environmental impact statement on our Web site at *http://www.ferc.gov/industries/gas/enviro/eis/2014/06-16-14-eis.asp.* The full final General Conformity Determination, and response to comments, may be found on FERC's elibrary system under the above references Docket numbers.

For further information, contact Eric Tomasi by telephone at 202–502–8097 or by email at *Eric.Tomasi@ferc.gov.*

Dated: September 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22799 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–2858–000]

Origin Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Origin Wind Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is October 6, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22802 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–2871–000]

Cameron Ridge, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Cameron Ridge, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and *Procedure* (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is October 6, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 15, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22803 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14630–000]

Chugach Electric Association, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 2, 2014, Chugach Electric Association, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Fourth of July Project (Fourth of July Creek Project or project) to be located on Godwin and Fourth of July Creeks, near Seward in Kenai Peninsula Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of two new developments using the same: (1) 70-foot long, 30-foot-wide, 30-foot-high powerhouse; (2) tailrace consisting of a concrete drop box continuing to a rip rap channel; (3) 10,900-foot-long, 69-kilovolt transmission line extending from the powerhouse to an existing substation; (4) 4,300-foot-long, 16-foot-wide gravel access road; (5) 200-foot-long bridge; and (6) appurtenant facilities.

Fourth of July Creek Development

(1) a 110-foot-long, 20-foot-wide, 18-foot-high concrete intake structure located at an elevation of 790 feet mean sea level (msl) on Fourth of July Creek; (2) a 5,200-foot-long, 54-inch-diameter steel penstock from the Fourth of July Creek intake housed in a 3,460-foot-long, 16-foot-diameter tunnel and a 1,670-foot-long, 54-inch-diameter steel penstock buried where feasible; and (3) a horizontal Francis turbine/generator unite rated for 6.6 megawatts (MW) at 637 feet of net head.

Godwin Creek Development

(1) a 110-foot-long, 20-foot-wide, 18-foot-high concrete intake structure located at an elevation of 415 feet msl on Godwin Creek; (2) a 3,500-foot-long, 78-inch-diameter steel penstock buried where feasible from Godwin Creek; and (3) a horizontal Francis turbine/generator unit rated for 6.1 MW at 280 feet of net head.

The estimated annual generation of the Fourth of July Creek Project would be 55,012 megawatt-hours.

Applicant Contact: Mr. Paul R. Risse, Senior Vice President, Chugach Electric Association, Inc., 5601 Electron Drive, Anchorage, Alaska 99518; phone: (907) 563–7494.

FERC Contact: Julia Kolberg; phone: (202) 502–8261.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14630–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14630) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 18, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22798 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–551–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization

Take notice that on September 10, 2014, Texas Eastern Transmission, LP (Texas Eastern), pursuant to its blanket certificate authorization granted in Docket No. CP82–535–000,[1] filed an application in accordance to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, requesting authority to abandon by sale certain pipeline facilities and removing related ancillary facilities, as necessary, located in Lincoln Parish, Louisiana. The proposed abandonment will enable Texas Eastern and its customers to eliminate the need for capital expenditures associated with the ongoing maintenance and repair of facilities that are no longer required for gas service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests authorization to abandon by sale to Regency, 5.97 miles of 14-inch diameter and 2.83 miles of 12-inch diameter pipelines designated as Line 2–H, and 2.1 miles of 12-inch diameter pipeline designated a Line 2–H–1. In additional, Texas Eastern proposes to remove certain related facilities. Regency specializes in the gathering and processing, contract compression, contract treating, transportation, fractionation and storage of natural gas and natural gas liquids. Regency intends to operate the pipelines as low-pressure gathering upon acquisition. The 2–H and 2–H–1 pipelines have not provided service to customers since April 2010, and its capacity is not currently subscribed under any firm service agreements.

Any questions concerning this application may be directed to Lisa A. Connolly, General Manager, Rates & Certificates, Texas Eastern

[1] 21 FERC ¶ 62,199 (1982).

Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, by phone at (713) 627–4102, or fax at (713) 627–5947, or email to *laconnolly@spectraenergy.com.*

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages interveners to file electronically.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice, the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: September 18, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–22793 Filed 9–24–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0595; FRL–9917–04–OEI]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Regulation of Fuels and Fuel Additives: Detergent Gasoline (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Regulation of Fuels and Fuel Additives: Detergent Gasoline (Renewal)'' (EPA ICR No. 1655.09, OMB Control No. 2060–0275) 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 24417) on April 30, 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 27, 2014.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2007–0595, to (1) EPA online using *www.regulations.gov* (our preferred method), 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: Jaimee Dong, Office of Transportation and Air Quality, (Mail Code: 6406J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9672; fax number: (202) 343–2802; email address: *dong.jaimee@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: Gasoline combustion results in the formation of engine deposits that contribute to increased emissions. Detergent additives deter deposit formation. The Clean Air Act requires gasoline to contain a detergent additive. The regulations at 40 CFR part 80, subpart G specify certification requirements for manufacturers of detergent additives, recordkeeping and reporting requirements for blenders of detergents into gasoline or post-refinery component (any gasoline blending stock or any oxygenate which is blended with gasoline subsequent to the gasoline refining process), and recordkeeping and reporting requirements for manufacturers, transferors, or transferees of detergents, gasoline, or post-refinery component (PRC). These requirements ensure that (1) a detergent is effective before it is certified by EPA, (2) a certified detergent, at the minimum concentration necessary to be effective (known as the lowest additive concentration (LAC)), is blended into gasoline, and (3) only gasoline which contains a certified detergent at its LAC is delivered to the consumer. The EPA maintains a list of certified gasoline detergents, which is publicly available.

Form Numbers: None.

Respondents/affected entities: Manufacturers, transferors and transferees, and blenders into gasoline or post-refinery component of detergent additives; and detergent additive researchers.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 1354 (total).

Frequency of response: Once, occasionally annually.

Total estimated burden: 220,181 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $18,854,168 including $335,040 annualized capital or O&M costs.

Changes in the estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Courtney Kerwin,

Acting Director, Collection Strategies Division.

[FR Doc. 2014–22749 Filed 9–24–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Meeting of the Appraisal Subcommittee Advisory Committee for Development of Regulations

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council (ASC).

ACTION: Notice of open meeting.

SUMMARY: The Appraisal Subcommittee Advisory Committee for Development of Regulations (ASCAC or Committee) will meet in open session on Wednesday, October 15, 2014, from 9:00 a.m. to 5:00 p.m. and Thursday, October 16, 2014, from 9:00 a.m. to 5:00 p.m. All times are in the Eastern time zone. The primary purpose of this meeting is to continue discussion on potential recommendations to the ASC regarding Temporary Practice, National Registries (Appraisers and Appraisal Management Companies), Information Sharing and Enforcement. The final agenda will be posted on the ASC Web site at *https://www.asc.gov.*

DATES: ASCAC will meet on Wednesday, October 15, 2014, from 9:00 a.m. to 5:00 p.m. and Thursday, October 16, 2014, from 9:00 a.m. to 5:00 p.m. All times are in the Eastern time zone. The meeting will be open to the public.

ADDRESSES: The meeting will be held at the Doubletree Hotel located at 300 Army Navy Drive, Arlington, VA 22202. Directional signs noting the meeting location for the ASCAC Meeting will be located in the hotel lobby.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Schuster, Designated Federal Officer, ASC, 1401 H Street NW., Suite 760, Washington, DC 20005; telephone (202) 595–7578; or via email at *Lori@asc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Committee was established in accordance with the Federal Advisory Committee Act, as amended, 5. U.S.C. App. The Committee is composed of eighteen members nominated by the ASC Executive Director and approved by the Chairman of the ASC in consultation with ASC members. ASCAC members represent a balance of expertise across the broad range of industry participants, including appraisers, lenders, consumer advocates, real estate agents, and government agencies. All ASCAC members have extensive experience concerning the appraiser regulatory framework for federally related transactions.

The ASC oversees the real estate appraisal process as it relates to federally related transactions as defined in Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act included amendments to Title XI and expanded the ASC's authority to include rulemaking authority in four areas: (1) Temporary practice; (2) national registries; (3) information sharing; and (4) enforcement. The ASC is primarily seeking independent advice from ASCAC concerning sanctions ASCAC deems advisable for purposes of enforcement of regulations promulgated by the ASC to State appraiser regulatory programs.

Procedures for Attendance: Persons wishing to attend the meeting must notify Ms. Lori Schuster via email at *Lori@asc.gov* or (202) 595–7578 by 5:00 p.m. Eastern time, Wednesday, October 8, 2014, in order to attend.

Procedures for Public Comment: There will be a public comment period, not to exceed thirty minutes, the morning of October 15, 2014. The public comment period is not intended to be a Q&A session. To register to comment, please contact Ms. Lori Schuster at *Lori@asc.gov* or (202) 595–7578. Requests to comment must be received by 5:00 p.m. Eastern time on October 8, 2014. Registered speakers/organizations will be allowed a maximum of 5 minutes each and will need to provide written copies of their comments. Written comments also may be provided to Ms. Lori Schuster at *Lori@asc.gov* until 5:00 p.m. Eastern time, Friday, October 10, 2014.

Dated: September 22, 2014.

James R. Park,

Executive Director.

[FR Doc. 2014–22838 Filed 9–24–14; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 10, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Robert Craig Duncan and Diana H. Duncan Revocable Trust, R. Craig Duncan and Diana H. Duncan as trustees, all of Winfield, Kansas; Robert E. Duncan Revocable Trust, R. Craig Duncan, as trustee, both of Winfield, Kansas; Jane Gary Duncan Revocable Trust, Jane Gary Duncan, as Trustee, both of Winfield, Kansas; George Duncan and Adrianna Duncan, both of Santa Fe, New Mexico; Spencer Duncan and Tessa Duncan, both of Wichita, Kansas; and Taylor Duncan and Tara Duncan, both of Winfield, Kansas, all as members of the R. Craig Duncan Family Group;* to retain voting shares of Cornerstone Alliance, Ltd, and thereby indirectly retain voting shares of CornerBank, both in Winfield, Kansas.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Benjy Marc Bauer; Elizabeth Theresa Bauer; Jacob Kopple Bauer; Simone Heyman Bauer, all of Waco, Texas; Rana Sue Bauer, Austin, Texas; Jacqueline Kalize Bauer, Woodway, Texas; and Eric Kandon Bauer,* Dallas, Texas, collectively a group acting in concert; to acquire voting shares of ABCT Holdings, Inc., and thereby indirectly acquire voting shares of Alliance Bank Central Texas, both in Waco, Texas.

Board of Governors of the Federal Reserve System, September 22, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–22822 Filed 9–24–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 20, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Central Bancompany, Inc.,* Jefferson City, Missouri, and it subsidiary bank holding company, First National Bancor, Inc., Lee's Summit, Missouri; to acquire 100 percent of the voting shares of Douglas County Bank, Lawrence, Kansas.

Board of Governors of the Federal Reserve System, September 22, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–22823 Filed 9–24–14; 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 20, 2014.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *MW Bancorp, Inc.,* Cincinnati, Ohio; to become a savings and loan holding company by acquiring 100 percent of the voting shares of Mount Washington Savings Bank, Cincinnati, Ohio.

Board of Governors of the Federal Reserve System, September 22, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–22824 Filed 9–24–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services is being amended at Chapter AA, Immediate Office of the Secretary, as last amended at 77 FR 23250–23260, dated April 18, 2012, at Chapter AW, Center for Faith-Based and Neighborhood Partnerships, as last amended at 75 FR 37814, dated June 30, 2010, and at Chapter ABC, Office for Intergovernmental Affairs, as last amended at 76 FR 42710–42711, dated July 19, 2011, as follows:

I. Under Chapter AA, Section AA.10 Organization, delete ''Center for Faith-Based and Neighborhood Partnerships (AW).''

II. Delete Chapter AW, ''Center for Faith-Based and Neighborhood Partnerships,'' in its entirety.

III. Under Chapter ABC, ''Office of Intergovernmental and External Affairs,'' Section ABC.00 Mission, at the end of the first paragraph, insert a new paragraph as follows:

Additionally, the Director of Intergovernmental and External Affairs has primary responsibility to coordinate the Department's efforts to support partnerships between HHS and faith and community-based nonprofit organizations in health care and human services sectors in order to better serve people and communities.

IV. Under Chapter ABC, Section ABC.20 Functions, after the 4th paragraph, insert a new paragraph as follows:

Engages and communicates with the grassroots, ensuring that local institutions that hold community trust have up-to-date information regarding health and human service activities and resources in their area. CFBNP also works to enable community and faith-based organizations to partner with the government through both non-fiduciary and fiduciary partnerships to achieve both HHS' and the President's goals for the Faith-based and Neighborhood Partnership Initiative, which include: strengthening the role of community organizations in the economic recovery and poverty reduction; reducing unintended pregnancies and supporting maternal and child health;

promoting responsible fatherhood and healthy families; and fostering interfaith dialogue and collaboration with leaders and scholars around the world and at home.

Dated: September 19, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–22813 Filed 9–24–14; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we announce an Agency for Healthcare Research and Quality Special Emphasis Panel (SEP) meeting on ''AHRQ RFA–HS14–009, ''Evaluating AHRQ Initiative to Accelerate the Dissemination and Implementation of PCOR Finding in Primary Care (R01).'' As with other SEP meetings, this meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: October 2, 2014 (Open on October 2 from 9:30 a.m. to 9:45 a.m. and closed for the remainder of the meeting.

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the public portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or an extended period of time. Rather, they are asked to participate in particular review meetings which require their expertise.

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6).

Grant applications for the AHRQ RFA–HS14–009, ''Evaluating AHRQ Initiative to Accelerate the Dissemination and Implementation of PCOR Finding in Primary Care (R01)'' are to be reviewed and discussed at this meeting. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 16, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–22703 Filed 9–24–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we announce an Agency for Healthcare Research and Quality Special Emphasis Panel (SEP) meeting on ''AHRQ RFA HS14–008 Accelerating the Dissemination and Implementation of PCOR Findings into Primary Care Practice (R18).'' As with other SEP meetings, this meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: November 13–14, 2014 (Open on November 13 from 8 a.m. to 8:30 a.m. and closed for the remainder of the meeting).

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the public portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel (SEP) is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their expertise.

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting. The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the AHRQ RFA HS14–008, Accelerating the Dissemination and Implementation of PCOR Findings into Primary Care Practice (R18).'' are to be reviewed and discussed at this meeting. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 16, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–22702 Filed 9–24–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The scientific peer review subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting. These meetings will be closed to the public in accordance with 5 U.S.C. App. 2 section 10(d), 5 U.S.C. section 552b(c)(4), and 5 U.S.C. section 552b(c)(6).

DATES: See below for dates of meetings:

1. Healthcare Effectiveness and Outcomes Research HEOR

Date: October 8, 2014 (Open from 8 a.m. to 8:30 a.m. on October 8th and closed for remainder of the meeting).

2. Health Care Research and Training (HCRT)

Date: October 16, 2014 (Open from 8 a.m. to 8:30 a.m. on October 16th and closed for remainder of the meeting).

3. Health System and Value Research (HSVR)

Date: October 16–17, 2014 (Open from 8 a.m. to 8:30 a.m. on October 16th and closed for remainder of the meeting).

4. Healthcare Information Technology Research (HITR)

Date: October 23–24, 2014 (Open from 8 a.m. to 8:30 a.m. on October 23rd and closed for remainder of the meeting).

5. Healthcare Safety and Quality Improvement Research (HSQR)

Date: November 5–6, 2014 (Open from 8 a.m. to 8:30 a.m. on November 5th and closed for remainder of the meeting).

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: (to obtain a roster of members, agenda or minutes of the pubic portions of the meetings): Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, Telephone (301) 427–1554.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), AHRQ announces meetings of the scientific peer review groups listed above, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committees. Each subcommittee meeting will commence in open session before closing to the public for the duration of the meeting. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: September 16, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–22701 Filed 9–24–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we announce an Agency for Healthcare Research and Quality Special Emphasis Panel (SEP) meeting on ''AHRQ RFA–HS14–010, ''Disseminating and Implementing Evidence from Patient-Centered Outcomes Research in Clinical Practice Using Mobile Health Technology (R21).'' As with other SEP meetings, this meeting will commence in open session before closing to the public for the duration of the meeting.

DATES: November 20–21, 2014 (Open on November 20 from 8:00 a.m. to 8:30 a.m. and closed for the remainder of the meeting).

ADDRESSES: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, Maryland 20878.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the public portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A SEP is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct, on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or an extended period of time. Rather, they are asked to participate in particular review meetings which require their expertise.

Each SEP meeting will commence in open session before closing to the public for the duration of the meeting, in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for the AHRQ RFA–HS14–010, ''Disseminating and Implementing Evidence from Patient-Centered Outcomes Research in Clinical Practice Using Mobile Health Technology (R21)'' are to be reviewed and discussed at this meeting. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 16, 2014.

Richard Kronick,

AHRQ Director.

[FR Doc. 2014–22704 Filed 9–24–14; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–14–0765]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public 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. To request more information on the below proposed project or to obtain a copy of the information collection plan and instruments, call 404–639–7570 or send comments to Leroy A. Richardson, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. Written comments should be received within 60 days of this notice.

Proposed Project

Fellowship Management System (OMB No. 0920–0765, expires 02/28/2015)—Revision—Division of Scientific Education and Professional Development (DSEPD), Center for Surveillance, Epidemiology, and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

DSEPD requests an additional three years to continue CDC's use of the Fellowship Management System (FMS) for its electronic application, host site, and directory processes that allow individuals to apply to fellowships online, allow public health agencies to submit fellowship assignment proposals online, and track applicant and alumni information. An extension will allow applicants, public health agencies, and alumni continued use of FMS for submission of electronic data.

The mission of DSEPD is to improve health outcomes through a competent, sustainable, and empowered public health workforce. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professionals seek opportunities, through CDC fellowships, to broaden their knowledge, skills, and experience to improve the science and practice of public health. CDC fellows are assigned to state, tribal, local, and territorial public health agencies; federal government agencies, including CDC and Department of Health and Human Services' (HHS) operational divisions, such as Centers for Medicare & Medicaid Services; and to nongovernmental organizations, including academic institutions, tribal organizations, and private public health organizations.

FMS provides an efficient and effective electronic mechanism for collecting and processing fellowship application data and fellowship host site assignment proposals; selecting qualified candidates; matching selected fellowship host site assignments with applicants; maintaining a current alumni database; generating reports; and documenting the impact of fellowships on alumni careers. FMS optimizes CDC's ability to provide continuous fellowship service delivery that builds and sustains public health capacity and helps to save lives and protect people from health threats. This proposed extension allows CDC to continue to use standardized electronic tools for streamlined collection of fellowship applications and fellowship assignment proposals, in the process collecting alumni information that will be used to document the impact of public health fellowships on career paths and on the science and practice of public health.

This information collection request was established to support making contextual non-substantive changes to application and host site questions and directions to accurately reflect evolving fellowship eligibility requirements, provide clarification of existing questions, and accommodate changing needs of host organizations. Non-substantive changes of this nature will be requested with this extension to include, e.g., supporting the submission of electronic transcripts and letters of recommendation in lieu of postal delivery; refining selected questions to align with current fellowship eligibility requirements; and clarifying instructions in response to user feedback. DSEPD/CSELS will be eliminating the data collection for two fellowships that are being discontinued (the Public Health Prevention Specialist Program and the CDC Experience Applied Epidemiology Fellowship). No change in burden to individual respondents will result from these non-substantive changes.

The annual burden table has been updated to reflect the number of respondents from nonfederal fellowship applicants, public health agencies, and fellowship alumni. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Public health agency or organization	Fellowship Management System Host Site.	394	1	85/60	558
Fellowship applicants	Fellowship Management System Application.	1,961	1	40/60	1,307
Fellowship alumni*	Fellowship Management System Directory.	1,382	1	15/60	346
Total					2,211

* Some alumni are deceased or cannot be located. Response burden assumes response from an individual responding alumnus, on average, every three years (which is a likely overestimate of frequency).

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2014–22752 Filed 9–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0155]

Agency Information Collection Activities; Proposed Collection; Comment Request; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for distribution and use of Veterinary Feed Directive (VFD) drugs and animal feeds containing VFD drugs.

DATES: Submit electronic or written comments on the collection of information by November 24, 2014.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Veterinary Feed Directive—21 CFR 558; OMB Control Number 0910–0363—Extension

With the passage of the Animal Drug Availability Act, Congress enacted legislation establishing a new class of restricted feed use drugs, VFD drugs, which may be distributed without involving state pharmacy laws. Although controls on the distribution and use of VFD drugs are similar to those for prescription drugs regulated under section 503(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(f)), the implementing VFD regulation (21 CFR 558.6) was tailored to the unique circumstances relating to the distribution of medicated feeds. All distributors of medicated feed containing VFD drugs must notify FDA of their intent to distribute, and records must be maintained of the distribution of all medicated feeds containing VFD drugs. The VFD regulation ensures the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost effectively as possible.

On December 12, 2013, FDA published a proposed rule in the **Federal Register** (78 FR 75515) intended to improve the efficiency of FDA's VFD program. The provisions included in the proposed rule were based on stakeholder input received in response to solicitations for public comment, including an advance notice of proposed rulemaking on March 29, 2010 (75 FR 15387), and draft text of proposed amendments to the current VFD regulations on April 13, 2012 (77 FR 22247).

While FDA intends to finalize the VFD rulemaking in 2015, the current

information collection request supporting the program expires on December 31, 2014. At this time, the burden for this information collection remains unchanged.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
558.6(a)(3) through (a)(5)	15,000	25	375,000	0.25 (15 minutes)	93,750
558.6(d)(1)(i) through (d)(1)(iii)	300	1	300	0.25 (15 minutes)	75
558.6(d)(1)(iv)	20	1	20	0.25 (15 minutes)	5
558.6(d)(2)	1,000	5	5000	0.25 (15 minutes)	1,250
514.1(b)(9)	1	1	1	3.00	3
Total					95,083

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2 —ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
558.6(c)(1) through (c)(4)	112,500	10	1,125,000	0.0167 (1 minute)	18,788
558.6(e)(1) through (e)(4)	5,000	75	375,000	0.0167 (1 minute)	6,263
Total					25,051

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of time required for record preparation and maintenance is based on Agency communication with industry and Agency records and experience.

Dated: September 19, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22808 Filed 9–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1344]

Policy Clarification for Fluoroscopic Equipment Requirements; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Policy Clarification for Fluoroscopic Equipment Requirements.'' This draft guidance describes FDA's intent to clarify the application of certain aspects of the performance standard requirements for fluoroscopic equipment when manufacturers comply with certain International Electrotechnical Commission (IEC) standards. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 24, 2014.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Policy Clarification for Fluoroscopic Equipment Requirements'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald Miller, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4646, Silver Spring, MD 20993–0002, 301–796–3299.

SUPPLEMENTARY INFORMATION:

I. Background

The draft guidance document, ''Policy Clarification for Fluoroscopic Equipment Requirements'' was developed to describe FDA's intent to clarify the application of certain aspects of the performance standard requirements in 21 CFR 1020.32 for fluoroscopic equipment when the manufacturer has complied with certain IEC standards. FDA believes that a declaration of conformity with the applicable IEC standard and the applicable measure(s) set forth in this guidance as part of the 510(k) submission for their device will sufficiently address the concerns intended to be addressed by certain parts of the requirements of § 1020.32, such that the public health is adequately protected.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will

represent the Agency's current thinking on the policy clarification for certain fluoroscopic equipment requirements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of ''Policy Clarification for Fluoroscopic Equipment Requirements'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1806 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E are currently approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 1020 have been approved under OMB control number 0910–0025.

V. 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.*

Dated: September 19, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22806 Filed 9–24–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2014–M–0326, FDA–2013–M–1324, FDA–2013–M–1693, FDA–2014–M–0069, FDA–2014–M–0166, FDA–2014–M–0167, FDA–2014–M–0224, and FDA–2014–M–0254]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the Agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Nicole Wolanski, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1650, Silver Spring, MD 20993–0002, 301–796–6570.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with sections 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the FD&C Act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from January 1, 2014, through March 31, 2014, and includes one denial action during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2014, THROUGH MARCH 31, 2014

PMA No., Docket No.	Applicant	Trade name	Date of action
P070023, FDA–2013–M–1324	Fzio Med, Inc	Oxiplex®/SP Gel	Denied October 21, 2013.
P110016/S008, FDA–2013–M–1693	St. Jude Medical, Inc	Therapy Cool Flex Ablation Catheter	Approved December 18, 2013.
P130004, FDA–2014–M–0069	Ocular Therapeutics, Inc	ReSure® Sealant	Approved January 8, 2014.
P130021, FDA–2014–M–0166	Medtronic CoreValve LLC	Medtronic CoreValve™ System	Approved January 17, 2014.
P100040/S012, FDA–2014–M–0167	Medtronic Vascular	Valiant Thoracic Stent Graft with Captivia Delivery System.	Approved January 22, 2014.
P120005/S002, FDA–2014–M–0224	Dexcom, Inc	Dexcom G4 PLATINUM (Pediatric) Continuous Glucose Monitoring System.	Approved February 3, 2014.

TABLE 1—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM JANUARY 1, 2014, THROUGH MARCH 31, 2014—Continued

PMA No., Docket No.	Applicant	Trade name	Date of action
P090031, FDA–2014–M–0254	Anika Therapeutics, Inc	MONOVISC™ Injectable Intra-articular Device.	Approved February 25, 2014.
P130015, FDA–2013–M–0326	Roche Diagnostics Operations, Inc.	Elecsys® HBeAg Immunoassay and Elecsys® PreciControl HBeAg.	Approved March 14, 2014.

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/DeviceApprovalsandClearances/PMAApprovals/default.htm.*

Dated: September 19, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–22807 Filed 9–24–14; 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; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NICHD)

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 Thursday, July 3, 2014, Vol. 79, No. 128, page 38047–38049 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), 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.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: 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.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Sarah L. Glavin, Project Clearance Liaison, Office of Science Policy, Analysis and Communication, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, National Institutes of Health, 31 Center Drive, Room 2A18, Bethesda, Maryland 20892, or call a non-toll free number (301) 496–1877 or Email your request, including your address to *glavins@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION:

Proposed Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (NICHD), 0925–0643, Expiration Date 10/31/2014, EXTENSION, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), National Institutes of Health (NIH).

Need and Use of Information Collection: There are no changes being requested for this submission. The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide information about the NICHD's customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the NICHD and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the NICHD's services will be unavailable.

The NICHD will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections

will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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 Office of Management and Budget control number.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 4,950.

ESTIMATED ANNUALIZED BURDEN HOURS

Estimated annual reporting burden				
Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Conference/Training—Pre and Post Surveys	100	1	15/60	25
Usability Testing	100	1	30/60	50
Focus Groups	750	1	1	750
Customer Satisfaction Survey	13,500	1	15/60	3,375
In-depth Interviews or Small Discussion Group	750	1	1	750
Total	15,200			4,950

Dated: September 18, 2014.

Sarah L. Glavin,

Project Clearance Liaison, Office of Science Policy, Analysis, and Communications, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health.

[FR Doc. 2014–22867 Filed 9–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-day Comment Request; Office of Minority Health Research Coordination Research Training and Mentor Program Applications

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Winnie Martinez, Project Officer, 6707 Democracy Blvd., Bethesda, MD, 20892 or call non-toll-free number (301) 435–2988 or Email your request, including your address to: *Winnie.Martinez@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION:

Proposed Collection: Office of Minority Health Research Coordination Training and Mentor Programs Applications, 0925–NEW, Existing collection in use without OMB control number, National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), National Institutes of Health (NIH).

Need and Use of Information Collection: In 2000, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) established the Office of Minority Health Research Coordination (OMHRC) to address the burden of diseases and disorders that disproportionately impact the health of minority populations. One of the major goals of the office is to build and sustain a pipeline of researchers from underrepresented populations in the biomedical, behavioral, clinical, and social sciences, with a focus on NIDDK mission areas. The office accomplishes this goal by administering a variety of programs and initiatives to recruit high school through post-doctoral educational level individuals into OMHRC research training and mentor programs: The Short-Term Research Experience for Underrepresented Persons (STEP–UP), the Diversity Summer Research Training Program (DSRTP) for Undergraduate Students, the NIH/NMA Program on Careers in Academic Medicine and the Network of Minority Health Research Investigators (NMRI). Identification of participants to matriculate into the program and initiatives comes from applications and related forms hosted through the NIDDK Web site. The proposed information collection activity is necessary in order to determine the eligibility and quality of potential awardees for traineeship in these programs.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,989.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of form	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Short-Term Research Experience for Underrepresented Persons (STEP–UP)	2,000	1	45/60	1,500
STEP–UP Mentor Training Form (SMTF)	200	1	15/60	50
Reference Recommendation form STEP–UP, DSRTP	6000	1	10/60	1000
Survey—STEP–UP Feedback Form	200	1	30/60	100
Survey—Mentor Feedback Form	200	1	15/60	50
Diversity Summer Research Training Program (DSRTP)	100	1	45/60	75
Survey—DSRTP Feedback Form	20	1	30/60	10
Network of Minority Health Research Investigators (NMRI) Criteria Form	200	1	15/60	50
Survey—NMRI Feedback Form	1000	1	30/60	500
Survey—NMRI Mentor Form	1000	1	30/60	500
NMRI Questionnaire	200	1	20/60	67
NIH/NMA Fellows Program on Careers in Academic Medicine (NIH/NMA)	200	1	20/60	67
Survey—NIH/NMA Feedback Form	40	1	30/60	20

Dated: September 5, 2014.

Frank Holloman,

NIDDK Project Clearance Liaison, Office of Management Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, NIH.

[FR Doc. 2014–22869 Filed 9–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR Part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Miniature Serial Microtome for Block-Face Imaging

Description of Technology: A microtome device is used in a variety of microcopy techniques to remove very thin (e.g., in the tens of nanometers range) portions from the top of a sample between successive images. This technology discloses a design for a microtome device that offers several

unique features and advantages over commercially available microtomes. A prototype of the microtome has been built and demonstrated to work with a serial block-face scanning electron microscopy in order to serially collect ultrathin sections from plastic embedded biological tissues, specifically from brain tissues. This microtome design allows for a sample to be cut at a location removed from the electron beam axis, thus reducing interference from debris and allowing imaging at a greater range of working distances. This microtome device is lightweight and easy to install utilizing the built-in stage of existing microscopes such that a sample's position and orientation can be controlled along three-axes of rectilinear translation and two axes of rotation. This microtome design utilizes a diamond blade coupled to both the base plate and an actuator to control the movement of the blade in a direction perpendicular to the exposed surface of the pedestal, while producing an output signal that indicates the blade location with respect to the base plate. Advantageously, this allows for a stage coupled pedestal to be moved accurately from an imaging location on the beam axis to a cutting location off the beam axis.

Potential Commercial Applications:

Can be used in a variety of microscopy techniques:

- Scanning electron microscopy.
- light-based (optical, fluorescence) microscopy.
- cathodoluminescence microscopy.

Can be used to study any of various types of sample materials:

- tissue microscopy.
- brain research.
- tissue sectioning.
- imaging.

Competitive Advantages:

- Is compatible with multiple microscopy systems.
- incorporates a feedback sensor to monitor and optimize cutting thickness/forces.
- can cut reproducible sections as thin as 25 nanometers.
- performs cutting off-axis to prevent contamination.
- mounts rapidly onto an existing SEM stage and does not require a custom vacuum chamber door.
- uses the full range of an existing SEM stage for positioning samples.
- incorporates a stage translation that is rectilinear.
- utilizes a pivot flexure bearing for frictionless rotation during cutting.
- cleans knife edge after each cut.

Development Stage:

- In vitro data available.
- Prototype.

Inventor: Kevin Briggman (NINDS).

Intellectual Property: HHS Reference No. E–121–2014/0—US Provisional Application No. 61/991,929 filed 12 May 2014.

Licensing Contact: Michael Shmilovich, Esq., CLP; 301–435–5019; *shmilovm@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Neurological Disorders and Stroke is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize the microtome device. For collaboration opportunities, please contact Melissa Maderia, Ph.D., M.B.A. at *maderiam@mail.nih.gov* or 240–276–5533.

Chimeric Receptors Targeting CD–19

Description of Technology: Available for licensing are compositions and methods for targeting and destroying CD19-expressing cancers, especially B-cell malignancies such as lymphomas and leukemias.

The antibody used in this technology is called anti-CD19. CD19 antibodies have been used to treat people with lymphoma and Leukemia. This technology has changed the anti-CD19 antibody so that instead of floating free in the blood, its CD19-binding domain is now joined to a T cell. When an antibody is joined to a T cell in this way it is called a chimeric receptor. Once localized at a CD19-expressing cancer cell, the T-cell portion of the chimeric receptor stimulates an immune response to destroy the cancer cell.

Potential Commercial Applications: Therapeutic agents to treat or prevent CD19-expressing cancers, including B-cell malignancies.

Competitive Advantages: Reduced toxicity and immunogenicity in humans of previous anti-CD19 chimeric receptors containing mouse sequences.

Development Stage:

- Early-stage.
- In vitro data available.

Inventor: James Kochenderfer (NCI).

Intellectual Property: HHS Reference No. E–042–2014/0—US Provisional Application No. 62/006,313 filed 02 June 2014.

Licensing Contact: Patrick McCue, Ph.D.; 301–435–5560; *mccuepat@od.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize chimeric antigen receptors targeting CD19. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Use of Small Molecules To Treat PARP1-Deficient Cancers

Description of Technology: Scientists at the National Human Genome Research Institute and the National Center for Advancing Translational Sciences have identified a class of small molecules synergistically working with known Poly (ADP-ribose) polymerase 1 (PARP–1)-inhibitors. These new small molecules can each effectively kill specific PARP–1 defective tumors cells and show synergy with known PARP1 inhibitors (PARP–1i) in killing tumor cells.

PARP1, a highly conserved DNA binding protein, is essential for repairing DNA damage and plays important roles in multiple DNA damage response pathways. Many cancer therapies utilize DNA-damaging agents to kill tumor cells, which often triggers DNA repair (e.g., by activating PARP1 pathways). Additionally, a variety of cancer types may also carry PARP1 mutation(s), such as glioma, breast cancer, and prostate cancer. Such mutations render the cancer cells resistant to these therapies. The key feature of these PARP–1i sensitizing molecules can be applied either as useful sensitizers in combinatorial treatment to increase the efficacy of DNA-damaging agents in cancer therapy, or selective targeting of cancer cells with specific DNA PARP–1 defects; thereby allowing for the development of new therapies.

Potential Commercial Applications: Therapies for cancers associated with PARP–1 defects.

Competitive Advantages:

- Utilizes proven small-molecule technology.
- Specificity of mode of action may reduce potential side-effects.
- Novel mode of action may limit market competition.
- Combinatorial therapies of cancers with PARP–1 inhibitors.

Development Stage: In vitro data available.

Inventors: Kyungjae Myung (NHGRI), et al.

Publications:

1. Papeo G, et al. PARP inhibitors in cancer therapy: an update. Expert Opin Ther Pat. 2013 Apr;23(4):503–14. [PMID 23379721].

2. Chiarugi A. A snapshot of chemoresistance to PARP inhibitors. Trends Pharmacol Sci. 2012 Jan;33(1):42–8. [PMID 22055391].

3. Yu H, et al. Association between PARP–1 V762A polymorphism and cancer susceptibility: a meta-analysis. Genet Epidemiol. 2012 Jan;36(1):56–65. [PMID 22127734].

Intellectual Property:

- HHS Reference No. E–039–2014/0—U.S. Patent Application No. 61/930,291 filed 22 Jan 2014.
- HHS Reference No. E–039–2014/1—U.S. Patent Application No. 61/988,502 filed 05 May 2014.

Licensing Contact: Eggerton Campbell, Ph.D.; 301–435–5282; *eggerton.campbell@nih.gov.*

Collaborative Research Opportunity: The National Human Genome Research Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize small molecules to treat PARP1-deficient cancer. For collaboration opportunities, please contact Anna Solowiej, Ph.D., J.D. at *solowieja@mail.nih.gov.*

Dated: September 22, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–22763 Filed 9–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Healthy Menopause.

Date: October 31, 2014.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Isis S. Mikhail, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *MIKHAILI@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: September 19, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–22762 Filed 9–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, With Changes, of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information collection for review; Form No. I–901; Fee Remittance for Certain F, J and M Non-immigrants; OMB Control No. 1653–0034.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty day until November 24, 2014.

Written comments and suggestions regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Chief Information Office, Forms Management Office, U.S. Immigrations and Customs Enforcement, 801 I Street NW., Mailstop 5800, Washington, DC 20536–5800.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with changes, of a currently approved information collection.

(2) *Title of the Form/Collection:* Fee Remittance for Certain F, J and M Non-immigrants.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–901, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Public Law 104–208, Subtitle D, Section 641 directs the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended or in a program of study at any other DHS approved academic or language-training institution, to include approved private elementary and secondary schools and public secondary schools, and from approved exchange visitor program sponsors designated by the Department of State (DOS). It also authorized a fee, not to exceed $200, to be collected from these students and exchange visitors to support this information collection program. DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 805,786 responses at 19 minutes (.32 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 257,852 annual burden hours.

Dated: September 22, 2014

Scott Elmore,

Program Manager, Forms Management Office, Office of the Chief Information Officer, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2014–22829 Filed 9–24–14; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000 DNINR0000.000000 DX61104; BAC 4334–12]

Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Meeting Notice.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: October 16, 2014, at 9:30 a.m.

ADDRESSES: First floor conference room, Glenn Olds Hall, 4210 University Drive, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Johnson, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The *Exxon Valdez* Oil Spill Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV.

The agenda will include a discussion about the Annual Work Plan and an opportunity for public comments. The final agenda and materials for the meeting will be posted on the *Exxon Valdez* Oil Spill Trustee Council Web site at *www.evostc.state.ak.us.* All *Exxon Valdez* Oil Spill Public Advisory Committee meetings are open to the public.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2014–22844 Filed 9–24–14; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–PWRO–15903; PX.P0131800B.00.1]

Record of Decision for Tuolumne River Comprehensive Management Plan, Yosemite National Park, California

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the Tuolumne River Comprehensive Management Plan. Approval of the Tuolumne River Comprehensive Management Plan concludes an extensive conservation planning and environmental impact analysis effort that began during 2005. The requisite no-action ''wait period'' was initiated on March 14, 2014, with the Environmental Protection Agency's **Federal Register** announcement of the filing of the Final EIS.

ADDRESSES: Those wishing to review the Record of Decision may obtain a copy by contacting the Superintendent, Attn: Division of Project Management, Yosemite National Park, P.O. Box 700–W, 5083 Foresta Road, El Portal, CA 95318 or via telephone request at (209) 379–1202.

FOR FURTHER INFORMATION CONTACT: Kathleen Morse, Chief of Planning, (209) 379–1270.

SUPPLEMENTARY INFORMATION: The National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement for the Tuolumne River Comprehensive Management Plan. This process was conducted pursuant § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2). The National Park Service has selected ''agency preferred'' Alternative 4 (with minor modifications incorporated in regards to continued operations of the Glen Aulin High Sierra Camp) for implementation as the approved Tuolumne River Comprehensive Management Plan.

Under the selected alternative, Tuolumne Meadows will retain its rustic character, the scenic driving experience through the corridor area will be enhanced, and limited facilities and services will be provided. There will be a comprehensive restoration program, including a rigorous program of monitoring and adaptive management. The Tuolumne Meadows campground will be completely rehabilitated. Approximately 4,700 people at one time will be accommodated in the entire Tuolumne River corridor during periods of peak visitation.

Selected key components of the approved plan are as follows: (1) Restore 171 acres of meadow and riparian habitat, including removing concessioner housing, 21 campground sites, and other structures that are too close to the river; (2) mitigate effects of stock grazing in Lyell Canyon by establishing fixed campsites with approved access routes and implement a grazing capacity based on establishing range-readiness criteria for stock grazing; (3) provide for a new visitor contact station adjacent to Tioga Road across from Parsons Memorial Lodge, including parking for day use hikers (the old contact station will be converted to office space and its appurtenant parking will be re-purposed for use by hikers to Cathedral Lakes); (4) continue traditional recreational activities such as hiking, climbing, and artistic pursuits, and allow whitewater boaters to float new river reaches through the Grand Canyon of the Tuolumne; and (5) increase shuttle frequency within Tuolumne Meadows during periods of peak use, and provide additional transit runs connecting to Yosemite Valley and Mammoth Lakes.

Four other alternatives were evaluated, the full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures were identified.

Dated: September 11, 2014.

Christine S. Lehnertz,

Regional Director, Pacific West Region.

[FR Doc. 2014–22841 Filed 9–24–14; 8:45 am]

BILLING CODE 4312–FF–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–887]

Certain Crawler Cranes and Components Thereof; Commission's Determination To Review in Part a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding

administrative law judge (''ALJ'') on July 11, 2014, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 17, 2013, based on a complaint filed by Manitowoc Cranes, LLC (''Manitowoc'') of Manitowoc, Wisconsin. 78 *FR* 42800–01 (July 17, 2013). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), by reason of infringement of U.S. Patent Nos. 7,546,928 (''the '928 patent'') and 7,967,158 (''the '158 patent'') (collectively ''the asserted patents''), and 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 complaint further alleges violations of section 337 by reason of trade secret misappropriation, the threat or effect of which is to destroy or substantially injure an industry in the United States or to prevent the establishment of such an industry under section 337(a)(1)(A). The Commission's notice of investigation named Sany Heavy Industry Co., Ltd. of Changsha, China, and Sany America, Inc. of Peachtree City, Georgia (collectively ''Sany'') as respondents. The Office of Unfair Import Investigations (''OUII'') was also named as a party.

On July 11, 2014, the ALJ issued his final ID finding a violation of section 337 with respect to claims 1, 2, 5, 8, and 23–26 of the '928 patent and misappropriation of Trade Secret Nos. 1, 6, 14, and 15. The ALJ further found no violation of section 337 with respect to claims 6, 10, and 11 of the '928 patent, claim 1 of the '158 patent, and Trade Secret Nos. 3 and 4.

On July 28, 2014, OUII, Manitowoc, and Sany each filed petitions for review. On August 5, 2014, the parties replied to the respective petitions for review. The Commission has determined to review the ALJ's findings with respect to: (1) Importation of the accused products; (2) infringement of the asserted patents; (3) estoppel; (4) the technical prong of the domestic industry requirement; and (5) the asserted trade secrets.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Please provide any legal support for the proposition that ''sale for importation'' requires that the article be constructed and ready for use. In addressing this question, please discuss whether the ''original'' UltraLift package was ever constructed and whether the ''original'' UltraLift package was modified to create the ''redesigned'' UltraLift package.

2. Are separate agreements or acts necessary to find that the original UltraLift package and redesigned UltraLift package were both sold for importation? Please discuss the facts surrounding the individual sales for importation of both the original and redesigned UltraLift packages, including the parties involved in the sale, when the sale occurred, where the sale occurred, and what the parties agreed was sold for importation.

3. Can there be a violation of section 337 when there is a ''sale for importation,'' with no later act of importation? Can there be a ''sale for importation'' of ''articles that infringe'' a patent claim, under section 337 (a)(1)(B)(i), without proof of direct infringement in the United States? *See Certain Electronic Devices with Image Processing Systems, Components Thereof, and Associated Software,* Inv. No. 337–TA–724, Comm'n Op. (Dec. 1, 2011). Please address this question in the context of both method and apparatus claims.

4. Are the holdings, for example, in *Certain Apparatus for the Continuous Production of Copper Rod,* Inv. No. 337–TA–89, Comm'n Op. (April 1981), *Enercon GmbH* v. *Int'l Trade Comm'n,* 151 F. 3d 1376 (Fed. Cir. 1998), and *Lang* v. *Pacific Marine,* 895 F.2d 761 (Fed. Cir. 1990), still viable after the Supreme Court's decision in *Limelight Networks, Inc.* v. *Akamai Techs., Inc.,* 134 S.Ct. 2111 (2014), particularly with respect to direct infringement as a necessary predicate for indirect infringement?

5. Discuss whether the accused SCC8500 crane with the original UltraLift package directly infringes asserted apparatus claims 23–26 of the '928 patent, including whether crane operation is required for a finding of infringement. Please address each limitation of the asserted apparatus claims.

6. What evidence in the record, if any, shows that the accused SCC8500 crane was used to perform each step of the asserted method claims? In what country, if any, was each step of the asserted method claims performed?

7. What evidence in the record, if any, supports finding that there are no non-infringing uses of the accused products, for asserted claims 6, 10, and 11 of the '928 patent and claim 1 of the '158 patent, when the accused products are operated?

8. Did Sany waive its argument that Trade Secret Nos. 1 and 6 are not protectable as trade secrets based on email CX–0116C?

9. Under what circumstances does a third party have a duty to refrain from disclosing a trade secret? What are the consequences of a trade secret being disseminated by a third party? How extensive must the disclosure of a trade secret by a 3rd party be in order to prevent or destroy trade secret protection? Please discuss the facts of this investigation and the relevant case law in answering these questions.

10. Are any of the asserted trade secrets disclosed in U.S. Patent Application No. 2011/0031202 (''the '202 patent application'') published in February of 2011? If so, is Manitowoc precluded from obtaining relief on the trade secrets disclosed in the '202 patent application?

11. Please discuss the relevant case law that identifies how much specificity is required to define the ''metes and bounds'' of an asserted trade secret, focusing in particular on asserted Trade Secret No. 3. Is Manitowoc required to prove trade secret protection for every possible combination of elements of asserted Trade Secret No. 3?

12. Discuss whether asserted Trade Secret No. 4 can be found to be independently protectable as a trade secret if Trade Secret No. 3 does not qualify for trade secret protection.

13. Discuss whether Sany misappropriated Trade Secret No. 3 and Trade Secret No. 4.

14. Discuss whether Sany can be held liable for misappropriation of the asserted trade secrets where Mr. Lanning, or other former Manitowoc employees, disclosed Manitowoc confidential information to Sany within the scope of their employment. Please address these issues within the context of the theories of respondeat superior and agency law.

15. Did Sany improperly acquire the asserted trade secrets from former Manitowoc employees?

16. What evidence is there that Sany ''used'' the elements of Trade Secret No. 15 to assist or accelerate Sany's research and development?

17. Please discuss with respect to each trade secret allegation the appropriate length of the remedy the Commission may impose if the Commission finds a violation of section 337 for misappropriation of the asserted trade secrets.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or

more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration.

Complainant is also requested to state the date that the '928 and '158 patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, October 1, 2014. Reply submissions must be filed no later than the close of business on Wednesday, October 8, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. The page limit for the parties' initial submissions on the questions posed by the Commission is 125 pages. The parties reply submissions, if any, are limited to 75 pages.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–887'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 19, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–22775 Filed 9–24–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2014 Senior Executive Service (SES) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES performance appraisals, bonus recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Terence L. Cook, Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Assistant Attorney General for Administration.

2014 FEDERAL REGISTER

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PHILLIPS, CHANNING	COUNSELOR TO THE ATTORNEY GENERAL.

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GILBERT, CURTIS	DEPUTY ASSISTANT DIRECTOR, INDUSTRY OPERATIONS.

2014 FEDERAL REGISTER—Continued

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TRACY, KATHRYN	SENIOR DEPUTY ASSISTANT DIRECTOR,RE-ENTRY SERVICES DIVISION.

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HARTNETT, KATHLEEN	DEPUTY ASSISTANT ATTORNEY GENERAL.
FRESCO, LEON	DEPUTY ASSISTANT ATTORNEY GENERAL.

2014 FEDERAL REGISTER—Continued

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COPPOLINO, ANTHONY J	DEPUTY BRANCH DIRECTOR.
DAVIDSON, JEANNE E	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
SNEE, BRYANT G	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
FARGO, JOHN J	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
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HILL, EVE LYNNE	DEPUTY ASSISTANT ATTORNEY GENERAL.
KARLAN, PAMELA	DEPUTY ASSISTANT ATTORNEY GENERAL.
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2014 FEDERAL REGISTER—Continued

Name	Position title
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CARWILE, P KEVIN	CHIEF, CAPITAL CASE UNIT.
LYNCH JR., JOHN T	CHIEF, COMPUTER CRIME, AND INTELLECTUAL PROPERTY SECTION.
DOWNING, RICHARD W	DEPUTY CHIEF, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
WYDERKO, JOSEPH	DEPUTY CHIEF, APPELLATE SECTION.
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RAABE, WAYNE C	DEPUTY CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
DAY, M. KENDALL	DEPUTY CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
OLMSTED, MICHAEL	SENIOR JUSTICE FOR THE EUROPEAN UNION AND INTERNATIONAL CRIMINAL MATTERS.
RODRIGUEZ, MARY D	DEPUTY DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
ROSENBAUM, ELI M	DIRECTOR, HUMAN RIGHTS ENFORCEMENT STRATEGY AND POLICY.
SMITH, JOHN "JACK" L	CHIEF, PUBLIC INTEGRITY SECTION.
STEMLER, PATTY MERKAMP	CHIEF, APPELLATE SECTION.
TREVILLIAN IV, ROBERT C	DIRECTOR, INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING ASSISTANCE PROGRAM.
TRUSTY, JAMES	CHIEF, ORGANIZED CRIME AND GANG SECTION.
JAFFE, DAVID	DEPUTY CHIEF, ORGANIZED CRIME AND GANG SECTION.
KNOX, JEFFREY H	CHIEF, FRAUD SECTION.
GOODMAN, NINA	SENIOR COUNSEL FOR APPEALS.
ROTH, MONIQUE P	DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
WARLOW, MARY ELLEN	DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
WEBB, JANET D	DEPUTY DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
WROBLEWSKI, JONATHAN J	DIRECTOR, OFFICE OF POLICY AND LEGISLATION.
WYATT, ARTHUR G	CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
EHRENSTAMM, FAYE	DIRECTOR, OPDAT.
Environmental and Natural Resources Division—ENRD	
HIRSCH, SAMUEL	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
WILLIAMS, JEAN E	DEPUTY ASSISTANT ATTORNEY GENERAL (ENVIRONMENTAL CRIMES AND WILDLIFE AND MARINE RESOURCES SECTIONS).
GELBER, BRUCE S	DEPUTY ASSISTANT ATTORNEY GENERAL.
ALEXANDER, S CRAIG	CHIEF, INDIAN RESOURCES SECTION.
BARSKY, SETH	CHIEF, WILDLIFE AND MARINE RESOURCES.
COLLIER, ANDREW	EXECUTIVE OFFICER.
FERGUSON, CYNTHIA	SENIOR LITIGATOR, ENVIRONMENTAL JUSTICE.
HIMMELCHOCH, SARAH	SENIOR ATTORNEY, E–DISCOVERY COORDINATOR.
FISHEROW, W BENJAMIN	CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
MARIANI, THOMAS	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
GELDERMANN, EDWARD S	SENIOR LITIGATION COUNSEL, NATURAL RESOURCES SECTION.
GETTE, JAMES	DEPUTY CHIEF, NATURAL RESOURCES SECTION.
GOLDFRANK, ANDREW M	CHIEF, LAND ACQUISITION SECTION.
GRISHAW, LETITIA J	CHIEF, ENVIRONMENTAL DEFENSE SECTION.
HOANG, ANTHONY P	SENIOR LITIGATION COUNSEL, NATURAL RESOURCES.
KILBOURNE, JAMES C	CHIEF, APPELLATE SECTION.
MAHAN, ELLEN M	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
DOUGLAS, NATHANIEL	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
MERGEN, ANDREW	DEPUTY CHIEF, APPELLATE SECTION.
HARRIS, DEBORAH	CHIEF, ENVIRONMENTAL CRIMES SECTION.
RUSSELL, LISA L	CHIEF, NATURAL RESOURCES SECTION.
STEWART, HOWARD P	SENIOR LITIGATION COUNSEL.
TENENBAUM, ALAN S	SENIOR LITIGATION COUNSEL, ENVIRONMENTAL ENFORCEMENT.
VADEN, CHRISTOPHER S	DEPUTY CHIEF, ENVIRONMENTAL DEFENSE SECTION.
WARDZINSKI, KAREN M	CHIEF, LAW AND POLICY SECTION.

2014 FEDERAL REGISTER—Continued

Name	Position title
Executive Office for Immigration Review—EOIR	
OSUNA, JUAN P	DIRECTOR.
KOCUR, ANA M	DEPUTY DIRECTOR.
O'LEARY, BRIAN M	CHIEF IMMIGRATION JUDGE.
MCGOINGS, MICHAEL	DEPUTY CHIEF IMMIGRATION JUDGE.
SCHMIDT, PAUL W	SENIOR IMMIGRATION JUDGE.
NEAL, DAVID	CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
ADKINS-BLANCH, CHARLES K	VICE CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
ROSENBLUM, JEFFREY A	GENERAL COUNSEL.
ESPENOZA, CECELIA MARIE	SENIOR ASSOCIATE GENERAL COUNSEL.
STUTMAN, ROBIN M	CHIEF ADMINISTRATIVE HEARING OFFICER.
JORDAN, WYEVETRA	ASSISTANT DIRECTOR FOR ADMINISTRATION.
COLE, PATRICIA A	ATTORNEY EXAMINER.
CREPPY, MICHAEL	ATTORNEY EXAMINER.
MANN, ANA	ATTORNEY EXAMINER.
GRANT, EDWARD R	ATTORNEY EXAMINER.
GREER, ANNE J	ATTORNEY EXAMINER.
GUENDELSBERGER, JOHN W	ATTORNEY EXAMINER.
HOLMES, DAVID B	ATTORNEY EXAMINER.
MALPHRUS, GARRY D	ATTORNEY EXAMINER.
MILLER, NEIL P	ATTORNEY EXAMINER.
MULLANE, HUGH G	ATTORNEY EXAMINER.
PAULEY, ROGER ANDREW	ATTORNEY EXAMINER.
WENDTLAND, LINDA S	ATTORNEY EXAMINER.
Executive Office for Organized Crime Drug Enforcement Task Forces—OCDETF	
PADDEN, THOMAS W	DEPUTY DIRECTOR, OCDETF.
Executive Office for U.S. Attorneys—EOUSA	
WILKINSON, ROBERT M	DIRECTOR.
BELL, SUZANNE L	DEPUTY DIRECTOR.
FLESHMAN, JAMES MARK	CHIEF INFORMATION OFFICER.
CHANDLER, CAMERON G	ASSOCIATE DIRECTOR, OFFICE OF LEGAL EDUCATION.
GIBSON, WAYNE	CHIEF OF PLANNING, EVALUATION AND PERFORMANCE.
MACKLIN, JAMES	GENERAL COUNSEL.
SMITH, DAVID L	COUNSEL FOR LEGAL INITIATIVES.
SUDDES, PAUL	CHIEF FINANCIAL OFFICER.
VILLEGAS, DANIEL A	COUNSEL, LEGAL PROGAMS AND POLICY.
WONG, NORMAN Y	DEPUTY DIRECTOR AND COUNSEL TO THE DIRECTOR.
FLINN, SHAWN	CHIEF HUMAN RESOURCES OFFICER.
Executive Office for U.S. Trustees—EOUST	
WHITE III, CLIFFORD J	DIRECTOR.
ELLIOTT, RAMONA D	DEPUTY DIRECTOR GENERAL COUNSEL.
Justice Management Division—JMD	
LOFTHUS, LEE J	ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION.
SANTANGELO, MARI BARR	DEPUTY ASSISTANT ATTORNEY GENERAL FOR HUMAN RESOURCES AND ADMINISTRATION (CHCO).
ALLEN, MICHAEL H	DEPUTY ASSISTANT ATTORNEY GENERAL FOR POLICY, MANAGEMENT, AND PLANNING, AND CHIEF OF STAFF.
LAURIA-SULLENS, JOLENE A	DEPUTY ASSISTANT ATTORNEY GENERAL/CONTROLLER.
KLIMAVICZ, JOSEPH F	DEPUTY ASSISTANT ATTORNEY GENERAL FOR INFORMATION RESOURCES MANAGEMENT AND CHIEF INFORMATION OFFICER.
GARY, ARTHUR	GENERAL COUNSEL.
ALVAREZ, CHRISTOPHER C	DEPUTY DIRECTOR (AUDITING), FINANCE STAFF.
ATSATT, MARILYNN B	DEPUTY DIRECTOR, BUDGET STAFF, PROGRAMS AND PERFORMANCE.
BEASLEY, ROGER	DIRECTOR, OPERATIONS SERVICES STAFF.
DEELEY, KEVIN	DEPUTY CHIEF INFORMATION OFFICER.
DUNLAP, JAMES L	DIRECTOR, SECURITY AND EMERGENCY PLANNING STAFF.
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MORGAN, MELINDA B	DIRECTOR, FINANCE STAFF.
MURRAY, JOHN W	DIRECTOR, ENTERPRISE SOLUTIONS STAFF.
CHANDLER, RICHARD	DIRECTOR, IT POLICY AND PLANNING STAFF.
COOK, TERENCE L	DIRECTOR, HUMAN RESOURCES.
NORRIS, J TREVOR	DEPUTY DIRECTOR, HUMAN RESOURCES.
DAUPHIN, DENNIS	DIRECTOR, DEBT COLLECTION MANAGEMENT STAFF.
OLDS, CANDACE A	DIRECTOR, ASSET FORFEITURE MANAGEMENT STAFF.

2014 FEDERAL REGISTER—Continued

Name	Position title
FUNSTON, ROBIN S	DIRECTOR, BUDGET STAFF.
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OLSON, ERIC R	DEPUTY, CHIEF INFORMATION OFFICER FOR E–GOVERNMENT SERVICES STAFF.
ROGERS, MELINDA	DIRECTOR, INFORMATION TECHNOLOGY SERVICES STAFF.
RODGERS, JANICE M	DIRECTOR, DEPARTMENTAL ETHICS OFFICE.
TOSCANO JR., RICHARD A	DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY STAFF.
SNELL, R SCOTT	DIRECTOR, FACILITIES AND ADMINISTRATIVE SERVICES STAFF.
National Security Division—NSD	
MCCORD, MARY	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL AND CHIEF OF STAFF.
WIEGMANN, JOHN B	DEPUTY ASSISTANT ATTORNEY GENERAL, OFFICE OF LAW AND POLICY.
EVANS, STUART	DEPUTY ASSISTANT ATTORNEY GENERAL.
TOSCAS, GEORGE Z	DEPUTY ASSISTANT ATTORNEY GENERAL (COUNTERESPIONAGE–COUNTER-TERRORISM).
BRADLEY, MARK A	DIRECTOR FOIA AND DECLASSIFICATION PROGRAM.
DUNNE, STEVEN M	CHIEF, APPELLATE UNIT.
EVANS, STUART	DEPUTY CHIEF, OPERATIONS SECTION.
KEEGAN, MICHAEL	DEPUTY CHIEF, COUNTERTERRORISM SECTION.
KENNEDY, J LIONEL	SPECIAL COUNSEL FOR NATIONAL SECURITY.
MULLANEY, MICHAEL J	CHIEF, COUNTERTERRORISM SECTION.
O'CONNOR, KEVIN	CHIEF, OVERSIGHT SECTION.
SANZ–REXACH, GABRIEL	CHIEF, OPERATIONS SECTION.
JENKINS, MARK	EXECUTIVE OFFICER.
HARDEE, CHRISTOPHER	CHIEF COUNSEL.
WALSH, JAMES D	SENIOR COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL FOR NA-TIONAL SECURITY.
SINGH, ANITA	CHIEF OF STAFF AND COUNSELOR.
Office of Community Oriented Policing Services—COPS	
DAVIS, RONALD L	DIRECTOR.
EDERHEIMER, JOSHUA A	PRINCIPAL DEPUTY DIRECTOR.
Office of Information Policy—OIP	
PUSTAY, MELANIE ANN	DIRECTOR.
Office of the Inspector General—OIG	
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BEAUDET, RAYMOND J	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
BLIER, WILLIAM M	GENERAL COUNSEL.
DORSETT, GEORGE L	ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS.
JOHNSON, ERIC A	DEPUTY ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS.
FORTINE OCHOA, CAROL	ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
MALMSTROM, JASON	DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT.
PETERS, GREGORY T	ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT AND PLANNING.
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STORCH, ROBERT	COUNSELOR TO THE INSPECTOR GENERAL.
PELLETIER, NINA S	ASSISTANT INSPECTOR GENERAL FOR EVALUATION AND INSPECTIONS.
Office of Justice Programs—OJP	
LEARY, MARY LOU	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
MCGARRY, BETH	CHIEF OF STAFF AND SENIOR COUNSEL.
BURCH II, JAMES H	DEPUTY ASSISTANT ATTORNEY GENERAL OPERATIONS MANAGEMENT.
AYERS, NANCY LYNN	DEPUTY ADMINISTRATOR FOR POLICY, OJJDP.
ROBERTS, MARILYN M	DEPUTY DIRECTOR, OFFICE FOR VICTIMS OF CRIME.
GARRY, EILEEN M	DEPUTY DIRECTOR FOR PLANNING, BUREAU OF JUSTICE ASSISTANCE.
TRAUTMAN, TRACEY	DEPUTY DIRECTOR FOR PROGRAMS, BUREAU OF JUSTICE ASSISTANCE.
FEUCHT, THOMAS E	EXECUTIVE SCIENCE ADVISOR, NATIONAL INSTITUTE OF JUSTICE.
HENNEBERG, MAUREEN A	DIRECTOR, OFFICE OF AUDIT, ASSESSMENT, AND MANAGEMENT.
MADAN, RAFAEL A	GENERAL COUNSEL.
MAHONEY, KRISTEN	DEPUTY DIRECTOR, POLICY AND MANAGEMENT, BUREAU OF JUSTICE AS-SISTANCE.
MERKLE, PHILLIP	DIRECTOR, OFFICE OF ADMINISTRATION.
JONES, CHYRL	DEPUTY ADMINISTRATOR FOR PROGRAMS, OJJDP.
SABOL, WILLIAM	DEPUTY DIRECTOR, BUREAU OF JUSTICE STATISTICS.
BENDA, BONNIE LEIGH	CHIEF FINANCIAL OFFICER.
MARTIN, RALPH	DEPUTY CHIEF FINANCIAL OFFICER.

2014 FEDERAL REGISTER—Continued

Name	Position title
BECK, ALLEN J	SENIOR STATISTICIAN.
Office of Legal Counsel—OLC	
THOMPSON, KARL	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
KOFFSKY, DANIEL L	DEPUTY ASSISTANT ATTORNEY GENERAL.
BIES, JOHN	DEPUTY ASSISTANT ATTORNEY GENERAL.
KRUGER, LEONDRA	DEPUTY ASSISTANT ATTORNEY GENERAL.
COLBORN, PAUL P	SPECIAL COUNSEL.
HART, ROSEMARY A	SPECIAL COUNSEL.
SINGDAHLSEN, JEFFREY P	SENIOR COUNSEL.
Office of Legal Policy—OLP	
TYRANGIEL, ELANA	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
KRULIC, ALEXANDER	DEPUTY ASSISTANT ATTORNEY GENERAL.
JONES, KEVIN ROBERT	DEPUTY ASSISTANT ATTORNEY GENERAL.
THIEMANN, ROBYN L	DEPUTY ASSISTANT ATTORNEY GENERAL.
ZUBRENSKY, MICHAEL	DEPUTY ASSISTANT ATTORNEY GENERAL.
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JACOBS, JOANNA	SENIOR COUNSEL FOR ALTERNATIVE DISPUTE RESOLUTION.
Office of Legislative Affairs—OLA	
WILLIAMS, ELLIOT	DEPUTY ASSISTANT ATTORNEY GENERAL.
BURTON, M FAITH	SPECIAL COUNSEL.
Office of Professional Responsibility—OPR	
ASHTON, ROBIN	COUNSEL FOR PROFESSIONAL RESPONSIBILITY.
WEINSHEIMER, G BRADLEY	DEPUTY COUNSEL ON PROFESSIONAL RESPONSIBILITY.
BIRNEY, WILLIAM	SENIOR ASSOCIATE COUNSEL.
Office of Public Affairs—PAO	
FALLON, BRIAN	DIRECTOR.
Office of Tribal Justice—OTJ	
TOULOU, TRACY S	DIRECTOR, OFFICE OF TRIBAL JUSTICE.
Office on Violence Against Women—OVW	
HANSON, BEATRICE	PRINCIPAL DEPUTY DIRECTOR.
Tax Division—TAX	
HUBBERT, DAVID A	DEPUTY ASSISTANT ATTORNEY GENERAL.
CIMINO, RONALD ALLEN	DEPUTY ASSISTANT ATTORNEY GENERAL.
ASHFORD, TAMARA	DEPUTY ASSISTANT ATTORNEY GENERAL.
BRUFFY, ROBERT	EXECUTIVE OFFICER.
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CIHLAR, FRANK P	CHIEF, CRIMINAL APPEALS AND TAX ENFORCEMENT POLICY SECTION.
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PINCUS, DAVID	CHIEF, COURT OF FEDERAL CLAIMS SECTION.
HAGLEY, JUDITH	SENIOR TRIAL ATTORNEY.
HARTT III, GROVER	SENIOR TRIAL ATTORNEY.
CLARKE, RUSSELL	CHIEF, CIVIL TRIAL SECTION, CENTRAL REGION.
MELAND, DEBORAH	CHIEF, CIVIL TRIAL SECTION, EASTERN REGION.
HYTKEN, LOUISE P	CHIEF, CIVIL TRIAL SECTION, SOUTHWESTERN REGION.
JOHNSON, CORY	SENIOR TRIAL ATTORNEY.
KEARNS, MICHAEL J	CHIEF, CIVIL TRIAL SECTION, SOUTHERN REGION.
LINDQUIST III, JOHN A	SENIOR TRIAL ATTORNEY.
REID, ANN C	CHIEF, OFFICE OF REVIEW.
MULLARKEY, DANIEL P	CHIEF, CIVIL TRIAL SECTION, NORTHERN REGION.
PAGUNI, ROSEMARY E	CHIEF, CRIMINAL ENFORCEMENT SECTION, NORTHERN REGION.
ROTHENBERG, GILBERT S	CHIEF, APPELLATE SECTION.
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SHATZ, EILEEN M	SPECIAL LITIGATION COUNSEL.
SMITH, COREY J	SENIOR TRIAL ATTORNEY.

2014 FEDERAL REGISTER—Continued

Name	Position title
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SULLIVAN, JOHN	SENIOR TRIAL ATTORNEY.
WEAVER, JAMES E	SENIOR TRIAL ATTORNEY.
LARSON, KARI	SENIOR TRIAL ATTORNEY.
IHLO, JENNIFER	SENIOR TRIAL ATTORNEY.
DALY, MARK	SENIOR TRIAL ATTORNEY.
WARD, RICHARD	CHIEF, CIVIL TRIAL SECTION WESTERN REGION.
DAVIS, NANETTE	SENIOR TRIAL ATTORNEY.
U.S. Marshals Service—USMS	
AUERBACH, GERALD	GENERAL COUNSEL.
HARLOW, DAVID	DEPUTY DIRECTOR.
BROWN, SHANNON B	ASSISTANT DIRECTOR, JPATS.
FALLON, WILLIAM T	ASSISTANT DIRECTOR, TRAINING.
SNELSON, WILLIAM D	ASSOCIATE DIRECTOR, OPERATIONS.
CAULK, CARL	ASSISTANT DIRECTOR OFFICE OF INSPECTION.
PROUT, MICHAEL J	ASSISTANT DIRECTOR, WITNESS SECURITY.
MORALES, EBEN	ASSISTANT DIRECTOR, PRISONER OPERATIONS.
O'BRIEN, HOLLEY	ASSISTANT DIRECTOR, FINANCIAL SERVICES.
MOHAN, KATHERINE	ASSISTANT DIRECTOR, HUMAN RESOURCES.
O'BRIEN-ROGAN, CAROLE	DEPUTY ASSISTANT DIRECTOR, ACQUISITION AND PROCUREMENT.
DOLAN, EDWARD	SPECIAL ASSISTANT FOR FINANCIAL SYSTEMS.
MUSEL, DAVID F	ASSOCIATE DIRECTOR, ADMINISTRATION.
DESOUSA, NEIL K	ASSISTANT DIRECTOR, TACTICAL OPERATIONS.
VARGO, BRUCE E	SENIOR ADVISOR.
BEAL, KIMBERLY	ASSISTANT DIRECTOR, ASSET FORFEITURE DIVISION.
DOUGLAS, NOELLE	ASSISTANT DIRECTOR, JUDICIAL SECURITY.

[FR Doc. 2014–22872 Filed 9–24–14; 8:45 am]

BILLING CODE 4410–NW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Contractor Veterans' Employment Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Veterans' Employment and Training Service (VETS) sponsored information collection request (ICR) revision titled, ''Federal Contractor Veterans' Employment Report,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 27, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201407-1293-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–VETS, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Federal Contractor Veterans' Employment Report. The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (VEVRAA), generally requires a covered Federal contractor or subcontractor to report annually on the total number of its employees who belong to the categories of VEVRAA protected veterans and the total number of those employees who were hired during the period covered by the report. This information collection has been classified as a revision, because a Final Rule published elsewhere today in the **Federal Register** rescinds regulatory provisions in 41 CFR part 61–250 that prescribe reporting requirements applicable to Government contracts and subcontracts entered into before December 1, 2003, and require contractors and subcontractors to the Federal Contractor Veterans' Employment Report VETS–100 (VETS–100 Report). The part 61–250 regulations are now obsolete, and maintaining the VETS–100 Report no longer has practical utility.

The Final Rule also revises the regulations in 41 CFR part 61–300 that prescribe the reporting requirements applicable to Government contracts and subcontracts of $100,000 or more entered into or modified after December

1, 2003. The part 61–300 regulations require contractors to use the Federal Contractor Veterans' Employment Report VETS–100A (VETS–100A Report) to provide information on veterans' employment. The Final Rule revises the manner in which Federal contractors report on their employment of protected veterans and renames the annual report required under the part 61–300 regulations the Federal Contractor Veterans' Employment Report VETS–4212 (VETS–4212). The new VETS–4212 Report reflects the new regulatory requirements. Contractors and subcontractors will have to comply with the reporting requirements in the Final Rule and use the VETS–4212 Report beginning with the annual report filed in 2015. Consequently, the ICR maintains the existing VETS–100A Report during the transition period. The DOL will submit a request to discontinue the VETS–100A Report once contractors begin using the new VETS–4212 Report. The VEVRAA authorizes this information collection. *See* 38 U.S.C. 4212.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1293–0005. The current approval is scheduled to expire on September 30, 2014; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about the subject information collection requirements, see the related Final Rule published elsewhere in today's issue of the **Federal Register**.

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1293–0005. The OMB is particularly interested in comments that:

- 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 methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–VETS.

Title of Collection: Federal Contractor Veterans' Employment Report.

OMB Control Number: 1393–0005.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 15,000.

Total Estimated Number of Responses: 315,000.

Total Estimated Annual Time Burden: 164,350 hours.

Total Estimated Annual Other Costs Burden: $1,080.

Dated: September 18, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–22819 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–79–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Report of Changes That May Affect Your Black Lung Benefits

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Report of Changes That May Affect Your Black Lung Benefits,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before October 27, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201405-1240-006* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Report of Changes That May Affect Your Black Lung Benefits, Forms CM–623 and CM–623S, information collection. These forms help determine continuing eligibility of primary beneficiaries receiving black lung benefits. The primary beneficiary is required to verify and update certain information that may affect entitlement to benefits; including changes to income, marital status, receipt of State Worker's Compensation benefits, and dependent status. This information collection has been classified as a revision, because of minor clarifications to Forms CM–929 and CM–929P intended to help claimants better

understand what information to provide. In addition, the OWCP has added an accommodation statement on the form to inform claimants with a mental or physical limitation to contact the OWCP if they need further assistance in the claims process. Federal Mine Safety and Health Act of 1977 section 426(a) authorizes this information collection. *See* 30 U.S.C. 936(a).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1240–0028. The current approval is scheduled to expire on September 30, 2014; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 16, 2014 (79 FR 28557).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0028. The OMB is particularly interested in comments that:

- 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 methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OWCP.

Title of Collection: Report of Changes That May Affect Your Black Lung Benefits.

OMB Control Number: 1240–0028.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 35,030.

Total Estimated Number of Responses: 35,030.

Total Estimated Annual Time Burden: 7,118 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: September 19, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–22820 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities

AGENY: Office of Disability Employment Policy, U.S. Department of Labor.

ACTION: Notice; Correction.

SUMMARY: The U.S. Department of Labor, Office of Disability Employment Policy published a document in the **Federal Register** of September 12, 2014, inviting interested parties to submit nominations for individuals to serve on the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. The document failed to provide the email address to submit nominations under the heading, ''**ADDRESSES**, *Electronically,* in column 3 on page 54746. However, the email address, *IntegratedCompetitiveEmployment@dol.gov,* was provided in column 2 on page 54746.

FOR FURTHER INFORMATION CONTACT: Christopher Button, 202–693–7880

Correction:

In the **Federal Register** of September 12, 2014, in FR Doc. 2014–21834, on page 54746, under the heading, **ADDRESSES**, *Electronically,* in column 3, remove the words, ''INSERT EMAIL ADDRESS FOR COMMITTEE,'' and replace with ''*IntegratedCompetitiveEmployment@dol.gov.*''

Dated: September 18, 2014.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2014–22774 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Committee Establishment

In accordance with section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act, and the provisions of the Federal Advisory Committee Act and its implementing regulations issued by the General Services Administration (GSA), the Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities is established.

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities shall study and prepare findings, conclusions, and recommendations for the Secretary of Labor on: (1) Ways to increase the employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)) for the employment of individuals with intellectual or developmental disabilities, or other individuals with significant disabilities; and (3) ways to improve oversight of the use of such certificates.

Membership shall consist of seven ex officio members: The Assistant Secretary of Disability Employment Policy, the Assistant Secretary for Employment and Training Administration, and the Administrator of the Wage and Hour Division of the Department of Labor; the Commissioner of the Administration on Intellectual and Developmental Disabilities, or the Commissioner's designee; the Director of the Centers for Medicare and Medicaid Services, or the Director's designee; the Commissioner of Social Security, or the Commissioner's designee; and the Commissioner of the Rehabilitation Services Administration, or the Commissioner's designee.

It shall further consist of approximately 10–12 representatives, appointed by the Secretary, with at least one from each of the following constituencies consisting of: Self-advocates for individuals with intellectual or developmental disabilities; providers of employment services, including those that employ individuals with intellectual or developmental disabilities in competitive integrated employment; representatives of national disability advocacy organizations for adults with intellectual or developmental disabilities; experts with a background in academia or research and expertise in employment and wage policy issues for individuals with intellectual or developmental disabilities; representatives from the employer community or national employer organizations; and other individuals or representatives of organizations with expertise on increasing opportunities for competitive integrated employment for individuals with disabilities.

The Advisory Committee shall report to the Secretary of Labor. It is required to submit an interim report not later than one year after the date on which the Committee is established and a final report, not later than 2 years after the date on which the Committee is established. It will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act, and its charter will be filed under the Act.

For further information, contact Jennifer Sheehy, Designated Federal Officer, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, U.S. Department of Labor, 200 Constitution Avenue NW., Suite S–1303, Washington, DC 20210, telephone (202) 693–7880.

Signed at Washington, DC this 18th day of September, 2014.

Jennifer Sheehy,

Deputy Assistant Secretary, Office of Disability Employment Policy.

[FR Doc. 2014–22777 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,277]

Aegis Media Americas; a Subsidiary of Dentsu Holdings USA, Inc.; Including On-Site Leased Workers From Solomon Page Technology Partners; Boston, Massachusetts; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 30, 2014, a worker requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Aegis Media Americans, a subsidiary of Dentsu Holdings USA, Inc., including on-site leased workers of Solomon Page Technology Partners, Boston, Massachusetts (Aegis Media Americans). The determination was issued on May 23, 2014. The Department's Notice of determination was published in the **Federal Register** on June 6, 2014 (79 FR 32757). Aegis Media Americans supplies media marketing and communications strategy services.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the Trade Adjustment Assistance (TAA) petition filed on behalf of workers at Aegis Media Americans was based on the findings that the subject firm does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Trade Act of 1974, as amended.

The request for reconsideration asserts that the Department made ''an incorrect assessment of Dentsu Aegis Network's services, products and articles''; that information technology (IT) workers' separation from the subject firm was due to outsourcing to Tata Consulting Services (TCS); that a ''significant part of the responsibility of the Aegis IT workers group (IT Team) was the monitoring of major servers and services for Aegis''; that ''After TSC started servicing Aegis, the monitoring of these services was shifted to overseas teas who now performed the monitoring duties in India''; and that Aegis Media Americans produced an article because an ''article is the byproduct of the internal company services, processes and the product/article itself'' and that the articles produced are computer code & algorithms.

The request also asserts that there should be no distinction between computer code for hardware and computer code for software and that the databases upon which services rely (such as research and analysis) are also articles.

In *Former Employees of Mortgage Guaranty Insurance Corporation (MGIC)* v. *United States Secretary of Labor* (Court No. 07–00182), the Department stated the policy requiring that the firm employing the subject workers produce an article domestically; that workers providing services incidental to the provision of a services are not engaged in the production of an article, for the purposes of the Trade Act; and that the services provided by a workers' firm would not be considered articles, whether tangible or intangible. The Department's determination in the afore-mentioned case (negative determination on remand regarding petitioning workers' eligibility to apply for Trade Adjustment Assistance) was affirmed by the U.S. Court of International Trade.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 4th day of September, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–22764 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–85,355]

Chevron Mining, Inc., a Subsidiary of Chevron Corporation Including On-Site Leased Workers From STU Blattner, Inc. (SBI), Questa, New Mexico; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 11, 2014, the State of New Mexico requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance, applicable to workers and former workers of Chevron Mining, Inc., Questa, New Mexico (Questa Mine). The determination was issued on July 30, 2014. The Department's Notice of determination was published in the **Federal Register** on August 18, 2014 (79 FR 48775).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the Trade Adjustment Assistance (TAA) petition filed on behalf of workers at Questa Mine was based on the findings that the subject firm does not produce an article within the meaning of Section 222(a) or Section 222(b) of the Trade Act of 1974, as amended (the Act).

During the investigation, the Department obtained information that Questa Mine no longer produced molybdenum disulfide and that the workers at Questa Mine were engaged in employment related to the supply of mine development services (such as block caving) and administrative services.

The request for reconsideration states that Chevron Mining, Inc. had been exploring for new mining veins but decided not to reenter the molybdenum market due to the impact of the global market, which resulted in worker separations at Questa Mine. The request cites TAA certifications TA–W–40,739 and TA–W–35,278 as examples of foreign trade impact on Questa Mine, and asserts that foreign trade continues to affect workers at Questa Mine. The request also asserts that workers at Questa Mine are eligible to apply for TAA as secondarily-affected workers, under Section 222(b), 19 U.S.C. 2272(b) or Section 222(c), 19 U.S.C. 2272(c) of the Act.

During the investigation, the Department received information that revealed that while Questa Mine did produce molybdenum disulfide prior to June 2013, Chevron Mining, Inc. did not reenter the molybdenum market and, consequently, there was no production during the relevant period.

In *Former Employees of Mortgage Guaranty Insurance Corporation (MGIC)* v. *United States Secretary of Labor* (Court No. 07–00182), the Department stated the policy requiring that the firm employing the subject workers produce an article domestically; that workers providing services incidental to the provision of a services are not engaged in the production of an article for the purposes of the Act; and that the services provided by a workers' firm would not be considered articles, whether tangible or intangible.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 4th day of September, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–22765 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 2, 2014 through September 5, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the

articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

Done.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,304, Keener Kitchen Mfg. Co., red Lion, Pennsylvania. May 13, 2013.

85,324, ConAgra Foods Packaged Foods, LLC., Kentwood, Michigan. May 20, 2013.

85,422, Standard Register, Toccoa, Georgia, July 11, 2013.

85,422A, Standard Register, Radcliff, Georgia, July 11, 2013.

85,431, Southwire Company, LLC., Coffeyville, Kansas. July 17, 2013.

85,445, AccuMED Innovative Technologies, LLC., Buffalo, New York, July 24, 2013.

85,450, BBB Industries LLC., Stockton, California. July 28, 2013.

85,473, Fiber Glass Industries, Inc., Amsterdam, New York, August 7, 2013.

85,474, Passion Splash LLC, Commerce, California. August 7, 2013.

85,478, American Technical Ceramics, Huntington Station, New York, February 25, 2014.

85,479, GDF Suez Mt. Tom Power Plant, Holyoke, Massachusetts. August 12, 2013.

85,487, LexisNexis, Colorado Springs, Colorado. August 11, 2013.

85,492, Eaton Corporation, Charlotte, North Carolina. August 18, 2013.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,229, Trane U.S., Inc., La Croose, Wisconsin.

85,464, Exelis Incorporated, Roanoke, Virginia.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,301, Citigroup Technology, Inc., (''CTI''), Warren, New Jersey.

85,395, StreetLinks Lender Solutions, Indianapolis, Indiana.

85,485, Stratus Technologies, Inc., Maynard, Massachusetts.

85,494, Fluor-B&W Portsmouth LLC, Piketon, Ohio.

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

85,499, Apex Tool Group, LLC., Springdale, Arkansas.

85,506, Diebold, Incorporated, North Canton, Ohio.

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

85,476, BBB Industries LLC, Stockton, California.

I hereby certify that the aforementioned determinations were issued during the period of *September 2, 2014 through September 5, 2014.* These determinations are available on the Web site *www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 11th day of September 2014.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–22766 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0185]

Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). The purpose of the requirements is to reduce workers' risk of death or serious injury by ensuring that aerial lifts are in safe operating condition.

DATES: Comments must be submitted (postmarked, sent, or received) by November 24, 2014.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0185, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier services) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2011–0185) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other materials in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Manufacturer's Certification of Modifications (§ 1910.67(b)(2)). The Standard requires that when aerial lifts are ''field modified'' for uses other than those intended by the manufacturer, the manufacturer or other equivalent entity, such as a nationally recognized testing laboratory, must certify in writing that the modification is in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard and that the modified aerial lift is at least as safe as the equipment was before modification. Employers are to maintain the certification record and make it available to OSHA compliance officers upon request. This record provides assurance to employers, workers, and compliance officers that the modified aerial lift is safe for use, thereby, preventing failure while workers are being elevated. The certification record also provides the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67). The Agency wishes to retain its current estimate of 21 burden hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Vehicle-Mounted Elevating and Rotating Work Platforms (Aerial Lifts) (29 CFR 1910.67).

OMB Control Number: 1218–0230.

Affected Public: Business or other for-profits; not-for-profit organizations; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,000.

Number of Responses: 1,014.

Frequency of Responses: On occasion.

Average Time per Response: Ranges from 1 minute (.02 hour) to maintain the

manufacturer's certification record to 2 minutes (.03 hour) to disclose the record to an OSHA Compliance Officer.

Estimated Total Burden Hours: 21.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number (Docket No. OSHA–2011–0185) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publically available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 19, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–22779 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0057]

Telecommunications; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in its Telecommunications Standard (29 CFR 1910.268). The purpose of the requirements is to ensure that workers have been trained as required by the Standard to prevent risk of death or serious injury.

DATES: Comments must be submitted (postmarked, sent, or received) by November 24, 2014.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0057, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0057) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled'' **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information

regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Under the paperwork requirements specified by paragraph (c) of the Standard, an employer must certify that his or her workers have been trained as specified by the training provision of the Standard. Specifically, employers must prepare a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The information collected will be used by employers as well as by compliance officers to determine whether employees have been trained according to the requirements set forth in 29 CFR 1910.268(c).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Telecommunications (29 CFR 1910.268). The burden hours have decreased based on the reduced number of telecommunication workers installing and repairing lines and equipment. Therefore, OSHA is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by the Standard from 1,077 hours to 664 hours, a total decrease of 413 hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Telecommunications (29 CFR 1910.268).

OMB Control Number: 1218–0225.

Affected Public: Business or other for-profits.

Number of Respondents: 558.

Frequency of Responses: On occasion.

Average Time per Response: Two minutes (.03 hour) for an establishment to disclose training records and two minutes (.03 hour) for the training record to be generated.

Estimated Total Burden Hours: 664.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number (Docket No. OSHA–2010–0057) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on September 19, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–22778 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2014–0005]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of FACOSH meeting.

SUMMARY: The Federal Advisory Council on Occupational Safety and Health (FACOSH) will meet November 6, 2014, in Washington, DC.

DATES:

FACOSH meeting: FACOSH will meet from 1 to 4:30 p.m., Thursday, November 6, 2014.

Submission of comments, requests to speak, speaker presentations, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to speak at the FACOSH meeting, speaker presentations, and requests for special accommodations to attend the meeting by October 31, 2014.

ADDRESSES:

FACOSH meeting: FACOSH will meet in Rooms N–4437 A–D, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You

may submit comments, requests to speak at the FACOSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions;

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648; or

Mail, express delivery, hand delivery, or messenger/courier service: You may submit materials to the OSHA Docket Office, Docket No. OSHA–2014–0005, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2350 (OSHA's TTY (877) 889–5627). Deliveries (hand, express mail, messenger/courier service) are accepted during the Department's and the OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Requests for special accommodations to attend the FACOSH meeting: You may submit requests for special accommodations by hard copy, telephone, or email to Ms. Gretta Jameson, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *jameson.grettah@dol.gov.*

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice. Because of security-related procedures, submissions by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, and messenger/courier service. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section below.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information provided, without change at *http://www.regulations.gov.* Therefore, OSHA cautions individuals about submitting certain personal information, such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

For general information: Mr. Francis Yebesi, Director, OSHA Office of Federal Agency Programs, U.S. Department of Labor, Room N–3622, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2122; email: *ofap@dol.gov.*

SUPPLEMENTARY INFORMATION:

FACOSH Meeting

FACOSH will meet November 6, 2014, in Washington, DC. Some FACOSH members may attend the meeting electronically. The meeting is open to the public. The tentative agenda for the FACOSH meeting includes:

- Updates from FACOSH subcommittees;
- Update on the recordkeeping rule changes affecting federal agencies;
- Protecting workers from retaliation; and
- Presidential POWER Initiative—update and future metrics.

FACOSH is authorized by 5 U.S.C. 7902; section 19 of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 668); and Executive Order 11612, as amended, to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees. This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce, and how to encourage each Federal Executive Branch Department and Agency to establish and maintain effective occupational safety and health programs.

OSHA transcribes and prepares detailed minutes of FACOSH meetings. The Agency puts meeting transcripts and minutes plus other materials presented at the meeting in the public record of the FACOSH meeting, which is posted at *http://www.regulations.gov.*

Public Participation, Submissions, and Access to Public Record

FACOSH meetings: FACOSH meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building the Visitors' Entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter. For additional information about building security measures, and requests for special accommodations for attending the FACOSH meeting, please contact Ms. Jameson (see **ADDRESSES** section).

Submission of requests to speak and speaker presentations. You may submit a request to speak to FACOSH by one of the methods listed in the **ADDRESSES** section. Your request must state:

- The amount of time you request to speak;
- The interest you represent (e.g., organization name), if any; and,
- A brief outline of your presentation.

PowerPoint speaker presentations and other electronic materials must be compatible with Microsoft Office 2010 formats. The FACOSH chair may grant requests to address FACOSH at his discretion, and as time and circumstances permit.

Submission of written comments. You also may submit written comments, including data and other information, using any of the methods listed in the **ADDRESSES** section. Your submissions, including attachments and other materials, must identify the agency name and the OSHA docket number for this **Federal Register.** You may supplement electronic submissions by uploading documents electronically. If you wish to submit hard copies of supplementary documents instead, you must submit them to the OSHA Docket Office following the instructions in the **ADDRESSES** section. The additional materials must clearly identify your electronic submission by name, date, and docket number. OSHA will provide copies of your submissions to FACOSH members prior to the meeting.

Because of security-related procedures, submitting comments, requests to speak, and speaker presentations by regular mail may cause a significant delay in their receipt. For information about security procedures concerning submissions by hand, express delivery, and messenger/courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

Access to submissions and public record. OSHA places comments, requests to speak, speaker presentations, meeting transcripts and minutes, and other documents presented at the FACOSH meeting in the public record without change. Those documents also may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions individuals about submitting certain personal information, such as Social Security numbers and birthdates.

To read or download documents in the public record, go to Docket No. OSHA–2014–0005 at *http://www.regulations.gov.* Although all meeting documents are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted material) are not publicly available to read or download through that Web page. All meeting documents, including copyrighted material, are available for

inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* to make submissions and to access the public record of the FACOSH meeting is available at that Web page. Please contact the OSHA Docket Office for assistance making submissions and obtaining documents in the public record and information about materials not available through that Web page.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information about FACOSH, also is available at OSHA's Web page at *http://www.osha.gov/.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under 29 U.S.C. 668; 5 U.S.C. 7902; 5 U.S.C. App. 2; 41 CFR part 102–3; Executive Order 12196 (45 CFR 12629 (2/27/1980)); and Secretary of Labor's Order No. 1–2012 (77 FR 3912 (1/25/2012)).

Signed at Washington, DC, on September 19, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–22754 Filed 9–24–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Forum—Emerging Flight Data and Locator Technology

On Tuesday, October 7, 2014, the National Transportation Safety Board (NTSB) will convene a forum titled *Emerging Flight Data and Locator Technology.* The forum will begin at 8:30 a.m., and is open to all. Attendance is free, and no registration is required. NTSB Acting Chairman Christopher Hart will serve as the presiding officer of the forum, and the Board of Inquiry will consist of the Acting Chairman, the Director of the Office of Research and Engineering, Joseph M. Kolly, Ph.D., and the Director of the Office of Aviation Safety, John DeLisi.

The one-day forum will focus on highlighting effective flight data and locator technologies currently being used, exploring technologies in development, and determining what policy, industry, regulatory, and technological impediments need to be addressed. Below is the preliminary agenda:

Tuesday, October 7, 2014 (08:30 a.m.–5:00 p.m.)

1. Opening Statement by Acting Chairman Hart.
2. Opening Remarks by Joseph M. Kolly, Ph.D.
3. Presentations on: *Regulatory Overview*
4. Questions from the Technical Panel and Board of Inquiry
5. Presentations on: *Airframe, On-Board System, and Service Provider Viewpoint*
6. Questions from the Technical Panel and Board of Inquiry
7. Lunch Break
8. Presentations on: *Technology Solutions*
9. Questions from the Technical Panel and Board of Inquiry
10. Presentations on: *Future Path*
11. Questions from the Technical Panel and Board of Inquiry
12. Closing Statement by Acting Chairman Hart

The full agenda and a list of participants can be found at the following web address: *http://www.ntsb.gov/news/events/2014/recorderforum/agenda.html.*

The hearing docket is DCA14SS009.

The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E., SW., Washington, DC. The public can view the hearing in person or by live Web cast at *www.ntsb.gov.* Web cast archives are generally available by the end of the next day following the hearing, and webcasts are archived for a period of 3 months from after the date of the event.

Individuals requiring reasonable accommodation and/or wheelchair access directions should contact Ms. Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Tuesday, September 30, 2014.

NTSB Media Contact: Peter Knudson—*peter.knudson@ntsb.gov.* NTSB Forum Manager: Erin Gormley—*erin.gormley@ntsb.gov*

Dated: September 19, 2014.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014–22729 Filed 9–24–14; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Plant Operations and Fire Protection; Notice of Meeting

The ACRS Subcommittee on Plant Operations and Fire Protection will hold a meeting on October 1, 2014, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 1, 2014—8:30 a.m. Until 5:00 p.m.

The Subcommittee will review and discuss the Inspection Manual Chapter 0350 Oversight of Fort Calhoun Station. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Omaha Public Power District, Army Corps of Engineers, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mark Banks (Telephone 301–415–3718 or Email: *Mark.Banks@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 CFR 67205–67206).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the

meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

Dated: September 17, 2014.

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–22852 Filed 9–24–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 1, 2014, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 1, 2014–12 p.m. Until 1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Quynh Nguyen (Telephone 301–415–5844 or Email: *Quynh.Nguyen@nrc.gov*) five days prior to the meeting, if possible, so that arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on November 8, 2013 (78 CFR 67205–67206).

Information regarding changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (240–888–9835) to be escorted to the meeting room.

Dated: September 18, 2014.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2014–22848 Filed 9–24–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Establishment Information Form, DD 1918, Wage Data Collection Form, DD 1919, Wage Data Collection Continuation Form, DD 1919C, 3206–0036

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an existing information collection request (ICR) 3206–0036, Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C). As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until November 24, 2014. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the U.S. Office of Personnel Management, Employee Services, Pay and Leave Policy, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200, Attention: Brenda L. Roberts, Acting Deputy Associate Director for Pay and Leave, or sent via electronic mail to *pay-leave-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the U.S. Office of Personnel Management, Employee Services, Pay and Leave Policy, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200, Attention: Brenda L. Roberts, Acting Deputy Associate Director for Pay and Leave, or sent via electronic mail to *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

The Federal Wage System (FWS) is the pay system established under 5 U.S.C. 5341 et seq. for prevailing rate employees who work in trade, craft, and laboring occupations. The FWS establishes rates of pay for Federal prevailing rate employees through local wage surveys of private sector employers. The FWS includes 132 appropriated fund and 118 nonappropriated fund local wage areas.

The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM based on recommendations of the Federal Prevailing Rate Advisory Committee for use by the Department of Defense to establish prevailing wage rates for FWS employees Governmentwide.

Analysis

Agency: Employee Services, Pay and Leave Policy, U.S. Office of Personnel Management

Title: Establishment Information Form (DD 1918), Wage Data Collection Form (DD 1919), and Wage Data Collection Continuation Form (DD 1919C)

OMB Number: 3260–0036

Frequency: Annually

Affected Public: Private Sector Establishments

Number of Respondents: 21,760

Estimated Time per Respondent: 1.5 hours

Total Burden Hours: 32,640

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–22888 Filed 9–24–14; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System and Federal Employees Retirement System; Notice to Surviving Same-Sex Spouses of Deceased Federal Annuitants, Employees, or Former Employees Who Died Prior to June 26, 2013

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: On August 2, 2013, the Office of Personnel Management (OPM) published notice in the **Federal Register** informing annuitants that they had an extended opportunity (until June 26, 2015), to elect survivor annuity benefits for their same-sex spouses if they had been married prior to the U.S. Supreme Court's decision in *United States* v. *Windsor,* 133 S.Ct. 2675 (2013), on June 26, 2013, and were prevented by the Defense of Marriage Act (DOMA), 1 U.S.C. 7(3)(1996), from making a timely election. *See* 78 FR 47018 (Aug. 2, 2013). Similarly, because annuitants, employees, or former employees in same-sex marriages may have died prior to the *Windsor* decision (i.e. prior to June 26, 2013), and because the same-sex spouses of those deceased annuitants, employees, and former employees may not have applied for death benefits because of DOMA, or may have applied for death benefits but were denied benefits because of DOMA, OPM is publishing this notice to inform those surviving same-sex spouses that they may apply (or re-apply) for death benefits so that OPM can evaluate whether or not those same-sex spouses may now be entitled to survivor annuity or lump-sum death benefits.

FOR FURTHER INFORMATION CONTACT: Roxann Johnson, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On June 26, 2013, the United States Supreme Court (the Supreme Court) held in *United States* v. *Windsor,* 133 S.Ct. 2675 (2013), that Section 3 of the Defense of Marriage Act (DOMA), 1 U.S.C. 7(3)(1996), was unconstitutional. Section 3 of DOMA provided that, when used in a federal law, the term ''marriage'' would mean only a legal union between one man and one woman as husband and wife, and that the term ''spouse'' referred only to a person of the opposite sex who is a husband or a wife. Therefore, as a result of DOMA, OPM was not permitted to accept survivor annuity elections for same-sex spouses from retirees from September 21, 1996, until June 25, 2013. OPM also denied eligible same-sex surviving spouses monthly survivor annuity and/or lump-sum death benefits, and/or may have discouraged employees, annuitants, and/or surviving spouses from electing a survivor annuity benefit and/or applying for benefits during that period. After the U.S. Supreme Court held that DOMA was unconstitutional, however, OPM was able to extend benefits to surviving same-sex spouses of deceased federal annuitants, employees, and former employees under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), even if the annuitants, employees, and former employees had died before June 26, 2013.

Therefore, in order to ensure that surviving same-sex spouses of deceased federal annuitants, employees, or former employees who died prior to the *Windsor* decision on June 26, 2013, are able to exercise their rights and interests as ''widows'' and ''widowers'' under CSRS and FERS, OPM is providing this notice to inform those surviving same-sex spouses how they may apply for survivor annuities and/or lump-sum death benefits. OPM also wants to make clear that surviving same-sex spouses of deceased annuitants who died prior to June 26, 2013, may apply for benefits even if the annuitants did not attempt to elect survivor annuity benefits for their spouses prior to death, and/or even if OPM has previously denied applications for benefits from surviving spouses as a result of DOMA.

How To Apply For Benefits: If you are a same-sex spouse of a deceased federal employee or annuitant whose spouse died before June 26, 2013, you may submit an application for death benefits (Standard Form (SF) 2800 for CSRS and SF 3104 for FERS) to OPM at this address: Office of Personnel Management, Survivor Benefits Windsor Decision, P.O. Box 45, Boyers, PA 16017–0045.

Surviving spouses may download these applications from OPM's Web site at *http://www.opm.gov/forms/standard-forms/,* or may call OPM's Retirement Information Office at 1–(888)–767–6738, or may send an email to *retire@opm.gov* to request an application for benefits. Please include ''Survivor Benefits Windsor Decision'' in the subject line of the email.

When a same-sex surviving spouse submits an application for death benefits or contacts OPM for information regarding eligibility for benefits, the surviving spouse should inform OPM that s/he is a same-sex spouse of a deceased annuitant, federal employee or former federal employee who died prior to June 26, 2013. The surviving spouse should also send OPM a copy of the couple's marriage certificate and a copy of the annuitant's death certificate if OPM has not already received these documents. Additionally, the surviving spouse should provide OPM with the deceased federal employee's name, date of birth, and the annuitant's CSA/CSF number or social security number to expedite processing of the claim.

Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–22895 Filed 9–24–14; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Notice Response to Comments and Notice of Final Action Regarding the United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern

SUMMARY: On February 22, 2013, the Office of Science and Technology Policy (OSTP) published a 60-day public notice in the **Federal Register** (**Federal Register** Volume 78, Number 36, Docket No. 2013–04127) to invite public

comment on the proposed *United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern* (hereafter, *Policy for Institutional DURC Oversight* or Policy). This Notice responds to comments received during this 60-day public notice, sets forth final changes to the *Policy for Institutional DURC Oversight,* and implements the final *Policy for Institutional DURC Oversight.* The *Policy for Institutional DURC Oversight* will be updated, as needed, following domestic dialogue, international engagement, and input from interested communities including scientists, national security officials, and global health specialists and announced in the **Federal Register** and at *http://www.phe.gov/s3/dualuse.*

DATES: *Policy release date:* September 24, 2014. *Effective date:* September 24, 2015. The 12-month period between release and effective date will allow institutions and USG funding agencies subject to this Policy to establish the procedures necessary to comply with this Policy. Certification of compliance will be required of institutions to which the Policy applies, as defined in Section 6.1, at the time of seeking funding, but no sooner than the effective date of the Policy.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew M. Hebbeler, Assistant Director for Biological and Chemical Threats, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Avenue, Washington, DC 20504, *DURCpolicy@ostp.gov.*

SUPPLEMENTARY INFORMATION: The *Policy for Institutional Oversight of Life Sciences DURC* is available on the U.S. Department of Health and Human Services Science Safety Security (S3) Web site: *http://www.phe.gov/s3/dualuse.*

Background

Life sciences research is essential to the scientific advances that underpin improvements in the health and safety of the public, agricultural crops and other plants, animals, and the environment; materiel[1]; and national security. While life sciences research has and will continue to yield benefits, no research comes without risk. Generally speaking, the risks associated with the conduct of life sciences research, such as accidental exposure of personnel or the environment to a pathogen or toxin, are addressed by existing and complementary statutes, regulations, and guidelines[2] that ensure that life sciences research is conducted safely and securely.

However, despite the doubtless value and benefits of the outcomes of scientific research, there are certain types of legitimately-conducted research that generate knowledge, information, products, or technologies that could also be intentionally utilized for harmful purposes. Such research is deemed to be ''dual use research.'' Within the life sciences, there exists a subset of dual use research that merits *particular* attention due to the magnitude of the potential consequences of its misuse or misapplication. This research is called dual use research *of concern* (DURC) and is defined in the *Policy for Institutional DURC Oversight* as life sciences research that, based on current understanding, can be reasonably anticipated to provide knowledge, information, products, or technologies that could be directly misapplied to pose a significant threat with broad potential consequences to public health and safety, agricultural crops and other plants, animals, the environment, materiel, or national security.

Funders of life sciences research and the institutions and scientists who conduct this research have a shared responsibility for oversight of DURC and for promoting its responsible conduct and communication. A comprehensive oversight system for DURC includes the policies, practices, and procedures put in place to ensure DURC is identified and risk mitigation measures are implemented, where applicable, and such a system must include both Federal and institutional oversight processes. Institutional oversight of DURC is a critical component of a comprehensive oversight system because institutions are most familiar with the life sciences research conducted in their facilities and are in the best position to promote and strengthen the responsible conduct and communication of DURC.

The *Policy for Institutional DURC Oversight* is one of two USG policies that apply to the oversight of life sciences research with dual use potential. The other policy is the *USG Policy for Oversight of Life Sciences Dual Use Research of Concern,* issued on March 29, 2012 and hereafter referred to as the *March 2012 DURC Policy.*[3] The *March 2012 DURC Policy* sets forth a process of regular Federal review of USG-funded or -conducted research and requires Federal agencies that fund or sponsor life sciences research to identify DURC and evaluate this research for possible risks, as well as benefits, and to ensure that risks are appropriately managed and benefits realized. The *Policy for Institutional DURC Oversight* complements the *March 2012 DURC Policy* by establishing review procedures and oversight requirements for the same scope of life sciences research at the institutions that receive Federal funding for such research. Together, the two policies work to engage the life sciences research community and the Federal departments and agencies that fund such research in a shared commitment to address the risk that knowledge, information, products, or technologies generated from life sciences research could be used for harm. In addition, the *Policy for Institutional DURC Oversight* and the *March 2012 DURC Policy* emphasize a culture of responsibility by reminding all involved parties of the shared duty to uphold the integrity of science and prevent its misuse.[4]

Text of the Final Policy for Institutional DURC Oversight

The final *Policy for Institutional DURC Oversight* is available on the U.S. Department of Health and Human Services Science Safety Security (S3) Web site: *www.phe.gov/s3/dualuse.*

Companion Guide to the USG Policies for Oversight of Life Sciences Dual Use Research of Concern

The USG has developed a guide to assist in implementation of both the final *Policy for Institutional DURC Oversight* and the *March 2012 DURC Policy,* entitled *Tools for the Identification, Assessment, Management, and Responsible Communication of Dual Use Research of Concern: A Companion Guide to the USG Policies for Oversight of Life Sciences Dual Use Research of Concern* (hereafter, *Companion Guide*). The

[1] Materiel includes food, water, equipment, supplies, or material of any kind.

[2] E.g., the select agent regulations (42 CFR Part 73, 9 CFR Part 121, and 7 CFR Part 331*); NIH Guidelines on Research Involving Recombinant or Synthetic Nucleic Acid Molecules* (*NIH Guidelines*); and *Biosafety in Microbiological and Biomedical Laboratories* (*BMBL*), 5th Edition.

[3] *The United States Government Policy for Oversight of Life Sciences Dual Use Research of Concern* (*March 2012 DURC Policy*), March 29, 2012, *www.phe.gov/s3/dualuse/Documents/us-policy-durc-032812.pdf.*

[4] The *March 2012 DURC Policy* and the final *Policy for Institutional DURC Oversight* are complemented by extant laws and treaties (e.g., United States Code Title 18 Section 175 and the Biological and Toxin Weapons Convention) that prohibit the development, production, acquisition, or stockpiling of biological agents or toxins of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes and that prohibit the use of biological agents and toxins as weapons.

comments received in response to the proposed Policy were taken into consideration in developing the guidance and other information that are included in the *Companion Guide.* Use of the *Companion Guide* by PIs, institutions, and Institutional Review Entities (IREs) is voluntary. The *Companion Guide* will be considered for revisions as experience in implementing the final *Policy for Institutional DURC Oversight* and the *March 2012 DURC Policy* and in utilizing the tools included in the *Companion Guide* accumulates. This review will be carried out periodically as needed.

The *Companion Guide* is available on the U.S. Department of Health and Human Services Science Safety Security (S3) Web site: *http://www.phe.gov/s3/dualuse/.*

Training and Education on DURC and Its Oversight

The USG and individual Federal funding agencies are developing training and education resources to assist institutions and PIs in meeting the requirements of Sections 7.2.G and 7.1.E, respectively, of the final *Policy for Institutional DURC Oversight.* These resources will be made available on the U.S. Government Science Safety Security (S3) Web site, *http://www.phe.gov/s3/dualuse/.* The training and educational resources will be considered for revisions as experience in such training accumulates. This review will be carried out periodically as needed.

For institutions subject to the final Policy, the USG anticipates that the requirements for education and training on DURC will be met by the effective date of the Policy or at the point of providing certification of compliance to a Federal funding agency or agencies, as described in Section 7.2.L of the final Policy. The twelve-month time frame between the release of the final Policy and its effective date was deemed sufficient to allow institutions to perform outreach and training for investigators whose research will now be subject to the *Policy for Institutional DURC Oversight.*

Summary of Public Comments & Revisions Reflected in the Final Policy

On February 22, 2013, the Office of Science and Technology Policy (OSTP) published a 60-day public notice in the **Federal Register** (**Federal Register** Volume 78, Number 36, Docket No. 2013–04127) [5] to invite public comment on a proposed draft of the *Policy for Institutional DURC Oversight,* and to gather specific comments on 16 questions relating to the Policy and its possible implementation.[6] In addition to assisting in the development of the final Policy, the comments were helpful in identifying and developing materials that are designed to aid institutions in the implementation of the final *Policy for Institutional DURC Oversight* and the *March 2012 DURC Policy.* By the end of the 60-day comment period, OSTP received 38 responding commentaries on the proposed Policy from 27 entities, described below. The majority of the responses (20) represented the viewpoints of departments and offices of 16 different research institutions: 11 universities, three teaching hospitals, one non-profit owning two of the commenting teaching hospitals, and one public health reference laboratory. Six professional associations and one citizens' group each submitted one response. Eleven of the responses were submitted by private citizens, eight of whom identified themselves as researchers or scientists.

The following paragraphs review the specific comments received on each section of the final Policy; the USG's response to those comments; and the revisions and additions included in the final Policy.

Section 1. Introduction

The introductory text of the final *Policy for Institutional DURC Oversight* states that the USG will update the Policy, as warranted, based on feedback on implementation of the final Policy, evaluation of the Policy's impact, and assessment of the advantages and disadvantages of expanding the scope of the Policy. In the final Policy, the introductory statement was revised to include that the USG will update the components outlined in the final Policy and the *March 2012 DURC Policy,* as needed, following domestic dialogue, international engagement, and input from interested communities including scientists, national security officials, and global health specialists.

The introduction in the final Policy, as well as a short statement in Section 6.1 (Applicability), include revisions to clarify that while institutions may, as they deem appropriate, expand their internal oversight to life sciences research outside the scope of the final Policy, such an expansion of scope by the institution would not be subject to oversight as articulated in the final Policy.

Section 4. Definitions

Two new definitions are provided in the final *Policy for Institutional DURC Oversight.* The first, a definition of ''to certify,'' which means to attest to the USG that an institution subject to this Policy will comply with all aspects of this Policy. A definition has also been provided for ''Principal Investigator'' (PI). For the purposes of the Policy, a PI is an individual who is designated by the research institution to direct a project or program and who is responsible to the funding agency or the research institution for the scientific and technical direction of that project or program. There may be more than one PI on a research grant or project within a single or multiple institutions.

Two definitions have been modified. The definition for the Institutional Contact for Dual Use Research (ICDUR) was revised to clarify that the person serving in this capacity should function as an institutional point of contact for questions regarding compliance with and implementation of the requirements for the oversight of DURC as well as the liaison (as necessary) between the institution and the relevant USG funding agency. The definition of ''life sciences'' was also revised to align with the definition of the same term in the *March 2012 DURC Policy,* i.e., for the purposes of the final Policy, ''life sciences'' includes the discipline of aerobiology.

Section 5. Policy Statement

Section 5.A of the final *Policy for Institutional DURC Oversight* includes slight revisions that clarify that life sciences research that meets the scope specified in Section 6.2 of the final Policy is subject to Federal oversight through the *March 2012 DURC Policy* as well as the institutional oversight set forth in the final Policy.

Section 6.1 Applicability

In the final *Policy for Institutional DURC Oversight,* the last paragraph of the applicability section was revised to clarify that life sciences research institutions that conduct or sponsor research that is within the scope of the Policy but receive no USG funds in support of life sciences research are not required to adhere to the oversight requirements of the final Policy. These institutions are, however, strongly encouraged to implement internal

[5] ''United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern; Notice, Request for Comment,'' 78 **Federal Register** 36 (22 February 2013), pp 12369–12372, *federalregister.gov/a/2013-04127.*

[6] *United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern* (*Policy for Institutional DURC Oversight*), February 21, 2013, *www.phe.gov/s3/dualuse/Documents/oversight-durc.pdf.*

oversight procedures consistent with the culture of shared responsibility underpinning the Policy. As noted in the Introduction to the final Policy, institutions may also, as they deem appropriate, expand their internal oversight to life sciences research outside the scope of the final Policy; however such an expansion of scope by the institution would not be subject to oversight as articulated in the final Policy.

The final Policy also reflects the relocation of the paragraph regarding compliance with the Policy from this section to a new section, Section 6.3.

Section 6.2. Scope of Research Requiring Oversight

The scope of the proposed *Policy for Institutional DURC Oversight* includes research that directly involves non-attenuated forms of the 15 agents or toxins listed in Section 6.2.1 of the final Policy, including the use of botulinum toxin at any quantity, and which also produces, aims to produce, or can be reasonably anticipated to produce one or more of the effects listed in Section 6.2.2 of the final Policy. Comments on the proposed Policy were specifically requested regarding the appropriateness of the scope of the Policy, including whether the scope should be expanded to all select agents, microbes, or all life sciences; what factors should be considered in determining a final or revised scope; what criteria might be used to determine what research should or should not be subject to oversight; and what effects such an expansion might have on the ability to conduct research. In addition, comments were invited on whether the scope of the proposed Policy should be expanded to include the use of any of the listed 15 agents or toxins in attenuated forms; the use of the genes from any of the listed 15 agents or toxins; *in silico* experiments (e.g., modeling experiments, bioinformatics approaches) involving the biology of the listed 15 agents or toxins; or research related to the public, animal, and agricultural health impact of any of the 15 listed agents or toxins (e.g., modeling the effects of a toxin, developing new methods to deliver a vaccine, developing surveillance mechanisms for a listed agent).

Eighteen comments were received on the topic of expanding the scope of the proposed Policy. Eleven comments favored the proposed scope or narrowing the proposed scope, while seven comments favored expansion of the proposed scope. Eight of the comments cited a negative impact on research should the scope be expanded, while nine comments made no mention of effects on the ability to conduct the research. One institution that already conducts DURC reviews of all recombinant DNA and BSL–3 research cited no additional burden as a result of an expanded scope for its review process. In general, those in favor of scope expansion expressed satisfaction with the current scope, with the understanding that expansion may occur in the future.

Thirteen comments were received in response to the more specific question on modifications to the scope. Three comments recommended no expansion or modification to the scope of the Policy, while two considered the scope appropriate at the current time but acknowledged that future developments may warrant changes. Five comments suggested that attenuated forms of agents should be considered for inclusion in the scope of the Policy if there is sufficient justification. Three comments expressed support for expanding the scope to include genes known to increase pathogenicity, virulence, or infectivity; however, one of these comments proposed limiting the source of these genes to any of the listed agents, while the other two comments noted that any genes known to increase these characteristics should be included in the scope. Two comments supported expansion of the scope to include consideration of *in silico* experiments. Two other comments received on this topic requested additional guidance on review of these types of studies in the event of an expansion of the Policy's scope. One comment suggested that the scope of the Policy could permit flexibility beyond a specific list of pathogens by limiting the scope to only the seven identified categories of experimental effects (Sec. 6.2.2) and thus the review process would involve evaluating the dual use implications of all research meeting one or more of these seven categories.

Because institutional oversight of DURC will be a new undertaking for many institutions, the USG has maintained the scope of the final Policy as a well-defined subset of life sciences research that involves 15 agents [7] and seven categories of experiments. Of note, the final Policy is intended to apply only to research that directly involves non-attenuated [8] forms of the 15 agents. After implementation of the final Policy, the USG will assess the advantages and disadvantages of expanding the scope of the Policy to encompass additional agents and/or categories of experiments and will update the Policy, as warranted.

Section 6.3. Compliance

Ten comments were received regarding the issue of compliance with the proposed *Policy for Institutional DURC Oversight.* Six of these comments noted that the proposed Policy contained limited information on compliance or its implementation or enforcement at institutions and Federal agencies. In addition, three of the comments indicated confusion regarding the role of the Institutional Review Entity (IRE) in ensuring compliance with the Policy. To address confusion and concerns over the responsibilities for compliance on both the part of the institution and the Federal funding agency, language regarding compliance with the Policy has been moved to a separate section (Section 6.3) and reflects revisions that clarify that any suspension, limitation, or termination of USG funding or loss of future USG funding opportunities due to noncompliance with the final Policy will be consistent with existing regulations and policies governing USG-funded research and may subject the institution to other potential penalties under applicable laws and regulations.

Regarding the role of the IRE in ensuring compliance at the institution, Section 7.2.H of the final Policy includes revisions intended to clarify that it is the institution, not the IRE, that is responsible for institutional compliance with the Policy.

Section 7. Organizational Framework for Oversight of DURC

The figure in Section 7 has been modified to correspond to changes and revisions described below.

Section 7.1. Responsibilities of Principal Investigators

The proposed *Policy for Institutional DURC Oversight* required PIs to refer any research involving one or more of

[7] The 15 agents and toxins listed in the *Policy for Institutional DURC Oversight* are subject to the select agent regulations (42 CFR Part 73, 7 CFR Part 331, and 9 CFR Part 121), which set forth the requirements for possession, use, and transfer of select agents and toxins, and have the potential to pose a severe threat to human, animal, or plant health, or to animal or plant products. It is important to note, however, that the Federal Select Agent Program does not oversee the implementation of the *Policy for Institutional DURC Oversight* or the *March 2012 DURC Policy.*

[8] The only forms of the agents or toxins listed in Section 6.2.1 of the final *Policy for Institutional DURC Oversight* that, for the purposes of the Policy, are considered by the USG to be attenuated and therefore not subject to the requirements of the Policy, can be found on the Select Agent and Toxin Exclusions list under ''Attenuated Strains of HHS and USDA Select Agents and Toxins'' at: *http://www.selectagents.gov/Select%20Agents%20and%20Toxins%20Exclusions.html.*

the 15 listed agents to an IRE, which would then determine whether the research can be reasonably anticipated to produce any of the seven effects, and if so, whether that research meets the definition of DURC.

Comments were solicited on whether it is preferable to require PIs to determine whether their research involves one or more of the listed agents as well as determine whether any of his or her research involving one or more of the listed agents can be reasonably anticipated to produce any of the listed effects before referring the research to the IRE. Fourteen comments were received on this topic. Nine of the comments were supportive of a review process that would require the PI to assess his or her research for both use of one or more the listed agents and the applicability of the listed experiments. Furthermore, nine comments indicated that the assessment of the applicability of the listed experimental effects should be conducted by both the PIs and the IRE.

Comments from two institutions with extant review systems for dual use research indicated that their review processes already require that PIs assess their research for the listed experimental effects and participate in discussions of the risks and benefits of the research. These institutions noted that the increased involvement of the PI in the review process is beneficial for both the PI and the institution because it promotes a common understanding of DURC, informs the institution of instances when training on DURC might be needed, strengthens the review, enhances collaboration, and improves compliance. Two other comments in support of the expansion of the PI's role noted that because of the Policy's requirements for ongoing review by PIs, the expectation of PIs to assess the applicability of the listed effects at the outset of the research is both reasonable and beneficial. Four comments opposed expanding the PI's role regarding review of research for experimental effects. These comments cited concerns about the subjective nature of the determination, and that PIs did not have sufficient expertise for the assessment. In response to these comments, Section 7.1.A of the final Policy includes revisions that require PIs initiating or conducting research with one or more of the listed agents to also review the research for the presence or anticipation of any of the listed experimental effects. Section 7.1.B also includes revisions that indicate that the PI must work with the IRE to assess the risks and benefits of the research as well as to develop the risk mitigation measures for any research determined to be DURC. For consistency, similar changes were made to the description of the responsibilities of institutions (Section 7.2.B.iii).

Comments were also solicited on whether research that has undergone institutional dual use review, but has been determined by the IRE to not meet the definition of DURC, should be monitored for emerging DURC issues. While the proposed *Policy for Institutional DURC Oversight* did not place any periodicity or time requirements for the identification of research that meets the scope of the Policy, comments indicated that it was not clear whether and how a PI should continue to consider the dual use potential of his or her work or whether a PI should ever re-examine work that has been previously determined by the IRE to not meet the definition of DURC. Twelve of the 16 comments addressing this topic agreed that some form of ongoing review by the PI and/or the dual use review entity was reasonable. However, there were concerns regarding the increased burden that ongoing or periodic review would have on institutions, in particular the interpretations that this ongoing review would involve monitoring in perpetuity all research that meets the scope of the Policy. In response to these comments, Section 7.1.A of the final Policy includes revisions that require PIs to notify the IRE as soon as, (1) his or her research involves one or more of the agents or toxins listed in Section 6.2.1; (2) his or her research with one or more of the agents or toxins listed in Section 6.2.1 of the Policy also produces, aims to produce, or can be reasonably anticipated to produce one or more of the seven effects listed in Section 6.2.2 of the Policy; or (3) his or her research that is within the scope of Section 6.2 of the Policy may meet the definition of DURC (as defined in Section 4 of the Policy).

Section 7.2. Responsibilities of USG-Funded Research Institutions

Section 7.2.B. Section 7.2 of the final Policy details the oversight process and the roles and responsibilities of research institutions (Federal and non-Federal) that receive USG funds for life sciences research and that conduct or sponsor research with any of the 15 agents or toxins listed in Section 6.2.1 of the final Policy. Public comment was requested on ways to optimize the relationship between the *March 2012 DURC Policy* and the proposed *Policy for Institutional DURC Oversight.* Nine comments were received related to the requirements in both policies to review research for DURC potential and develop and implement risk mitigation plans for any identified DURC. Four of these comments noted the potential for duplicate reviews for research that is found to be DURC by both the IRE (per the final *Policy for Institutional DURC Oversight*) and the Federal funding agency (per the *March 2012 DURC Policy*). Likewise, four of these comments noted that both policies require the development of risk mitigation plans for any identified DURC and that this could lead to a single DURC project with two risk mitigation plans.

In an effort to reduce burden for the implementing institutions, the final Policy includes revisions that indicate that research that has already been determined to be DURC under the *March 2012 DURC Policy* and is already being conducted under a risk mitigation plan does not require the development of a new risk mitigation plan. In addition, any research that has already been determined to be DURC under the *March 2012 DURC Policy,* and for which a risk mitigation plan has already been developed, is not required to undergo the review steps outlined in Sections 7.2.B.i–vi. However, the institutions will remain responsible for ensuring that the risk mitigation plan is implemented and kept up-to-date, that the PIs continue to conduct ongoing assessments of their research, and that the risk mitigation plan undergoes annual review by the IRE (described below).

Section 7.2.B.iii of the final Policy includes revisions to clarify that the IRE should include the PI in its review activities, as appropriate, and that any research that has been determined by an institution to be DURC should not be conducted until an approved risk mitigation plan has been implemented.

Section 7.2.B.iv of the final Policy describes the first reporting requirement of institutions regarding oversight of DURC: Within 30 calendar days of the institutional review of the research for DURC potential, the institution must notify the USG of any research that falls within the scope of 6.2, including whether the research meets or does not meet the definition of DURC. Revisions included in the final Policy also detail the necessary information to include in this initial 30-day notification: The grant or contract number related to the research (if the research is funded by the USG); the name(s) of PI(s); the name(s) of the applicable agent(s) listed in Section 6.2.1 of the Policy; and a description of why the research is deemed to produce one or more of the experimental effects listed in Section 6.2.2 of the Policy. For research that is

determined by the IRE to meet the definition of DURC, the notification should also include: The name of the investigator (if different from the PI) responsible for the performance of the DURC; and a description of the IRE's basis for its determination.

Section 7.2.B.v–vi. These sections of the final Policy regard the institution working together with the USG funding agency to develop a risk mitigation plan for research that has been determined by the institution to be DURC. In order to clarify this process, the final Policy includes revisions that require the institution to submit a *draft* risk mitigation plan to the USG funding agency within 90 calendar days of the IRE's determination that the research is DURC. In turn, the USG funding agency is required to finalize and approve the risk mitigation plan within 60 calendar days of receipt of the draft plan.

Section 7.2.B.viii–ix. In order to clarify and streamline the requirements for periodic review by IREs of the risk mitigation plans developed in response to determinations of DURC, the final *Policy for Institutional DURC Oversight* includes revisions that require IREs to review, at least annually, all active risk mitigation plans and modify them, as needed. This annual review should apply to all risk mitigation plans for DURC taking place at the institution, regardless of whether the DURC was identified per the final *Policy for Institutional DURC Oversight* or the *March 2012 DURC Policy.* The review of risk mitigation plans would likely include a review of the DURC itself, and may result in a change in the DURC status of the research (e.g., the research no longer meets the definition of DURC). Therefore, the final Policy also includes revisions that require IREs to notify, within 30 calendar days, the appropriate USG agency of any change in the status of a DURC-designated project at the institution, and details of any changes to risk mitigation plans, which need to be approved by the funding agency.

Review of research proposals. Thirteen comments were received in response to the request for feedback on whether research institutions should review life sciences research proposals for DURC issues prior to their submission to a funding agency. Eight of the comments noted that fewer proposals are funded than are submitted, and thus a requirement for institutional reviews of proposals before funding is secured could result in a waste in effort and an unnecessary burden upon the institution.

In response to these comments, references to the institutional or IRE review of research proposals for DURC concerns prior to submission to a funding agency have been removed. However, it should be noted that institutions that conduct Federally-funded life sciences research are required, at the time of application for USG funds for life sciences research, to provide certification to the USG funding agency or agencies that the institution is in full compliance with all aspects of the Policy or will be at the time the research is initiated. In addition, the *Policy for Institutional DURC Oversight* requires PIs to identify any and all research involving one or more of the 15 listed agents and refer such research to the IRE, along with the PIs assessment of the applicability of the listed experimental effects. Thus, institutions will have a process in place for reviewing research for dual use concerns before the research is initiated, and this review must be done by the time this research begins.

Comments on the proposed Policy also indicated that guidance was needed for institutions and IREs to meet the review and reporting requirements set forth in Section 7.2.B. To assist institutions and their IREs, Section C of the *Companion Guide* contains more information on the reporting requirements for institutions with respect to findings of DURC. Also, Section D of the *Companion Guide* contains guidance and tools to assist IRE's in the drafting of risk mitigation plans for DURC.

Section 7.2.D. The proposed *Policy for Institutional DURC Oversight* described the role of an Institutional Contact for Dual Use Research (ICDUR), who is designated by the institution to serve as a point of contact for questions regarding compliance with and implementation of the requirements for the oversight of research that falls within the scope of and/or meets the definition of DURC. When questions arise regarding compliance or implementation of the final Policy or the *March 2012 DURC Policy,* the assessment of DURC, or the development of risk mitigation plans, the ICDUR also serves as the liaison (as necessary) between the institution and the relevant program officers at the Federal agencies.

Comments were solicited regarding the feasibility of a single individual serving in the capacity of the ICDUR. Nine of the thirteen comments were supportive of the ICDUR's role, with two comments voicing concerns about the expertise and training needed for performing the role of the ICDUR. Based on the comments received concerning the role and expertise of the ICDUR, the final Policy clarifies that the ICDUR is not expected to be able to answer all DURC-related questions, but rather would serve as the institutional point of contact for questions and would ensure that all questions are adequately addressed by the appropriate subject matter experts. Furthermore, it is at the discretion of the institution to decide whether the position of ICDUR should be a new full-time position or whether the responsibilities of the ICDUR should be assigned to an extant institutional staff member or official.

Section 7.2.E. The final *Policy for Institutional DURC Oversight* details the responsibility of institutions subject to the Policy to establish an IRE, describes the range of mechanisms available to institutions in meeting this requirement, and details the required attributes of an IRE. Comments were requested on how DURC oversight could be usefully integrated with other existing institutional oversight processes in order to reduce duplication and burdens on institutions, as well as the feasibility, benefits, and limitations of using an institution's Institutional Biosafety Committee (IBC) to conduct the DURC institutional review process.

Twelve of the nineteen comments received on the topic of utilizing extant IBCs for dual use reviews posited that integration of DURC review with existing IBC processes would be less of a burden for the institution than establishing a new entity for the sole purpose of conducting DURC reviews. These institutions noted that, because some IBCs already conduct some form of review for dual use concerns, they are familiar with the concept already. In addition, the commenting institutions noted that using an extant body would eliminate a duplicative process of standing up yet another entity for a similar submission and review process. A few (four) of the respondents either opposed the use of the IBC for DURC review or requested more information on the process. These comments described potential challenges to using the IBC for dual use reviews, including that review of research for dual use concerns would be an entirely new role for the IBC and that committee members may not have the expertise to conduct such reviews. Also, the time required to review research projects could increase significantly for IBCs, reducing the efficiency of both the recombinant DNA and dual use reviews. Many comments were also concerned with the ability of IREs to recognize and assess the risks associated with DURC. A few comments noted that institutions may not have the expertise required to identify DURC and that the consistency of DURC reviews

among institutions may vary considerably. Other comments requested more guidance and tools for the institution and its IRE to assist in the review and oversight processes.

To address the comments and concerns on the composition and expertise of the IRE, the final Policy clarifies that: the IRE is to be composed of no fewer than five members; the IRE membership should be empowered by the institution to execute the actions listed in Sections 7.2.B.i–iii, v, and viii, of the final Policy; the IRE should include members that understand biosafety and biosecurity considerations; and the IRE may include as a member or as a consultant at least one individual knowledgeable of the institution's policies and procedures. No changes were made regarding the range of mechanisms available to institutions in fulfilling the requirement to establish an IRE; the final Policy retains the flexibility for institutions to create or designate the review entity best suited for their needs, as long as the review entity is appropriately constituted (per Section 7.2.E.ii–iv) to meet the requirements of the final Policy. In addition, guidance on the establishment of an IRE has been provided in the *Companion Guide* and training materials have been developed to assist institutions and their IREs in implementing the requirements of the final Policy.

Of note, the final Policy identifies resources for institutions with questions regarding DURC reviews or oversight. The final Policy describes the USG's responsibility to provide guidance to institutions on the sharing of DURC research products and on the communication of DURC, as well as convene advisory bodies such as the National Science Advisory Board for Biosecurity (NSABB), when necessary, to develop recommendations on particularly complex cases of DURC. In addition, per Section 8.B, institutions may, with the participation of the designated ICDUR, consult with the USG department or agency that is funding the research (or in the case of non-USG funded research, with the NIH or with the USG funding agency designated by the NIH) for advice on matters related to DURC.

Section 7.2.F. Retention of records. The proposed *Policy for Institutional DURC Oversight* required institutions to maintain records of institutional DURC reviews, risk mitigation plans, and personnel training on dual use research for three years. Comments were solicited regarding the appropriate amount of time that institutions should be required to retain such records. Twelve comments were received on this topic. Nine recommended that records be retained for or beyond the period of time of the research grant or contract. Five of the comments indicated that records should be retained, at a minimum, for the length of the grant or contract period and then three additional years following project termination or completion. Two comments indicated that indefinite records retention was too burdensome for institutions. The comments also indicated that while research institutions may have different records retention requirements, these requirements are generally record-specific; that is, each type of record may have its own retention schedule and requirement. Three comments considered the records retention requirements of the *Policy for Institutional DURC Oversight* to be repetitive and unnecessary considering that the laboratories conducting research subject to the *Policy for Institutional DURC Oversight* are also complying with biological select agents and toxins (BSAT) related record-keeping requirements, Occupational Safety and Health Administration regulations, Environmental Protection Agency regulations, and biosafety-related requirements—some of which have record retention requirements that exceed the length of time indicated in the proposed Policy. These comments recommended that the USG harmonize the recordkeeping requirements.

The final Policy includes revisions that require institutions to maintain records of institutional DURC reviews and completed risk mitigation plans for the term of the research grant or contract plus three years after its completion, but no less than eight years, unless a shorter period is required by law or regulation. This revision accommodates the period of performance for most life sciences research grants and contracts.

Section 7.2.H. The final *Policy for Institutional DURC Oversight* includes revisions to clarify that it is the institution, not the IRE, that is responsible for institutional compliance with the final Policy. While institutions are required to empower their IRE to execute the requirements listed in Section 7.2.B.i–iii, v, and viii, the responsibility to ensure compliance with the final Policy and with approved risk mitigation plans, as well as report instances of non-compliance, rests with the institution. The final Policy incorporates revisions to clarify these points. As noted earlier, language regarding compliance with the final Policy has been moved to a new section (Section 6.3).

Section 7.2.K. Accessibility of Institutional Review Procedures. The proposed *Policy for Institutional DURC Oversight* required IREs to make their procedures for reviewing life sciences research for dual use potential accessible to the public. Further, it stipulated that the posted policies of the institution should include an overview of the institution's procedures or review process, but should not include details of particular cases or the minutes of the DURC review entity's proceedings. The final Policy includes revisions to clarify that institutions should make documentation of their DURC review process available to the public upon request, as consistent with applicable law. In addition, the final Policy has been updated to indicate that the provision of DURC review procedures is an institutional responsibility that may be delegated to IREs.

7.2.L. Certification of compliance. The proposed *Policy for Institutional DURC Oversight* required institutions to provide, on an annual basis, a formal assurance to the appropriate Federal funding agency or agencies that the institution is in compliance with all aspects of the Policy. Two comments addressed the process for providing institutional assurances of compliance with the Policy. Suggestions for reducing burden associated with providing assurances included lengthening the period of time between assurances and allowing institutions to file a single assurance with a single entity (as is the case for the Common Rule) rather than requiring institutions to provide an assurance to each Federal funding agency that they work with.

The final Policy contains revisions clarifying that certification of compliance must be provided by an institution at the time of seeking funding for life sciences research, but no sooner than the effective date of the final Policy. Each USG funding agency will be implementing the certification requirement for applicants and grantees according to their own agency policies. More information and guidance on meeting the institutional requirement to provide certification of compliance with the *Policy for Institutional DURC Oversight* can be obtained in the grants and contracting policies of the funding agency.

Notes at the End of 7.2

DURC research at multiple institutions. The proposed *Policy for Institutional DURC Oversight* noted that there will be situations where a PI is conducting potential DURC at multiple institutions and proposed that it should be the purview of each institution to

review these projects and, if appropriate, develop and implement a risk mitigation plan. Examples of DURC projects involving more than one institution include cases where the DURC is a collaboration between PIs at different institutions or when the DURC is undertaken by a single PI who maintains laboratories at more than one institution. Comments were requested regarding whether each institution participating in a multi-site DURC project should have oversight of their portion of the projects and, if DURC is being conducted at their institution, develop and implement their own risk mitigation plans, or whether the primary institution should have the responsibility for meeting the requirements for oversight of DURC.

Twelve comments were received related to the oversight of DURC taking place at multiple institutions. Seven of the comments expressed the view that each institution conducting DURC should be responsible for the assessment of its research for DURC potential, and, in cases where DURC is determined, develop and implement a risk mitigation plan. Comments differed, however, on how institutions should work together to coordinate the oversight responsibilities of the DURC. Two comments suggested that in cases of multiple PIs (and their institutions) collaborating on a single DURC project, the institutions of the collaborating investigators should report any findings of DURC to a single, primary institution. Conversely, another comment stated that DURC assessment should be a responsibility of the primary or lead institution in the DURC collaboration, but that the individual collaborating institutions should be responsible for risk mitigation plan development and implementation of their portion of the project. Some (five) of the comments were concerned with how differences in institutional DURC assessments and mitigation plans should be handled, how these differences are arbitrated, and how the risk mitigation plan(s) should be implemented in cases of differing institutional resources and capabilities.

The oversight of research that falls within the scope and applicability of the final Policy should be consistent, regardless of whether the research is undertaken by a single investigator at a single institution, by a single investigator holding multiple research positions at different institutions, or by multiple investigators collaborating across institutions. When DURC research is undertaken at multiple institutions, these institutions should work together to ensure that DURC oversight, including the DURC reviews and any resulting risk mitigation plans, is implemented consistently across the collaborating entities. Consequently, in the final Policy, the note at the conclusion of Section 7.2 includes revisions to clarify that in the case of DURC collaborations involving multiple institutions, the primary institution (i.e., the institution in receipt of the grant or contract from the USG funding agency) is responsible for notifying the funding agency of research that falls within the scope of the Policy and, if that research is determined to be DURC, providing copies of each collaborating institution's risk mitigation plan. Furthermore, the primary institution should ensure that DURC oversight is consistently applied by all entities participating in the collaboration.

The final Policy includes an additional note in this section regarding cases in which a Federal department or agency simply passes through funding from another Federal department or agency to support life sciences research at an institution that conducts or sponsors research involving any of the agents listed in Section 6.2.1. In such cases, the agency originally providing the funding shall be considered the USG funding agency, and the ultimate recipient of the funds shall be considered the institution, and respectively shall fulfill the requirements expected of each under this Policy.

Section 7.3. Responsibilities of USG Funding Agencies

In order to facilitate timely finalization of risk mitigation plans drafted by the IRE (per Section 7.2.B.v) and submitted by institutions (per Section 7.2.B.vi), the final *Policy for Institutional DURC Oversight* requires the appropriate USG agencies to provide an initial response to institutions within 30 calendar days and finalize the plan within 60 calendar days of receipt of the draft plan. This change is, in part, due to two comments received that suggested a specified time frame for USG funding agencies to respond.

Section 8. Resources for Institutional Oversight of DURC

The final Policy contains no revisions to Section 8. However, as referenced in Section III of this Notice, Section 8.A of the Policy describes an implementation guide (i.e., a *''compendium of tools''*) for use with both the *Policy for Institutional DURC Oversight* and the *March 2012 DURC Policy.* Comments were requested on the sufficiency of the tools and guidance material, and approximately one-third of the 26 comments received indicated the list to be sufficient. However, many more comments included suggestions of additional tools and how tools should be developed. These suggestions include provision of real or hypothetical case studies illustrating the DURC assessment process, provision of example or template risk mitigation plans, and additional guidance for interpreting the seven experimental effects enumerated in the Policy. Comments received in response to the proposed Policy were helpful in developing and revising the guide's components, including: A tool to assist PIs and IREs in assessing the applicability of the listed experimental effects; points to consider in the assessment of risks and benefits; guidance on developing a risk mitigation plan for IRE-identified DURC; and guidance regarding the responsible communication of DURC.

The compendium of implementation tools is titled *Tools for the Identification, Assessment, Management, and Responsible Communication of Dual Use Research of Concern: Companion Guide to the USG Policies for Oversight of Life Sciences Dual Use Research of Concern* (*Companion Guide*), and is posted on the U.S. Department of Health and Human Services Science Safety Security (S3) Web site: *http://www.phe.gov/s3/dualuse.* Use of the *Companion Guide* by PIs, institutions, and Institutional Review Entities (IREs) is, however, not a requirement of the *Policy for Institutional DURC Oversight* or the *March 2012 DURC Policy.*

Cristin A. Dorgelo,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 2014–22770 Filed 9–24–14; 8:45 am]

BILLING CODE 3270–F4–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31253; File No. 812–14028]

Monroe Capital Corporation, et al.; Notice of Application

September 19, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 17(d), 57(a)(4), and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d), 57(a)(4), and 57(i) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain business development companies (''BDCs'') and registered closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

Applicants: Monroe Capital Corporation (the ''Company''), MC Funding Ltd. (''MC Funding''), MC Funding, Ltd. 2013–1 (''2013–1''), Monroe Capital Partners Fund, L.P. (''Monroe SBIC''), Monroe Capital Partners Fund II, L.P. (''Monroe SBIC II''), Monroe Capital Corporation SBIC, LP (''MCC SBIC''), Monroe Capital Senior Secured Direct Loan Fund LP (''MCSSDL Fund''), Monroe Capital Senior Secured Direct Loan Fund (Unleveraged) LP (''MCSSDL–U Fund''), Monroe FCM Direct Loan Fund LP (''MFDL Fund'' and collectively with MC Funding, 2013–1, Monroe SBIC, Monroe SBIC II, MCSSDL Fund and MCSSDL–U Fund, the ''Existing Affiliated Private Funds''), Monroe Capital Management Advisors, LLC (''MCMA''), Monroe Capital Management LLC (''Monroe Collateral Manager''), Monroe Capital Partners Fund Advisors, Inc. (''Monroe SBIC Adviser''), Monroe Capital Partners Fund II Advisors, Inc. (''Monroe SBIC II Adviser'' and, collectively with MCMA, Monroe Collateral Manager, and Monroe SBIC Adviser, the ''Affiliated Advisers''), Monroe Capital Partners Fund, LLC (''Monroe SBIC General Partner''), Monroe Capital Partners Fund II, LLC (''Monroe SBIC II General Partner''), MCC SBIC GP, LLC (''MCC SBIC General Partner''), Monroe Capital Senior Secured Direct Loan Fund LLC (''MCSSDL Funds General Partner,''), and Monroe FCM Direct Loan Fund LLC (''MFDL Fund General Partner''), and Monroe Capital BDC Advisors, LLC (''BDC Adviser'').[1]

DATES: *Filing Dates:* The application was filed on April 18, 2012, and amended on February 27, 2013, June 5, 2013, November 27, 2013, July 16, 2014, and September 5, 2014.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 14, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: 311 South Wacker Drive, Suite 6400, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Mark Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Company is a Maryland corporation organized as a closed-end management investment company that has elected to be regulated as a BDC under section 54(a) of the Act. The Company's Objectives and Strategies[2] are to maximize the total return to stockholders in the form of current income and capital appreciation through investment in primarily senior, unitranche and junior secured debt of middle-market companies and, to a lesser extent, unsecured subordinated debt and equity investments. A majority of the directors of the Company are persons who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Non-Interested Directors'').

2. The BDC Adviser is a Delaware corporation and is wholly owned and controlled by Theodore L. Koenig. The BDC Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Company. Mr. Koenig also directly or indirectly owns a controlling interest in, and serves as the principal executive officer of, each of the Affiliated Advisers.

3. MCC SBIC is a Delaware limited partnership and is licensed to operate as a small business investment company (''SBIC'') by the United States Small Business Administration (''SBA''). MCC SBIC General Partner is a Delaware limited liability company and serves as general partner of MCC SBIC. The Company owns 100 percent of the MCC SBIC General Partner's equity interests and the MCC SBIC General Partner owns 1 percent of MCC SBIC in the form of a general partnership interest. The Company directly owns 99 percent of MCC SBIC in the form of limited partnership interests. As a result, the Company directly or indirectly wholly owns MCC SBIC. MCC SBIC General Partner has appointed the BDC Adviser as the sole investment adviser for MCC SBIC.

4. MC Funding and 2013–1 are exempted companies incorporated under the laws of the Cayman Islands with limited liability. Monroe Collateral Manager is a Delaware limited liability company and is the investment adviser for MC Funding and 2013–1. Monroe SBIC and Monroe SBIC II Delaware limited partnerships and are each licensed as SBIC by the SBA. Monroe SBIC General Partner and Monroe SBIC II General Partner, each a Delaware limited liability company, are the general partners of Monroe SBIC and Monroe SBIC II, respectively, and have entered into agreements with Monroe SBIC Adviser and Monroe SBIC II Adviser, each a Delaware corporation, to serve as investment adviser for Monroe SBIC and Monroe SBIC II, respectively. MCSSDL Fund, MCSSDL–U Fund, and MFDL Fund are Delaware limited partnerships. MCSSDL Funds General Partner, a Delaware limited liability company, is the general partner of MCSSDL Fund and MCSSDL–U Fund and MFDL Fund General Partner, a Delaware limited liability company, is the general partner of MFDL Fund. MCMA, a Delaware limited liability company, serves as investment adviser for MCSSDL Fund, MCSSDL–U Fund, and MFDL Fund under agreements with MCSSDL Funds General Partner and MFDL Fund General Partner, respectively. Each of the Existing Affiliated Private Funds is excluded from the definition of investment company by section 3(c)(1) of the Act. Each of the Affiliated Advisers is

[1] All references to the term ''BDC Adviser'' include successors-in-interest to the BDC Adviser. A successor-in-interest is limited to an entity that results from a reorganization into another jurisdiction or change in the type of business organization.

[2] ''Objectives and Strategies'' means a Regulated Fund's (as defined below) investment objectives and strategies, as described in the Regulated Fund's registration statement on Form N–2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (the ''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to shareholders.

registered as an investment adviser under the Advisers Act.[3]

5. Applicants seek an order (''Order'') to permit each Regulated Fund,[4] together with one or more Regulated Funds and/or Affiliated Private Funds [5] to participate in the same investment opportunities through a co-investment program where such participation would otherwise be prohibited under sections 17(d) or 57(a)(4) and rule 17d–1 by (a) co-investing with each other in securities issued by issuers in private placement transactions in which an Adviser negotiates terms in addition to price; [6] and (b) making additional investments in securities of such issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub, as defined below) participated together with one or more other Regulated Funds and/or one or more Affiliated Private Funds in reliance on the requested Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Private Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[7]

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary would be prohibited from investing in a Co-Investment Transaction with any other Regulated Fund or Affiliated Private Fund because it would be a company controlled by a Regulated Fund for purposes of sections 17(d) or 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the requested Order, as though the Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Sub would have no purpose other than serving as a holding vehicle for the Regulated Fund's investments and, therefore, no conflicts of interest could arise between the Regulated Fund and the Wholly-Owned Investment Sub. The Regulated Fund's board of directors (for any Regulated Fund, the ''Board'') would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Sub's participation in a Co-Investment Transaction, and the Regulated Fund's Board would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Sub in the Regulated Fund's place. If the Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subs, the Board will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Sub. MCC SBIC is a Wholly-Owned Investment Sub and SBIC Subsidiary of the Company.

7. When considering Potential Co-Investment Transactions for any Regulated Fund, the BDC Adviser will consider only the Objectives and Strategies, investment policies, investment positions, capital available for investment (''Available Capital''),[9] and other pertinent factors applicable to that Regulated Fund. The BDC Adviser expects that any portfolio company that is an appropriate investment for a Regulated Fund should also be an appropriate investment for one or more other Regulated Funds and/or one or more Affiliated Private Funds, with certain exceptions based on Available Capital or diversification.[10]

8. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the Board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority'') will approve each Co-Investment Transaction prior to any investment by the participating Regulated Fund.[11]

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) The proposed participation of each Regulated Fund and Affiliated Private Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the Board of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the Board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The Board of any Regulated Fund may at any time rescind, suspend or qualify its approval

[3] MCMA has filed a Form ADV with the Commission. Monroe Collateral Manager, Monroe SBIC Adviser and Monroe SBIC II Adviser are each investment advisers registered under the Advisers Act because they are relying advisers of MCMA.

[4] ''Regulated Funds'' means the Company and the Future Regulated Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser is an Adviser, and (c) that intends to participate in the Co-Investment Program (as defined below). ''Adviser'' means (a) the BDC Adviser, (b) an Affiliated Adviser, or (c) any investment adviser that controls, is controlled by or is under common control with the BDC Adviser and is registered as an investment adviser under the Advisers Act.

[5] ''Affiliated Private Fund'' means any Existing Affiliated Private Fund or any entity (a) whose investment adviser is an Adviser, (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, and (c) that intends to participate in Co-Investment Program.

[6] The term ''private placement transactions'' means transactions in which the offer and sale of securities by the issuer are exempt from registration under the Securities Act.

[7] All existing entities that currently intend to rely upon the requested Order have been named as applicants. Any other existing or future entity that subsequently relies on the Order will comply with the terms and conditions of the application.

[8] The term ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with the Regulated Fund at all times holding, directly or indirectly, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary, maintain a license under the SBA Act and issue debentures guaranteed by the SBA); (iii) with respect to which the Regulated Fund's board of directors (''Board'') has the sole authority to make all determinations with respect to the entity's participation under the conditions of the application; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means an entity that is licensed by the SBA to operate under the Small Business Investment Act of 1958 (the ''SBA Act'') as a small business investment company. An SBIC Subsidiary may be a Wholly-Owned Investment Sub if it satisfies the conditions in this definition.

[9] ''Available Capital'' consists solely of liquid assets not held for permanent investment, including cash, amounts that can currently be drawn down from lines of credit, and marketable securities held for short-term purposes. In addition, for the Affiliated Private Funds, Available Capital would include bona fide uncalled capital commitments that can be called by the settlement date of the Co-Investment Transaction.

[10] The Regulated Funds, however, will not be obligated to invest, or co-invest, when investment opportunities are referred to them.

[11] In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Eligible Directors and the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o).

of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

10. No Non-Interested Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit affiliated persons of a registered investment company from participating in joint transactions with the company or a company controlled by such registered investment company unless the Commission has granted an order permitting such transactions. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC (or a company controlled by such BDC) in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to BDCs. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies to joint transactions involving a BDC. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. The Regulated Funds and the Affiliated Private Funds (a) may be deemed to be under common control, and thus affiliated persons of each other under section 2(a)(3)(C) of the Act and (b) will be persons related to a Regulated Fund that is a BDC in a manner described in section 57(b) of the Act. As a result, these relationships will cause each Regulated Fund (or its Wholly-Owned Investment Sub) and Affiliated Private Fund participating in a Co-Investment Transaction with a Regulated Fund (or its Wholly-Owned Investment Sub) to be subject to section 17(d) or section 57(a)(4) and rule 17d–1.

3. Applicants state that in the absence of the requested relief, the Regulated Funds would be, in some circumstances, limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that the participation of the Regulated Funds in Co-Investment Transactions in accordance with the conditions to the requested relief would be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from, or less advantageous than, of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following conditions:

1. Each time an Adviser considers a Potential Co-Investment Transaction for an Affiliated Private Fund or another Regulated Fund that falls within a Regulated Fund's then-current Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for such Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the applicable Adviser to be invested by the Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by the other participating Regulated Funds and Affiliated Private Funds, collectively, in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each. The applicable Adviser will provide the Eligible Directors of each participating Regulated Fund with information concerning each participating party's Available Capital to assist the Eligible Directors with their review of the Regulated Fund's investments for compliance with these allocation procedures.

(c) After making the determinations required in conditions 1 and 2(a), the applicable Adviser will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and Affiliated Private Fund) to the Eligible Directors of each participating Regulated Fund for their consideration. A Regulated Fund will co-invest with one or more other Regulated Funds and/or one or more Affiliated Private Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the Potential Co-Investment Transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its shareholders and do not involve overreaching in respect of the Regulated Fund or its shareholders on the part of any person concerned;

(ii) The Potential Co-Investment Transaction is consistent with:

(A) the interests of the shareholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) The investment by any other Regulated Funds or Affiliated Private Funds would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of other Regulated Funds or Affiliated Private Funds; provided that, if any other Regulated Fund or Affiliated Private Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event will not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the applicable Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that an Affiliated Private Fund or a Regulated Fund or any affiliated person of any Affiliated Private Fund or any Regulated Fund receives in connection with the right of an Affiliated Private Fund or a Regulated Fund to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Affiliated Private Funds (who each may, in turn, share its portion with its affiliated persons) and the participating Regulated Funds in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the

Advisers, the Affiliated Private Funds or the other Regulated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The applicable Adviser will present to the Board of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or Affiliated Private Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not offered to the Regulated Fund, and an explanation of why the investment opportunities were not offered to the Regulated Fund. All information presented to the Board pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8,[12] a Regulated Fund will not invest in reliance on the Order in any issuer in which another Regulated Fund, Affiliated Private Fund, or any affiliated person of another Regulated Fund or Affiliated Private Fund is an existing investor.

6. A Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for each participating Regulated Fund and Affiliated Private Fund. The grant to an Affiliated Private Fund or another Regulated Fund, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Affiliated Private Fund or any Regulated Fund elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Affiliated Private Funds and Regulated Funds.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and Affiliated Private Fund in such disposition is proportionate to its outstanding investments in the issuer immediately preceding the disposition; (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the Board of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each Affiliated Private Fund and each Regulated Fund will bear its own expenses in connection with any such disposition.

8. (a) If any Affiliated Private Fund or any Regulated Fund desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the applicable Advisers will:

(i) Notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Regulated Fund and each Affiliated Private Fund in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) The amount of the opportunity is not based on the Regulated Funds' and the Affiliated Private Funds' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by each Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Affiliated Private Funds in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each participant's Available Capital, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Non-Interested Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Private Funds that the Regulated Fund considered but declined to participate in, so that the Non-Interested Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Non-Interested Directors will consider at least annually

[12] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f) of the Act.

11. No Non-Interested Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act) of a Affiliated Private Fund.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective investment advisory agreements with the Affiliated Private Funds and the Regulated Funds, be shared by the Regulated Funds and Affiliated Private Funds in proportion to the relative amounts of the securities held or to be acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k) of the Act, as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Regulated Funds and Affiliated Private Funds on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by such Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1) of the Act, and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Regulated Funds and Affiliated Private Funds based on the amounts they invest in such Co-Investment Transaction. None of the Affiliated Private Funds, the Advisers, the other Regulated Funds or any affiliated person of the Regulated Funds or Affiliated Private Funds will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the Regulated Funds and the Affiliated Private Funds, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C); and (b) in the case of an Adviser, investment advisory fees paid in accordance with the agreement between the Adviser and the Regulated Fund or Affiliated Private Fund).

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22792 Filed 9–24–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73151; File No. SR–NYSEARCA–2014–106]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 2.100(a) To Correct Potential Ambiguities Introduced in Prior Rule Change Filings Submitted in 2013 and 2014

September 19, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 15, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 2.100(a) to correct potential ambiguities introduced in prior rule change filings submitted in 2013 and 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 2.100(a) to correct potential ambiguities introduced in prior rule change filings submitted in 2013 and 2014. More specifically, as a result of overlapping amendments in 2013 and 2014, potential ambiguity as to the approved text of Rule 2.100(a) of the rule was introduced, as discussed in greater detail below. In order to establish the approved text definitively, the Exchange accordingly proposes to amend existing Rule 2.100(a)(2)(A).

On June 14, 2013, the Exchange filed a proposed rule change relating to the acquisition by IntercontinentalExchange Group, Inc. (now known as Intercontinental Exchange, Inc. or ''ICE'') of the Exchange's indirect parent company, NYSE Euronext (the ''June 2013 Rule Change'').[4] The June 2013 Rule Change included non-substantive amendments to Rule 2.100(a)(3)(ii) to replace two references to NYSE Euronext with references to IntercontinentalExchange Group, Inc., which would be the new public holding company above NYSE Euronext. No other amendments to Rule 2.100(a) were proposed. The Commission approved the June 2013 Rule Change on August 15, 2013.[5] However, the June 2013 Rule Change by its terms did not become operative until the closing of ICE's acquisition of NYSE Euronext, which occurred on November 13, 2013.

On July 22, 2013, after publication of notice of the June 2013 Rule Change but prior to issuance of the approval order, the Exchange filed an additional

[4] *See* Securities Exchange Act Release No. 69850 (June 25, 2013), 78 FR 39352 (July 1, 2013) (SR–NYSEArca–2013–62) (notice).

[5] *See* Securities Exchange Act Release No. 70210 (Aug. 15, 2013), 78 FR 51758 (Aug. 21, 2013) (SR–NYSEArca–2013–62) (approval order).

proposed rule change that made substantive changes to Rule 2.100 to better delineate the self-regulatory organization functions of the Exchange and affiliated exchanges during an emergency condition, reflect the operational preferences of the industry, reflect the current structure of market participant connectivity to and system coding for exchange systems, and add NYSE MKT LLC as an affiliated exchange (the ''July 2013 Rule Change'').[6] As part of the July 2013 Rule Change, the Exchange renumbered Rule 2.100(a), and moved the text previously found in Rule 2.100(a)(3)(ii) to new paragraph Rule 2.100(a)(2)(A). The renumbering of former Rule 2.100(a)(3)(ii) did not include any substantive changes to that rule text. The July 2013 Rule Change was approved and effective on November 6, 2013.[7]

Because the July 2013 Rule Change was effective prior to the operative date of the June 2013 Rule Change, it did not reflect the change from NYSE Euronext to IntercontinentalExchange Group, Inc. made in the June 2013 Rule Change. In addition, the June 2013 Rule Change was not amended after effectiveness of the July 2013 Rule Change to conform the unamended rule text. As a result, when ICE's acquisition of NYSE Euronext closed on November 13, 2013 and the June 2013 Rule Change was intended to take effect, the text of Rule 2.100(a) in Exhibit 5 to the rule filing (i.e. the text before the proposed amendment) did not correspond with the text as recently amended by the July 2013 Rule Change. However, when the changes associated with the June 2013 Rule Change were made to Rule 2.100(a) on the Exchange's Web site, the change from NYSE Euronext to IntercontinentalExchange Group, Inc. was made, even though the rule text appeared under new rule numbering.

In a further proposed rule change filed on May 5, 2014, the Exchange proposed to amend Rule 2.100(a) to reflect the change of name from IntercontinentalExchange Group, Inc. to Intercontinental Exchange, Inc. (the ''May 2014 Rule Change'').[8] The base text of Rule 2.100(a) in this filing did not reflect the renumbering of the rule text in the July 2013 Rule Change, but did reflect the June 2013 Rule Change.[9] The May 2014 Rule Change was effective, and designated operative, upon filing.

As a consequence of this series of overlapping rule change filings, there is potential ambiguity as to whether the assumption by officers of ICE in 2013 of the roles formerly assigned to officers of NYSE Euronext, and the subsequent change in ICE's name in 2014, are accurately reflected in Rule 2.100(a). The Exchange believes there is no ambiguity as to the intent of any of the rule change filings or as to the intended text of Rule 2.100(a) as there were no substantive changes made in the July 2013 Rule Change to Rule 2.100(a)(3), only a renumbering of paragraphs. Accordingly, the Exchange proposes to amend the version of Rule 2.100(a) as it currently appears on the Exchange's Web site, to replace the reference to IntercontinentalExchange Group, Inc., with the correct reference to Intercontinental Exchange, Inc., as provided for in the May 2014 Rule Change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market by clarifying rule text to reflect the correct corporate entity, as intended in the May 2014 Rule Change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address any competitive issues and relates to non-substantive clarifications of one rule .only

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the Exchange to correct any ambiguity as to its current rule created by its prior rule filings, which were either previously approved by the Commission or effective on filing.[16] For this reason, the Commission designates the proposed

[6] *See* Securities Exchange Act Release No. 70097 (Aug. 2, 2013), 78 FR 48528 (Aug. 8, 2013) (SR–NYSEArca–2013–77) (notice).

[7] *See* Securities Exchange Act Release No. 70822 (Nov. 6, 2013), 78 FR 68128 (Nov. 13, 2013) (SR–NYSEArca–2013–77) (approval order).

[8] *See* Securities Exchange Act Release No. 72157 (May 13, 2014), 79 FR 28792 (May 19, 2014) (SR–NYSEArca–2014–52) (notice of filing and immediate effectiveness).

[9] Exhibit 5 to the May 2014 Rule Change included the text of a Rule 2.100(a)(1) as part of such exhibit, but did not propose any changes to that provision. The base text of Rule 2.100(a)(1) in Exhibit 5 to the May 2014 Rule Change did not reflect the changes made in the July 2013 Rule Change, which became effective on November 6, 2013. However, the changes to Rule 2.100(a)(1) made in the July 2013 Rule Change are correctly reflected on the Exchange's Web site and the Exhibit 5 to this filing.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *See* supra notes 4–8.

rule change to be operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2014–106 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2014–106. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2014–106 and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73150; File No. SR–CHX–2014–15]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt the CHX Routing Services

September 19, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 8, 2014, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to adopt and amend rules to implement the CHX Routing Services. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX 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 Changes

1. Purpose

The Exchange proposes to adopt and amend rules to implement the proposed CHX Routing Services. Specifically, the Exchange proposes to permit Routable Orders[4] to be routed away from the CHX Matching System (''Matching System'') for executions at away Trading Centers (''routing destination''),[5] if a Routing Event[6] is triggered. The proposed CHX Routing Services would be provided through CHXBD, LLC (''CHXBD''), which is an affiliated broker-dealer that will operate as a facility of the Exchange. All orders routed away from, and related executions within, the Matching System would be done in a manner compliant with Exchange rules and federal securities laws and regulations, including Regulation NMS and Regulation SHO. Incidentally, the Exchange also proposes to amend the operation of certain order modifiers and price sliding functionalities that will be impacted by the proposed CHX Routing Services, including the CHX Only and LULD Price Sliding functionalities and Do Not Display modifier, and clarify how orders are ranked, displayed and executed by the Matching System.

The Exchange believes that the proposed CHX Routing Services and related amendments will benefit market participants by providing a routing functionality that would increase the likelihood of executions resulting from Routable Orders submitted to the Matching System. Consequently, the proposed CHX Routing Services and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] As discussed below, proposed Article 1, Rule 1(oo) defines ''Routable Order'' as ''any incoming Limit order, as defined under Article 1, Rule 2(a)(1), of any size, not marked by any order modifiers or related terms listed under Article 1, Rule 2 that prohibit the routing of the order to another Trading Center.'' By definition, orders resting on the CHX book are never routable.

[5] Proposed Article 1, Rule 1(nn) defines ''Trading Center'' as it is defined under Rule 600(b)(78) under Regulation NMS.

[6] As discussed below, proposed Article 19, Rule 3(a) lists three Routing Events, any of which may cause an order to be routed away pursuant to the proposed CHX Routing Services.

related amendments to modifiers and price sliding functionalities will reduce the number of order cancellations and improve fill rates on orders submitted to the Matching System, which will, in turn, enhance and streamline the national market system by promoting executions within and without the Matching System.

Background

Current CHX Article 20 (Operation of the Matching System) provides routing rules that were adopted when the Exchange migrated to its all-electronic trading model in 2006.[7] However, the Exchange has never provided outbound routing of orders from the Matching System. In sum, these current routing rules contemplate a routing functionality largely based on the current routing of orders from Brokerplex through the Order Management System (''OMS''), which is fundamentally different from the proposed CHX Routing Services.[8] The following highlight the key differences between the current routing rules and the proposed CHX Routing Services:

(1) Unlike the proposed CHX Routing Services, the current routing rules contemplate a routing functionality requiring Participants to enter into numerous agreements, including one with a non-affiliated third-party routing broker directly (''third-party routing broker'').[9] In contrast, the proposed CHX Routing Services do not involve Participants entering into any agreements with, or submitting any orders directly to, the routing brokers associated with the CHX Routing Services, including CHXBD. As discussed in detail below, the proposed CHX Routing Services involve the routing of corresponding orders related to Routable Orders submitted to the Matching System, from the Matching System, through CHXBD, to a third-party routing broker. This third-party routing broker would then submit the order to a routing destination for execution directly, or through another non-affiliated third-party routing broker.[10]

(2) Unlike the proposed CHX Routing Services, the current routing rules only contemplate the routing of orders directly away from the Matching System where such orders would execute in violation of Rule 611 of Regulation NMS and/or display in violation of Rule 610(d) of Regulation NMS.[11] In contrast, the proposed CHX Routing Services include additional Routing Events that would also result in routing of Routable Orders away from the Matching System.

(3) Unlike the proposed CHX Routing Services, the current routing rules contemplate routing of orders that are rejected from the Matching System.[12] In contrast, the proposed CHX Routing Services only involve routing of Routable Orders *from the Matching System* and Routable Orders that have been rejected from the Matching System are not eligible for the proposed CHX Routing Services.

Given these fundamental differences between the current routing rules and the proposed CHX Routing Services, the Exchange now proposes to delete current Interpretation and Policy .03 of Article 20, Rule 5; Article 20, Rule 8(h); and Interpretation and Policy .03 of Article 20, Rule 8. In lieu of these current rules, the Exchange proposes to adopt or amend the following rules.

Proposed Article 19 (Operation of the CHX Routing Services)

The Exchange proposes to list all rules concerning the ''Operation of the CHX Routing Services'' under Article 19, which is currently reserved. Thereunder, the Exchange proposes to adopt Rule 1 (CHX Routing Services), Rule 2 (Routing Brokers), and Rule 3 (Routing Events).

Proposed Article 19, Rule 1 (CHX Routing Services)

Proposed Rule 1 (CHX Routing Services) provides a general overview of the scope of the proposed CHX Routing Services. Specifically, proposed Rule 1(a) states as follows:

(a) *Generally.* Routable Orders that have been submitted to, and accepted by, the Matching System may be routed from the Matching System to other Trading Centers pursuant to this Article 19 and in a manner that is compliant with other Exchange rules and all securities laws and regulations, including, but not limited to, Regulation NMS and Regulation SHO; provided that the Exchange's routing-related systems and facilities are enabled and operational.

Pursuant to proposed Article 1, Rule 2(oo),[13] a ''Routable Order'' is an incoming limit order of any size, regardless of the attached order display modifier (*i.e.,* fully-displayable if no display modifier is attached, Reserve Size or Do Not Display); provided that such an order is not attached with at least one order modifier listed under Article 1, Rule 2 that explicitly or implicitly precludes routing.[14] Once a Routable Order comes to rest on the CHX book, it is no longer considered a Routable Order as the proposed CHX Routing Services will never route away resting orders. Moreover, the proposed CHX Routing Services involve the routing of Routable Orders *from the Matching System.* Routable Orders that have not been accepted by the Matching System (*i.e.,* rejected or never submitted) or have been accepted by the Matching System, but cancelled back to the Participant order sender, are not eligible for the proposed CHX Routing Services.[15] Thus, the proposed CHX

[7] *See* Securities Exchange Act Release No. 54550 (September 29, 2006), 71 FR 59563 (October 10, 2006) (SR–CHX–2006–05).

[8] *See* CHX Article 17, Rule 5(e). Brokerplex is an order sending facility of the Exchange distinct and separate from the Matching System. At the request of the Participant, orders may be routed from Brokerplex through the OMS to the Matching System or to any other Trading Center with which the Participant order sender has precedent access. The Exchange does not place itself between Brokerplex and the away Trading Center.

[9] *See* Interpretation and Policy .03(b) of CHX Article 20, Rule 5; *see also* Interpretation and Policy .03(1) of CHX Article 20, Rule 8.

[10] At initial operation of the proposed CHX Routing Services, CHXBD will utilize one third-party routing broker to clear and submit trades for execution on behalf of the Exchange. The same third-party routing broker will maintain a CHXBD Error Account on behalf of CHXBD for the purpose of liquidating Error Positions, pursuant to proposed Article 19, Rule 2(a)(7). The same third-party routing broker will also liquidate such positions, pursuant to proposed Article 19, Rule 2(a)(8)(D). The proposed rules do not prohibit the Exchange from utilizing two or more third-party routing brokers in connection with the proposed CHX Routing Services.

[11] *See* Interpretation and Policy .03 of CHX Article 20, Rule 5.

[12] *See* CHX Article 20, Rule 8(h); *see also* Interpretation and Policy .03 of CHX Article 20, Rule 8.

[13] *See supra* note 4.

[14] If any one of the following order modifiers are attached to a limit order, the order shall not be eligible for routing: ''BBO ISO,'' as defined under paragraph (b)(1)(A); ''CHX Only,'' as defined under paragraph (b)(1)(C); ''Post Only,'' as defined under paragraph (b)(1)(D); ''Price Penetrating ISO,'' as defined under paragraph (b)(1)(E); ''Do Not Route,'' as defined under paragraph (b)(3)(A); ''ISO,'' as defined under paragraph (b)(3)(B); ''Sell Short,'' as defined under paragraph (b)(3)(D), if the short sale price test restriction of Rule 201 under Regulation SHO is in effect for the relevant security and the order is not marked ''Short Exempt,'' as defined under paragraph (b)(3)(E); ''Fill Or Kill,'' as defined under paragraph (d)(2); and ''Immediate Or Cancel,'' as defined under paragraph (d)(4). Cross and Market orders are not routable as they are always treated by the Matching System as Immediate Or Cancel. *See* CHX Article 1, Rules 2(a)(2) and (3). All Routable Orders shall be marked for Regular Way Settlement, as only Cross orders can be for Non-Regular Way Settlement. *See* CHX Article 1, Rule 2(e)(1).

[15] An order ''rejected'' by the Matching System is different than order ''cancelled'' by the Matching System. While both an order rejection and cancellation would result in the order being sent back to the Participant who submitted the order, generally speaking, an order is ''rejected'' by the Matching System if the order could not be accepted by the Matching System and ''cancelled'' by the

Routing Services can be distinguished from the current routing of orders directly from Brokerplex, pursuant to current Article 17, Rule 5(e).[16]

Proposed Rule 1(b) states as follows:

(b) *Limitation of liability.* Use of the CHX Routing Services is optional and subject to the Exchange's limitation of liability, pursuant to Article 3, Rule 19.

The purpose of this language is to make clear that the Exchange's absolute limitation of liability applies to the use of the proposed CHX Routing Services. Consequently, the Exchange will not provide any compensation to Participants for any alleged losses incurred due to use of the proposed CHX Routing Services.

Proposed Rule 1(c) states as follows:

(c) *Firm orders.* Routable Orders submitted to the Matching System are firm orders, pursuant to Article 20, Rule 3, and Participants that submit Routable Orders agree to be bound by all resulting executions, including the execution of routed orders at other Trading Centers. Routed orders received by another Trading Center shall be subject to the rules and procedures of that Trading Center.

This language expands the firm order rule of current Article 20, Rule 3 (Firm Orders) to include all orders, regardless of whether the order is executed within the Matching System or at another Trading Center.[17] It also clarifies that routed orders received by another Trading Center are subject to the rules of the away Trading Center, which means, *inter alia,* that CHX rules concerning order handling do not apply to routed orders while they are away from the Exchange and its facilities.

Proposed Article 19, Rule 2 (Routing Brokers)

Proposed Rule 2 (Routing Brokers) details rules concerning routing brokers connected with the proposed CHX Routing Services. Currently, CHXBD is the only broker-dealer affiliated with the Exchange. As such, proposed paragraph (a) details operational and governance rules concerning CHXBD, which begins as follows:

(a) *CHXBD, LLC as Outbound Router.* The Exchange shall provide the CHX Routing Services through CHXBD, LLC (''CHXBD''), which is an affiliated broker that operates as a facility of the Exchange. CHXBD shall utilize one or more non-affiliated third-party brokers-dealers (''third-party routing brokers'' and together with CHXBD ''routing brokers'') in connection with the CHX Routing Services to route orders to away Trading Centers. CHXBD shall only accept routing-related instructions from the Exchange to route orders to away Trading Centers and shall not accept routing instructions from Participants or other non-Participants directly. Thus, the Exchange will determine the logic that provides, when, how, and where orders are routed away. Routing brokers cannot change the terms of an order or the routing instructions, nor do the routing brokers have any discretion about where to route an order. The Exchange shall report and allocate executions or report cancellations of routed orders at the away Trading Centers to the Participants that submitted the Routable Orders and to Qualified Clearing Agencies. Neither the Exchange nor CHXBD shall have responsibility for the handling of the routed order by the away Trading Center.

At initial operation, CHXBD will operate as an ''introducing broker-dealer,'' which means that CHXBD shall not be permitted to hold customer funds nor execute or clear trades.[18] Instead, the clearing functions of the proposed CHX Routing Services will be handled by a third-party routing broker, which will, pursuant to specific agreements entered into between each third-party routing broker and CHXBD (*e.g.,* carrying agreement pursuant to FINRA Rule 4311), carry a customer account, submit orders, and clear trades.[19] CHXBD shall not engage in any proprietary trading, except that a third-party routing broker shall liquidate Error Positions in the CHXBD Error Account, pursuant to proposed Article 19, Rule 2(a)(7), as discussed below.[20]

As an introducing broker-dealer, the Exchange submits that CHXBD does not have market access obligations, pursuant to Rule 15c3–5 under the Act[21] nor does it have reporting obligations pursuant to Rule 606 of Regulation NMS. Specifically, since CHXBD does not directly submit orders to any exchange or alternative trading system (''ATS'') for execution and does not operate an ATS, it does not have ''market access'' as defined by Rule 15c3–5(a)(1) under the Act.[22] Instead, market access obligations will be handled ''upstream'' by Participants that submit orders to the Matching System and ''downstream'' by third-party broker dealers that submit orders on behalf of the Exchange to routing destinations. Moreover, since CHXBD will not have discretion as to where a corresponding routing order is to be routed, the Exchange believes that CHXBD has no reporting obligations pursuant to Rule 606 of Regulation NMS.

Mechanically, when the Exchange accepts a Routable Order in the Matching System and a Routing Event, as described under proposed Article 19, Rule 3, is triggered, the Exchange will provide CHXBD with one or more ''corresponding routing orders'' and instructions to route the order(s) consistent with the applicable Routing Event. As discussed below, the routed portion of the Routable Order will enter a ''pending'' state in the Exchange's systems until an execution or cancellation confirmation is received from the away routing destination (''pending routed portion''). CHXBD will then route the corresponding routing order(s) and instructions to a third-party routing broker, who will then route the order(s) to the ultimate routing destination(s) for execution.

In the normal course, executions will be reported backwards through the routing chain, ultimately to the Participant order sender by the Exchange.[23] In the case of cancellations of routed orders at away routing destinations (''unexecuted remainders'') such unexecuted remainders would be reported backwards through the routing chain to the Exchange by CHXBD. Unexecuted remainders will only be cancelled back to the Participant order sender if a cancel message is awaiting the unexecuted remainder upon its return to the Matching System.

In contrast, clearing submissions for routed orders executed at away Trading Centers (''street-side trade'') will be submitted for clearance and settlement in the name of the third-party routing broker on behalf of the Exchange and the Exchange will, in turn, execute corresponding non-tape clearing-only trade(s) with the Participant order sender. As such, the sequence of non-tape clearing only trades connecting the street-side trade with the Participant order sender will never involve CHXBD. Thus, the Exchange, not CHXBD, will arrange for any resulting securities positions to be delivered to the Participant order sender that submitted the Routable Order to the Matching System. Mechanically, upon receipt of an execution confirmation for a routed

Matching System only after it had been accepted by the Matching System.

[16] *See supra* note 8.

[17] CHX Article 20, Rule 3 applies specifically to ''executions within the Matching System.''

[18] *See* FINRA Rule 7310(d).

[19] *See supra* note 10.

[20] *Id.*

[21] 17 CFR 240.15c3–5.

[22] 17 CFR 240.15c3–5(a)(1).

[23] As discussed below, these execution and cancellation confirmations will be utilized by the Exchange's routing systems to determine how to treat pending routed portions awaiting away execution(s).

order, the Exchange's systems will (1) automatically pair the execution with the pending routed portion of the Participant order sender's Routable Order that is resting on the Matching System and (2) report that trade to a Qualified Clearing Agency for clearance and settlement purposes by submitting a non-tape, clearing only report. In sum, positions would be delivered from the ''street'' to the Exchange and the Exchange would, in turn, deliver the positions to Participant order senders.

Proposed Rule 2(a) further provides that for so long as CHXBD is affiliated with the Exchange and is providing outbound routing from the Exchange to away Trading Centers, proposed paragraphs (a)(1) to (a)(7) shall apply. Much of the proposed language is virtually identical to the rules of other exchanges, such as NYSE, BATS Y-Exchange (''BYX''), and Nasdaq.[24] Proposed paragraphs (a)(1)–(a)(6) state as follows:

(1) The Exchange will regulate CHXBD as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act.[25] In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to CHXBD and CHXBD will be subject to the Exchange's non-discrimination requirements.

(2) FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d–1 of the Act[26] with the responsibility for examining CHXBD for compliance with applicable financial responsibility rules.

(3) Participants' use of CHXBD to route orders to away Trading Centers will be optional. Participants that do not desire to use CHXBD must designate orders entered into the Matching System as ''Do Not Route'' or any other order modifier available through the Exchange that is ineligible for routing. Any Participant that does not want to use CHXBD may use other routers to route orders to away Trading Centers.

(4) CHXBD will not engage in any business other than (A) its outbound router function for the Exchange, (B) its usage of CHXBD Error Accounts in compliance with paragraph (b)(7) below, and (C) any other activities it may engage in as approved by the Commission.

(5) The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including CHXBD as its routing facility) and any other entity; or, where there is a third-party routing broker, the Exchange, the routing facility and any third-party routing broker, and any other entity, including any affiliate of the third-party routing broker (and if the third-party routing broker or any of its affiliates engages in any other business activities other than providing the routing services to the Exchange, between the segment of the third-party routing broker or affiliate that provides the other business activities and the segment of the third-party routing broker that provides the routing services).

(6) The books, records, premises, officers, agents, directors and employees of CHXBD as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for the purposes of, and subject to oversight pursuant to, the Act. The books and records of CHXBD as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission. Nothing in these Rules shall preclude officers, agents, directors or employees of the Exchange from also serving as officers, agents, directors and employees of CHXBD.

With respect to proposed paragraph (a)(3), by submitting a Routable Order to the Matching System, a Participant is electing to utilize the proposed CHX Routing Services. If a Participant does not wish for an order to be routed, the order submitted to the Matching System must not be a Routable Order, which is achieved by attaching any order modifier to the order that is ineligible for routing, including, but not limited to, Do Not Route.[27] Thus, the CHX Routing Services is optional in that a Participant may elect not to submit a Routable Order to the Matching System. Once a Routable Order is submitted to the Matching System, however, the CHX Routing Services would be the only option through which an order could be routed away directly from the Matching System, without an intervening order cancellation.[28] If a Participant wishes to utilize another routing option after submitting a Routable Order to the Matching System, the Participant would have to cancel the original order.

With respect to proposed paragraph (a)(5), prior to becoming operational, CHXBD will adopt policies and procedures related to the handling of confidential and proprietary information, as required by proposed paragraph (a)(5).

Proposed paragraph (a)(7) details rules concerning Error Position and, specifically, how Error Positions would be handled by the Exchange and/or CHXBD. Proposed paragraph (a)(7) begins as follows:

(7) CHXBD shall maintain a CHXBD Error Account for the purpose of liquidating unpaired trade positions that are the result of an execution or executions that are not clearly erroneous under Article 20, Rule 10[29] and result from a technical or systems issue at CHXBD, the Exchange, a routing destination, or non-affiliated third-party broker-dealers. (''Error Positions'').[30]

The proposed definition of ''Error Positions'' excludes clearly erroneous transactions because clearly erroneous trades should be cancelled pursuant to the clearly erroneous rules of the executing exchange.

Proposed subparagraph (A) states as follows:

(A) CHXBD shall not accept any positions in a CHXBD Error Account from an account of a Participant or permit any Participant to transfer any positions from its account to a CHXBD Error Account; provided, however, that CHXBD may accept into its CHXBD Error Account positions erroneously allocated to Participants to the extent that the alternatives listed under subparagraph (C) below have been exhausted or are impracticable.

Proposed subparagraph (A) provides a narrow exception from the general prohibition against CHXBD accepting positions from Participants. Specifically, the exception is narrowly tailored to the improbable scenario where a systems or technical issue at the Exchange would result in a position being erroneously allocated to a Participant (*e.g.,* an erroneous pairing of an execution confirmation with a pending Routable Order). In such a situation, the erroneously allocated position would have been an Error Position, but for the erroneous allocation. The proposed exception would only apply to Error Positions that could not otherwise be addressed

[24] *See* NYSE Rule 17; *see also* BYX Rule 2.11; *see also* Nasdaq Rule 4758(b).

[25] *See* 15 U.S.C. 78c(a)(2); *see also* 15 U.S.C. 78f.

[26] 17 CFR 240.17d–1.

[27] *See supra* note 14.

[28] *See infra* note 71.

[29] As defined under Article 20, Rule 10, a transaction executed on the Exchange is ''clearly erroneous'' where there is an obvious error in any term, such as price, number of shares or unit of trading, or identification of the security.

[30] *See supra* note 10.

pursuant to proposed subparagraph (C), as discussed below. Given that the Exchange does not provide Participants with the ability to file claims for alleged losses, the Exchange submits that this narrow exception is necessary and appropriate.[31]

Proposed subparagraph (B) states as follows:

(B) If a technical or systems issue on the Exchange or CHXBD results in the Exchange not having valid clearing instructions for a Participant to a trade, the Exchange may assume that Participant's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.

This proposed language permits the Exchange to take a Participant's side to an away execution where a systems or technical issue at the Exchange or CHXBD results in the Exchange not having valid clearing instructions for the Participant to the trade.[32] Assuming that the execution at the away Trading Center is valid, the Exchange would be obligated to settle that execution. The resulting position would then be liquidated pursuant to proposed subparagraph (D).[33]

Proposed subparagraph (C) states as follows:

(C) In connection with a particular technical or systems issue and prior to accepting any resulting Error Positions into the CHXBD Error Account, the Exchange or CHXBD shall, if practicable, -1- assign such Error Positions to Participants in accordance with subparagraph (C)(i) below; -2- cause to have any erroneous executions cancelled on the Trading Centers on which they were executed; or -3- allocate Error Positions to third-party routing brokers, if the technical or systems issue occurred away from the Exchange and CHXBD. Error Positions that could not be handled in this manner shall be taken into the CHXBD Error Account and liquidated in accordance with subparagraph (D). Determinations on how to treat Error Positions shall be made in a nondiscriminatory manner.[34]

(i) The Exchange or CHXBD shall assign all Error Positions resulting from a particular technical or systems issue to the Participants affected by that technical or systems issue if the Exchange or CHXBD:

(1) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the Participants affected by that technical or systems issue;

(2) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the Participants affected by that technical or systems issue; and

(3) Has not determined to cancel all orders affected by that technical or systems issue in accordance with Article 20, Rule 12.

Although the CHXBD Error Account may be utilized to liquidate any Error Positions, regardless of where the systems or technical issue occurred, proposed subparagraph (C) requires three alternatives be pursued, if practicable, prior to accepting a Error Position into the CHXBD Error Account.[35]

With respect to the allocation of unpaired positions pursuant to proposed subparagraph (C)(i), a technical or systems issue of limited scope or duration may occur at a routing destination and the resulting trades may be submitted for clearance and settlement by such routing destinations to a Qualified Clearing Agency. If there were a small number of trades, there may be sufficient time to match positions with Participant orders and avoid using the CHXBD Error Account. There may be scenarios, however, where the Exchange or CHXBD determines that it is unable to assign all Error Positions resulting from a particular technical or systems issue to all of the affected Participants, or determines to cancel all affected routed orders, pursuant to proposed Article 20, Rule 12. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issues might be such that the research necessary to determine which Participants to assign those executions could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after CHXBD has transmitted IOC orders to it that prevent CHXBD from receiving responses to those orders, the Exchange or CHXBD may cancel/release all Routable Orders affected by the issue, pursuant to proposed Article 20, Rule 12(b), as discussed below. In such a situation, the Exchange or CHXBD would not pass on to the Participants any executions on the routed orders subsequently received from the routing destination. Thus, where Error Positions could not be assigned to Participants, the Exchange would seek to either cancel the related executions[36] or have the third-party routing broker accept the positions, prior to accepting Error Positions into the CHXBD Error Account.

Pursuant to agreement between CHXBD and third-party routing brokers, third-party routing brokers would typically be required to accept Error Positions where the positions result from systems or technical issues away

[31] *Compare* BYX Rule 11.16. In support of its absolute prohibition on accepting error positions from its Members, BATS Y-Exchange stated the following: To the extent a Member receives locked-in positions in connection with a technical or systems issue, that Member may seek to rely on BYX Rule 11.16 if it experiences a loss. That rule provides Members with the ability to file claims against the Exchange for ''losses resulting directly from the malfunction of the Exchange's physical equipment, devices, and/or programming or the negligent acts or omissions of its employees.'' *See* Exchange Act Release No. 69226 (June 12, 2013), 78 FR 36612 (June 18, 2013) (SR–BYX–2013–018) (''Notice'').

[32] As discussed above, CHXBD will operate as a facility of the Exchange. Accordingly, pursuant to proposed CHX Article 19, Rule 2(a)(1), the Exchange is responsible for filing with the Commission rule changes and fees relating to the functions of CHXBD. In addition, the Exchange is using the phrase ''the Exchange or CHXBD'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of CHXBD or the Exchange depending on the circumstances of the issue. At initial operation, the Exchange will use one or more non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party routing brokers). Mechanically, orders will be submitted to the third-party routing broker through CHXBD, which will act as an introducing broker-dealer. The third-party routing broker will then route the orders to the routing destination in its name, and any executions will be submitted for clearance and settlement in the name of the third-party routing broker on behalf of the Exchange, so that any resulting positions are delivered to the Exchange upon settlement. As described above, the Exchange would then normally arrange for any resulting securities positions to be delivered to the Participant that submitted the Routable Order to the Exchange. If Error Positions (as defined in proposed CHX Article 19, Rule 2(a)(7)) result in connection with the Exchange's use of a third-party routing broker for outbound routing, and those positions are delivered to the Exchange through the clearance and settlement process, the Exchange or CHXBD would be permitted to resolve those positions in accordance with proposed CHX Article 19, Rule 2(a)(7). If the third-party routing broker received Error Positions in connection with its role as a routing broker for the Exchange, and the Error Positions were not delivered to the Exchange through the clearance and settlement process, then the third-party Routing Broker would resolve the Error Positions itself and CHXBD would not be permitted to accept the Error Positions, as set forth in proposed CHX Article 19, Rule 2(a)(7)(A).

[33] *See infra* Example 6.

[34] Prior to becoming operational, CHXBD will adopt policies and procedures designed to ensure that any determinations considering how to treat Error Positions will be done in a manner nondiscriminatory to our Participants.

[35] While the alternatives detailed under proposed subparagraph (C) are being considered, Error Positions will not be transferred into the CHXBD Error Account. *See supra* note 10.

[36] Cancellations of executions that comprise an Error Position would be effected pursuant to the rules of the executing venue.

from the Exchange and CHXBD.[37] If an Error Position gets erroneously allocated to the Exchange's customer account, the Exchange would require the third-party routing broker to take back the Error Position. Thus, ideally, the CHXBD Error Account would only be used (1) to liquidate Error Positions resulting from systems or technical issues at the Exchange/CHXBD or (2) where a third-party routing broker is unable to utilize its own error account to liquidate Error Positions resulting from systems or technical issues away from the Exchange and CHXBD. However, the Exchange recognizes that some Error Positions resulting from systems or technical issues away from the Exchange/CHXBD may not be taken by a third-party routing broker or may not be cancelled by the executing routing destination and, as such, it is important that CHXBD retain the discretion to take any Error Positions into the CHXBD Error Account.[38]

If an Error Position is taken into the CHXBD Error Account, proposed subparagraph (D) details how such Error Positions would be liquidated, which states as follows:

(D) If the Exchange or CHXBD is unable to address Error Positions in accordance with subparagraph (C) above or if the Exchange or CHXBD determines to cancel all orders affected by the technical or systems issue in accordance with Article 20, Rule 12, then such Error Positions shall be taken into the CHXBD Error Account and CHXBD shall cause to have such positions liquidated as soon as practicable. In liquidating such Error Positions, the Exchange or CHXBD shall:

(i) Provide complete time and price discretion for the trading to liquidate the Error Positions to a non-affiliated third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; provided, however, that CHXBD may provide a general instruction to the non-affiliated third-party broker-dealer that the Error Positions should be liquidated in a timely manner using commercially reasonable efforts in accordance with custom and practice within the securities industry while minimizing market fluctuation to the extent possible; and

(ii) Establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the non-affiliated third-party broker-dealer and CHXBD/the Exchange associated with the liquidation of the Error Positions.

Although proposed subparagraph (D)(i) provides full price/time discretion to a third-party broker-dealer, the Exchange submits that it should be permitted to provide a general instruction to the third-party broker-dealer to effectuate the liquidation of the position in a timely manner with minimum market fluctuation, in order to improve the likelihood that the liquidation be effected in market conditions similar to when the Error Position was obtained, so as to minimize the potential for loss to the Exchange.

Proposed subparagraph (E) states as follows:

(E) The Exchange and CHXBD shall make and keep records to document all determinations to treat positions as Error Positions and all determinations for the liquidation of Error Positions through the non-affiliated third-party broker-dealer, as well as records associated with the liquidation of Error Positions through the non-affiliated third-party broker-dealer.

Incidentally, proposed Article 20, Rule 12 (Order Cancellation by the Exchange) provides the Exchange and CHXBD with the authority to cancel orders, including cancelling and/or releasing orders subject to the proposed CHX Routing Services, which states as follows:

(a) The Exchange or CHXBD may cancel orders as it deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, CHXBD, a non-affiliated third party broker in connection with the CHX Routing Services provided under Article 19, or another Trading Center to which an order has been routed. The Exchange or CHXBD shall provide notice of the cancellation to affected Participants as soon as practicable.

(b) The Exchange may release orders being held on the Exchange awaiting another Trading Center execution as it deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, CHXBD, a non-affiliated third-party broker, or another Trading Center to which an order has been routed.

The proposed rule gives the Exchange authority to cancel orders as necessary to maintain fair and orderly markets in all situations, not only in connection with the proposed CHX Routing Services.[39] In the context of the proposed CHX Routing Services, proposed paragraph (a) permits the Exchange to cancel the unrouted portion of a Routable Order posted to the CHX book, whereas proposed paragraph (b) provides the Exchange with the authority to release the pending routed portion of a Routable Order that is pending on the Exchange's systems (*i.e.,* the portion represented by the corresponding order that has been routed away). If the Exchange releases a routed order, the Participant order sender would be given an ''out'' and any resulting executions would be treated as Error Positions.

Incidentally, the Exchange also proposes to amend current Article 20, Rule 8(f) to clarify how cancel messages are currently handled for orders resting on the CHX book and how they would be handled in connection with routed orders. The amended Article 20, Rule 8(f) provides as follows:

(f) *Cancellation of orders.* Order cancellation messages submitted by Participants shall be handled as follows:

(1) Orders resting on the CHX book shall be immediately and automatically cancelled upon receipt of a cancellation message; provided, however, that cross orders (other than opening cross orders) cannot be cancelled or changed because they are always handled IOC;[40] and

(2) Cancel messages for routed orders shall be held by the Exchange while the routed order is away and only the unexecuted routed portion of a routed order shall be cancelled upon its return to the Matching System; provided, however, that the Exchange may release the pending routed portion of a Routable Order pursuant to Article 20, Rule 12.

Notably, the Exchange proposes to replace current language describing the Immediate Or Cancel order modifier with a reference to the modifier itself.[41] Also, given that cancel messages from

[37] The Exchange believes it is reasonable and appropriate to require such Error Positions to be addressed through the error account of a third-party routing broker because, among other reasons, it is the executing broker associated with these transactions.

[38] To the extent that CHXBD incurred a loss in covering its positions, short or long, and to the extent that the Error Position resulted from a systems or technical issue at a third-party routing broker or routing destination, it would submit a reimbursement claim to the third-party routing broker or routing destination, as applicable.

[39] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or CHXBD determines to cancel orders routed to a routing destination under proposed Article 20, Rule 12(a), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[40] The Exchange proposes replace current language describing the Immediate Or Cancel order modifier with a reference to the modifier itself. *See* CHX Article 1, Rule 2(d)(4).

[41] *See* CHX Article 1, Rule 2(d)(4).

Participant order senders for routed orders will not be forwarded on to the routing destination because all routed orders shall be marked IOC,[42] routed orders shall only be cancelled at the request of Participants to the extent that an unexecuted remainder is returned to the Matching System.

The following Examples 1 and 2 illustrate when and how the Exchange would seek to cancel orders in the context of the proposed CHX Routing Services:[43]

Example 1. If CHXBD, a third-party routing broker, or a routing destination experiences a technical or systems issue that results in CHXBD not receiving responses to IOC orders that it routed away, the Exchange may release the routed portion of the Routable Order pending on the Exchange's systems, pursuant to proposed Article 20, Rule 12(b).

Example 2. If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders resting on the CHX book affected by that issue, including the unrouted portion of Routable Orders posted to the CHX book, and notify affected Participants of the cancellations. In addition, the Exchange may also seek to release any pending routed portions awaiting away confirmations.

The following Examples 3–6 illustrate how certain Error Positions may result and be resolved:

Example 3. An Error Position may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order to The Depository Trust & Clearing Company (''DTCC'') for clearance and settlement.

In such a situation, the Exchange would not then allocate the execution to the Participant because of the earlier cancellation message from the routing destination. Instead, CHXBD would first cause to have such executions cancelled pursuant to the rules of the executing venue or allocate the position to a third-party routing broker, if practicable. If the executions could not be cancelled or allocated, CHXBD would post those positions into its CHXBD Error Account and have the positions liquidated pursuant to proposed Article 19, Rule 2(a)(7)(D).

Example 4. Error Positions may result if the Exchange receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a Participant submits a Routable Order to buy 100 shares of ABC stock, which causes CHXBD to send an order to a third-party routing broker, which in turn sends the order to a routing destination that is subsequently executed, cleared, and closed out by that routing destination, and the execution is ultimately communicated back to that Participant. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, the Exchange would still be responsible for settling that Participant's purchase, but would be left with a short position in the CHXBD Error Account.[44]

In such a situation, the Exchange would take the opposite side of the Participant's purchase, but submit a claim for reimbursement from the third-party routing broker or routing destination or cause to have the routing destination submit valid clearing instructions to cover the Exchange's short position, if practicable.

Example 5. Error Positions may result from a technical or systems issue that causes orders to be executed in the name of the Exchange or a third-party routing broker[45] that are not related to any corresponding Routable Orders initially submitted to the Matching System. As a result, the Exchange would not be able to assign any positions resulting from such an issue to Participants.

If the technical or systems issue occurred away from the Exchange and CHXBD, pursuant to proposed Article 19, Rule 2(a)(7)(C), CHXBD would first cause to have such executions cancelled pursuant to the rules of the executing market or have the responsible third-party routing broker accept the position, if practicable. If the executions could not be cancelled or accepted by the responsible third-party routing broker or if the technical or systems issue occurred at the Exchange or CHXBD, CHXBD would post those positions into its CHXBD Error Account and have the positions liquidated pursuant to proposed Article 19, Rule 2(a)(7)(D).

Example 6. Error Positions may result from a technical or systems issue at the Exchange through which the Exchange does not receive sufficient notice that a Participant that has executed trades on the Exchange has lost the ability to clear trades through DTCC, as well as where the Exchange received notice of such Participant's loss of ability to clear trades through DTCC, but, because of a technical or systems issue at the Exchange, the Exchange was unable to react to such notice in a timely manner.

In such a situation, the Exchange would not have valid clearing information from its Participant, which would prevent the trade from being automatically processed for clearance and settlement on a locked-in basis. Thus, pursuant to proposed Article 19, Rule 2(a)(7)(B), the Exchange would assume that Participant's side of the trades so that the counterparties can settle the trade. CHXBD would post those positions into the CHXBD Error Account and have the positions liquidated pursuant to proposed Article 19, Rule 2(a)(7)(D).

Proposed Article 19, Rule 3 (Routing Events)

Proposed Rule 3 (Routing Events) outlines when and how a Routable Order would be routed away from the Matching System and states as follows:

(a) *Routing Events.* A Routable Order, or a portion thereof, shall be routed pursuant to the CHX Routing Services in compliance with CHX rules and all federal securities laws, rules and regulations, including Regulation NMS and Regulation SHO, to the extent necessary:[46]

(1) To permit the display and/or execution of an incoming Routable Order on the Exchange in compliance with Rules 610(d) and 611 of Regulations NMS;

(2) To prevent the execution of an incoming Routable Order for an Odd Lot if it would trade-through a Protected Quotation of an external market; or

(3) To execute an incoming Routable Order marked Do Not Display or a Routable Order of an Odd Lot that could not be displayed (''incoming undisplayed Routable Order'') against any Protected Quotation(s) of external market(s) priced at or through the limit price of the Routable Order if there are no contra-side resting orders on the CHX book against which the incoming undisplayed Routable Order could execute.

[42] Pursuant to proposed Article 19, Rule 3(b), all routed orders shall be marked IOC. Thus, routed orders shall not be permitted to rest at away routing destinations.

[43] The examples are not an exhaustive list of scenarios.

[44] To the extent that CHXBD incurred a loss in covering its positions, short or long, it would submit reimbursement claims to either the routing destination and/or third-party routing broker related to the routed order execution.

[45] Given that CHXBD is an introducing broker-dealer, routed orders will never be executed in the name of CHXBD.

[46] A routed order may nevertheless execute against hidden liquidity priced better than the Protected Quotation.

(b) *Marking routed orders.* Every order routed away pursuant to a Routing Event shall be marked IOC.

(c) *Handling unexecuted remainders.* If an unexecuted remainder of a routed order is returned to the Matching System in one or more parts, each shall be handled pursuant to Article 20, Rule 8(b)(7).

(d) *Cancelling routed orders.* Cancellation requests of routed orders from Participants shall be handled pursuant to Article 20, Rule 8(f). The Exchange may release pending routed portions of Routable Orders pursuant to Article 20, Rule 12(b).

Proposed paragraph (a)(1) permits the routing of a Routable Order to the extent necessary for an order to be displayed and/or executed on the Exchange in compliance with Rules 610(d) and Rule 611 of Regulations NMS (''Routing Event #1'').

With respect to Rule 610(d) of Regulation NMS, if the display of an incoming Routable Order would impermissibly lock or cross the market in violation of Rule 610(d) of Regulation NMS, the portion of the Routable Order necessary to satisfy all contra-side Protected Quotations of external markets priced at or better than the Routable Order shall be routed away to execute against such Protected Quotations. Thus, if the Routable Order is smaller than, or the same size as, the aggregate size of all contra-side Protected Quotations of external markets priced at or better than the Routable Order, the entire Routable Order would be routed away. However, if the Routable Order is larger than the aggregate size of all contra-side Protected Quotations of external markets priced at or better than the Routable Order, only the portion of the Routable Order necessary to satisfy such Protected Quotations shall be routed away. The following Examples 7 and 8 illustrate how an order would be routed to permit a Routable Order to be displayed on the Exchange in compliance with Rule 610(d) of Regulation NMS:

Example 7. Assume that the NBBO for security XYZ is $10.00 x $10.01 where Exchange A and Exchange B are each displaying for 100 shares at the NBO and Exchange C is displaying a Protected Offer for 100 shares at $10.02. Assume there are no other Protected Offers of external markets in security XYZ. Assume also that the displayed CHX BBO is $10.00 x $10.03 and there are no offers priced better than $10.03 resting on the CHX book. Assume then that an incoming fully-displayable Routable Bid for 100 shares of security XYZ priced at $10.02/share is received by the Matching System (''Routable Bid 1''). As such, there are 300 shares worth of Protected Offers of external markets priced at or better than Routable Bid 1.

In this situation, the display of Routable Bid 1 at $10.02 would cross the Protected Offers of Exchange A and B at $10.01 and lock the Protected Offer of Exchange C at $10.02, in violation of Rule 610(d) of Regulations NMS.

Thus, Routing Event #1 would be triggered and the Exchange's routing systems would create a corresponding buy order marked IOC for 100 shares of security XYZ,[47] and route the corresponding buy order to CHXBD, with instructions for the third-party routing broker to route the order utilizing its smart-routing technology pursuant to the Exchange's routing table.[48] The entire balance of Routable Bid 1 would then be placed in a pending routed state. CHXBD would then forward the corresponding buy order with instructions to the third-party routing broker and the third-party routing broker would then route the corresponding buy order to Exchange A and/or Exchange B.[49]

Any unexecuted remainders returned to the Matching System would be handled pursuant to proposed Article 20, Rule 8(b)(7), as discussed below.

Example 8. Assume the same as Example 7, except that Routable Bid 1 is for 500 shares of security XYZ.

In this situation, similar to Example 7, the display of Routable Bid 1 at $10.02 would cross the Protected Offers of Exchange A and B at $10.01 and lock the Protected Offer of Exchange C at $10.02, all in violation of Rule 610(d) of Regulations NMS.

As such, Routing Event #1 would be triggered and since Routable Bid 1 for 500 shares is larger than the aggregate size of all Protected Offers of external markets priced at or better than Routable Bid 1 (*i.e.,* 300 shares total), the Exchange's routing systems would create three corresponding buy orders marked IOC and ISO with instructions to route one buy order for 100 shares priced at $10.01/share to Exchange A, one buy order for 100 shares priced at $10.01/share to Exchange B and one buy order for 100 shares priced at $10.02/share to Exchange C.[50] The routed portion would then enter a pending routed state on the Exchange's system and the remaining 200 shares would immediately be displayed on the CHX book at $10.02. This ''ship and post'' would permit the unrouted portion to be displayed in compliance with Rule 610(d) of Regulations NMS.

Any unexecuted remainders returned to the Matching System would be handled pursuant to proposed Article 20, Rule 8(b)(7), as discussed below.

With respect to Rule 611 of Regulation NMS, if the execution of an incoming Routable Order against a resting order on the CHX book would result in an impermissible trade-through of a Protected Quotation of an external market in violation of Rule 611 of Regulation NMS, the portion of the Routable Order necessary to prevent an improper trade-through shall be routed away to execute against such Protected Quotations of external markets. Thus, if the Routable Order is smaller than, or the same size as, the aggregate size of all contra-side Protected Quotations of external markets priced better than the Routable Order, the entire Routable Order would be routed away. However, if the Routable Order is larger than the aggregate size of all contra-side Protected Quotations of external markets priced better than the Routable Order, only the portion of the Routable Order necessary to satisfy such Protected Quotations shall be routed away. The following Examples 9 and 10 illustrate how an order would be routed to permit a Routable Order to execute within the Matching System in compliance with Rule 611 of Regulation NMS:

Example 9. Assume that the NBBO for security XYZ is $10.00 × $10.01 where Exchange A and Exchange B are each displaying 100 shares at $10.01 and Exchange C is displaying a Protected Offer for 100 shares at $10.02. Assume there are no other Protected Offers of

[47] *See supra* note 42.

[48] Where the routed order is smaller than the aggregate size of two or more contra-side Protected Quotations that could be satisfied, the Exchange will rely on the third-party routing broker to utilize its smart-routing technology to route the order pursuant to a routing table provided by the Exchange. Thus, the relevant snapshot of the NBBO for Regulation NMS purposes will be taken by the third-party routing broker and the third-party routing broker would route orders IOC and ISO. However, where the routed order is smaller than the size of one Protected Quotation that could be satisfied or is the same size as the aggregate size of one or more contra-side Protected Quotations that could be satisfied, the Exchange will direct the third-party routing broker to route orders to specific routing destinations. Thus, the relevant snapshot of the NBBO will be taken by the Exchange and the Exchange would mark the directed orders IOC and ISO.

[49] Given the frequency at which the bids and offers change in the national market system, it is possible that a Protected Quotation identified by the Exchange as having to be satisfied pursuant to Regulation NMS may no longer be displayed when the third-party routing-broker receives the corresponding routing order. Nevertheless, the third-party routing broker will route the order as received from CHXBD utilizing its smart-routing technology and pursuant to the Exchange's routing table.

[50] *See supra* note 48.

external markets in security XYZ. Assume then that the CHX BBO is $10.00 × $10.03, with 100 shares displaying at the $10.03 and there are no offers priced better than $10.03 resting on the CHX book. Assume then that an incoming fully-displayable Routable Bid for 100 shares of security XYZ priced at $10.03/share is received by the Matching System (''Routable Bid 1''). As such, there are 300 shares worth of Protected Offers of external markets priced better than Routable Bid 1. In this situation, the execution of Routable Bid 1 at $10.03 against the CHX Best Offer would result in an impermissible trade-through of the Protected Offers of Exchanges A, B and C, in violation of Rule 611 of Regulations NMS.

Thus, Routing Event #1 would be triggered and the Exchange's routing systems would create a corresponding buy order marked IOC for 100 shares of security XYZ,[51] and route the corresponding buy order to CHXBD, with instructions for the third-party routing broker to route the order utilizing its smart-routing technology pursuant to the Exchange's routing table.[52] The entire balance of Routable Bid 1 would then be placed in a pending routed state. CHXBD would then forward the corresponding buy order with instructions to the third-party routing broker and the third-party routing broker would then route the corresponding buy order to Exchange A and/or Exchange B.[53]

Any unexecuted remainders returned to the Matching System would be handled pursuant to proposed Article 20, Rule 8(b)(7), as discussed below.

Example 10. Assume the same as Example 9, except that Routable Bid 1 is for 500 shares of security XYZ.

In this situation, the execution of Routable Bid 1 at $10.03 against the CHX Best Offer would result in an impermissible trade-through of the Protected Offers of Exchanges A, B and C, in violation of Rule 611 of Regulations NMS.

As such, Routing Event #1 would be triggered and since Routable Bid 1 for 500 shares is larger than the aggregate size of all Protected Offers of external markets priced at or better than Routable Bid 1 (*i.e.,* 300 shares total), the Exchange's routing systems would create three corresponding buy orders marked IOC and ISO with instructions to route one buy order for 100 shares priced at $10.01/share to Exchange A, one buy order for 100 shares priced at $10.01/share to Exchange B and one buy order for 100 shares priced at $10.02/share to Exchange C.[54] The routed portion would then enter a pending routed state on the Exchange's system and 100 shares of the unrouted portion of Routable Bid 1 would execute against the CHX Best Offer at $10.03/share. Since there is no other resting liquidity against which the remaining 100 shares of the unrouted portion of Routable Bid 1 could execute, the Exchange would post and display the unexecuted remainder of the unrouted portion at $10.03. This ''ship and execute'' would permit the unrouted portion to be executed within the Matching System in compliance with Rule 611 of Regulations NMS.

Any unexecuted remainders returned to the Matching System would be handled pursuant to proposed Article 20, Rule 8(b)(7), as discussed below.

Proposed paragraph (a)(2) provides that an incoming Routable Order for an Odd Lot will be routed away if its execution on the Exchange would trade-through a Protected Quotation of an external market (''Routing Event #2''). This language is consistent with a proposed amendment to current Article 20, Rule 5(b) that will prohibit the execution of incoming Odd Lot limit orders if the execution would trade-through a Protected Quotation of an external market, as discussed below, but would permit resting Odd Lot orders to be executed through the NBBO.[55] The following Example 11 illustrates how Routing Event #2 would be triggered.

Example 11. Assume that the NBBO for security XYZ is $10.00 × $10.01 and Exchange A is the only Protected Offer at the NBO and is displaying 100 shares. Assume also that CHX has a Protected Offer for 100 shares priced at $10.02/share and there are no other orders resting on the CHX book with respect security XYZ. Assume then that an incoming fully-displayable Routable Bid for 50 shares of security XYZ priced at $10.02/share is received by the Matching System (''Routable Bid 1'').

In this situation, Routing Event #2 would be triggered and the Exchange's routing systems would create a corresponding buy order marked IOC for 50 shares of security XYZ priced at $10.01/share and route the order away with instructions to direct the order to Exchange A.[56] The entire balance of Routable Bid 1 would then be placed in a pending routed state. CHXBD would then forward the corresponding buy order with instructions to the third-party routing broker and the third-party routing broker would then route the corresponding buy order to Exchange A.

Any unexecuted remainders returned to the Matching System would be handled pursuant to proposed Article 20, Rule 8(b)(7), as discussed below.

Proposed paragraph (a)(3) provides that an incoming Routable Order that is either marked Do Not Display or is an undisplayed yet displayable Odd Lot will be routed away to execute against any Protected Quotation(s) of external market(s) priced at or better than the limit price of the incoming undisplayed Routable Order if there is no resting liquidity on the CHX book against which the incoming undisplayed Routable Order could execute (''Routing Event #3).[57] Thus, the difference between Routing Event #1 and Routing Event #3 is that Routing Event #3 would not result in a trade-through of a Protected Quotation of an external market because there are no resting contra-side orders on the CHX book nor a locked or crossed market in violation of Rule 610(d) of Regulation NMS because the incoming Routable Order could not be displayed.[58] The following Examples 12–13 illustrate how Routing Event #3 could be triggered:

Example 12. Assume that the NBBO for security XYZ is $10.00 × $10.02 and only Exchange A has a Protected Offer at $10.02, which is for 100 shares. Assume also that the CHX book is empty with respect security XYZ. Assume then that an incoming Routable Bid marked Do Not Display for 200

[51] *See supra* note 42.

[52] *See supra* note 48.

[53] *See supra* note 49.

[54] *See supra* note 48.

[55] Current CHX Article 20, Rule 5(b) permits inbound Odd Lot orders to execute through Protected Quotations of external markets. Also, incoming Odd Lot limit orders are permitted to post to, or remain on, the CHX book through the NBBO, provided that it could not be displayed pursuant to CHX Article 20, Rule 8(b)(6). Odd Lot orders that are displayed pursuant to current CHX Article 20, Rule 8(b)(6) are treated like Round Lot orders for the purposes of Rule 610(d) of Regulation NMS.

[56] Current Article 20, Rule 5(b) would permit Routable Bid 1 to execute against the resting offer at $10.02 for 50 shares of XYZ, as the execution would be for an Odd Lot.

[57] An incoming Routable Order marked Reserve Size, as defined under Article 1, Rule 2(c)(3), will always be treated as fully-displayed order for the purposes of the proposed CHX Routing Services.

[58] Currently, the Exchange permits undisplayed yet displayable orders (*e.g.,* Odd Lot limit orders that could not be aggregated with other Odd Lots or Mixed Lots, pursuant to CHX Article 20, Rule 8(d)(6)) and fully-undisplayed orders) (*e.g.,* limit orders marked Do Not Display) to rest through the NBBO. However, if a subsequent incoming contra-side order would result in a resting order priced through the NBBO being executed, the resting order ''shall be cancelled to the extent necessary to allow the inbound order to be executed or quoted.'' *See* CHX Article 20, Rule 5(a). As discussed in detail below, the Exchange now proposes to expand the applicability of the CHX Only modifier, which offers the CHX Only Price Sliding Processes, to all limit orders, regardless of the attached order display modifier and to require all Do Not Display orders that are resting on the CHX book to be handled as CHX Only, even if they were not originally marked CHX Only by the order sender.

shares of security XYZ, priced at $10.03 is received by the Matching System (''Routable Bid 1'').

In this situation, since the posting of Routable Bid 1 at $10.03 would result in a bid resting on the CHX book through the NBO, Routing Event #3 would be triggered and the Exchange's routing systems would create a corresponding buy order marked IOC for 100 shares priced at $10.02/share and route the corresponding buy order to Exchange A. The routed portion would then enter a pending routed state on the Exchange's systems. Immediately after routing the corresponding buy order away, the unrouted 100 shares would be posted to the CHX book undisplayed at $10.03.

Any unexecuted remainders returned to the Matching System would be handled pursuant to proposed Article 20, Rule 8(b)(7), as discussed below.

Example 13. Assume the same as Example 12 and that after the unrouted 100 shares of Routable Bid 1 posted to the CHX book at $10.03, Exchange B displayed a Protected Offer for 100 shares of security XYZ at $10.02.

In this situation, since the Exchange will not route away resting orders, Routable Bid 1 would be price slid to the NBO locking price of $10.02, as all resting orders marked Do Not Display will be handled as CHX Only and subject to price sliding.[59]

Incidentally, given that the Exchange proposes to permit certain limit orders marked Do Not Display to be routable, the Exchange proposes to amend the definition of ''Do Not Route,'' under Article 1, Rule 2(b)(3)(A), by replacing the current term ''displayed'' with the more inclusive term ''ranked.'' As such, amended Article 1, Rule 2(b)(3)(A) will provide that ''Do Not Route'' means ''a limit or market order modifier that requires an order to only be executed or ranked within the Exchange's Matching System and not be routed to another market.''

With respect to how unexecuted remainders of routed orders would be treated by the Matching System, amended Article 20, Rule 8(b)(7) states as follows:

(7) *Priority of unexecuted remainders of routed orders returned to the Matching System.* An unexecuted remainder of a routed order returned to the Matching System in one or more parts shall be added to the existing balance of the related Routable Order already posted to the CHX book. If no balance exists at the time a part of an unexecuted remainder of a routed order is returned to the Matching System, it shall be treated as a new incoming order.[60]

As discussed above, when a Routing Event is triggered, a corresponding routing order is created by the Exchange's routing system that represents the relevant portion of the Routable Order that is to be routed away.[61] Upon routing of the corresponding routed order, the routed portion of the Routable Order enters a pending state on the Matching System (''pending routed portion''). If the Exchange receives an execution confirmation concerning the corresponding routed order, the related pending routed portion will be released as executed to the extent represented by the execution confirmation. If, however, the Exchange receives a cancellation confirmation from the away Trading Center, the pending routed portion will be released as unexecuted to the extent represented by the cancellation confirmation.[62] In turn, the pending routed portion released as unexecuted will either (1) be added to any existing balance of the Routable Order already posted to the CHX book or (2) be treated as a new incoming order to the Matching System.[63]

An existing balance can occur if an unrouted portion had posted to the CHX book immediately after the routed portion had been routed away (*i.e.,* ''ship and post'') and the unrouted portion was resting on the CHX book when the pending routed portion was released as unexecuted. An existing balance could also occur even if there was no portion of the Routable Order initially posted to the CHX book where the routed portion returned to the Matching System in two or more parts. In such a situation, the first unexecuted remainder to return to the Exchange would be treated as an incoming order and any subsequent unexecuted remainders would be added to any existing balance of previously returned remainders. The portion of a Routable Order released as unexecuted that is treated as an incoming order may result in that released portion being routed away again, if a proposed Routing Event is triggered, executed against the CHX book, or posted to the CHX book as a new order. The following Examples 14–16 illustrate how unexecuted remainders of routed orders would be handled by the Matching System:

Example 14. Assume that a Routable Order to buy 500 shares of security XYZ at $10.00/share is received by the Matching System that will be subject to a ''ship and post'' because Exchange A and Exchange B are displaying Protected Offers at the NBO priced at $10.00/share (''Protected Offer A'' and ''Protected Offer B''). Assume that pursuant to Routing Event #1, the Exchange's routing systems created two corresponding buy orders for 200 shares each to be routed to Exchange A and Exchange B (''Routed Bid A'' and ''Routed Bid B,'' respectively). The routed portion then enters a pending routed state on the Exchange's systems. Immediately after Routed Bid A and Routed Bid B are routed way, the remaining 100 shares of the unrouted portion of the Routable Order are posted to the CHX book. Assume that while the unrouted portion remains posted to the CHX book, the Matching System receives an execution confirmation for Routed Bid A for 200 shares, an execution confirmation for Routed Bid B for 100 shares, and a cancellation message for Routed Bid B for 100 shares.

In this situation, of the 400 shares representing the pending routed portion, 200 of those shares would be released as executed and reported to clearing. Upon receipt of the second execution, 100 of those shares would be released as executed and reported to clearing. Upon receipt of the cancellation message, the remaining 100 shares would be released as unexecuted and would be posted to the existing balance of the Routable Order already posted to the CHX book, which would result in 200 shares of the Routable Order being posted to the CHX book priced at $10.00/share.

Example 15. Assume the same as Example 14, except that by the time the first execution confirmation returned to the Matching System, the unrouted portion of the Routable Order resting on the CHX book was fully executed.

In this situation, upon receipt of the first execution confirmation, 200 of those shares would be released as executed and reported to clearing. Upon receipt of the second execution, 100 of those shares would be released as executed and reported to clearing. Upon

[59] *Id.*

[60] Current Article 20, Rule 8(b)(7) provides language that the Exchange proposes to delete concerning order execution priority for price slid orders because the concept of the ''Working Price'' enunciated in the rule is actually applicable to execution priority for all orders, as discussed in detail below.

[61] *See supra* Examples 7–13.

[62] The Exchange can also release pending routed portions pursuant to proposed Article 20, Rule 12, in connection with a systems or technical issue. In such a case, the pending routed portion would be released as unexecuted and cancelled back to the order sender.

[63] It is important to note that a cancel message from the away routing destination is not a new incoming order. Once the cancel message is received by the Matching System, the released pending routed portion may be handled as an incoming order if there is no existing balance of the Routable Order already posted to the CHX book.

receipt of the cancellation message, the remaining 100 shares would be released as unexecuted and would be treated as a new incoming bid to purchase 100 shares of security XYZ at $10.00/share.

If a Protected Offer of an external market priced at $10.00/share were displayed prior the final 100 shares of the Routable Order being released as unexecuted, Routing Event #1 would be triggered again and the Exchange's routing systems would create a corresponding buy order for 100 shares of XYZ priced at $10.00/share and the Routable Order would be routed to the venue displaying the new Protected Offer. If, instead, the Exchange received an offer for security XYZ priced at $10.00/share or better on the Matching System prior to the final 100 shares of the Routable Order being released as unexecuted, the 100 released shares would execute against the resting offer on the CHX book. However, if the CHX book were empty and the NBBO did not prohibit the posting of a bid at $10.00/share, the 100 released share would be posted to the CHX book and ranked on the CHX book pursuant to Article 20, Rule 8(b).[64]

Example 16. Assume the same as Example 14, except that the Matching System receives an execution confirmation for Routed Bid A for 100 shares, a cancellation confirmation for Routed Bid A for 100 shares, and a cancellation message for Routed Bid B for 200 shares. Assume also that the portion of the Routed Order released as unexecuted pursuant to the first cancellation message resulted in 100 shares of the Routed Order being posted to the CHX book.

In this situation, the 200 shares of the pending routed portion would be released as unexecuted pursuant to Routed Bid B being returned cancelled and would be added to the existing balance of 100 shares already posted to the CHX book due to the earlier cancellation message received regarding Routed Bid A.

Exception From Article 3, Rule 20 (No Affiliation Between Exchange and any Participant)

Current Article 3, Rule 20 provides, in pertinent part, that the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a Participant in the absence of an effective filing under Section 19(b) of the Act. The rule further provides that a Participant shall not be or become an affiliate of the Exchange or any affiliate of the Exchange in the absence of an effective filing under Section 19(b) of the Act. The purpose of Article 3, Rule 20 is to prevent or manage potential conflicts of interest that could arise from the Exchange or its affiliates having an ownership interest in a Participant, particularly with respect to the Exchange's obligation under Section 19(g) of the Act to enforce its Participants' compliance with the Act, the Commission's rules thereunder, and Exchange Rules.

The Exchange is currently in compliance with Article 3, Rule 20. CHX Holdings Inc. wholly owns the Exchange and CHXBD. As such, the Exchange is affiliated with CHXBD, which is a registered broker-dealer and member of FINRA. However, CHXBD is not yet a Participant of the Exchange.

The Exchange believes that CHXBD should now be permitted to operate as an affiliated Participant outbound router on behalf of the Exchange and, to this end, the Exchange submits this immediately effective filing pursuant to Section 19(b)(3)(A) of the Act, which is consistent with the requirements of Article 3, Rule 20. Specifically, the Exchange believes that proposed Article 19, Rule 2(a) would eliminate any potential conflict of interest that could arise in the context of an affiliation between the Exchange and CHXBD, as a Participant, by requiring the following:

- The Exchange will regulate CHXBD as a facility of the Exchange;
- FINRA, a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, is CHXBD's designated examining authority;
- CHXBD will not engage in any other business other than (a) its outbound router function and (b) any other activities it may engage in as approved by the Commission;
- The use of CHXBD for outbound routing by Participants is optional;
- The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including CHXBD as its routing facility) and any other entity; and
- The books, records, premises, officers, agents, directors and employees of CHXBD as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for the purposes of, and subject to oversight pursuant to, the Act.

As a facility of the Exchange, CHXBD will be subject to the Exchange's and the Commission's regulatory oversight, and the Exchange will be responsible for ensuring that CHXBD's outbound routing function is operated consistent with Section 6 of the Act and the Exchange's proposed rules. In addition, the Exchange will be required to file with the Commission proposed rule changes and fees relating to CHXBD's outbound routing function. Any such rules and fees relating to CHXBD's outbound routing function will be subject to the Exchange's non-discrimination requirements. The Exchange also notes that the Commission has previously approved an affiliation between an exchange and its member outbound routing facility based on rules similar to the provisions of proposed Article 19, Rule 2(a) stated above.[65] Thus, the Exchange submits that CHXBD becoming an affiliate Participant of the Exchange to be consistent with the Act.

Amended Article 20, Rule 5 (Prevention of Trade-Throughs)

In light of the proposed CHX Routing Services, the Exchange proposes to amend current Article 20, Rule 5 to clarify how the Matching System will treat orders received by the Matching System that could not be executed within the Matching System in compliance with Rule 611 of Regulation NMS and to prohibit incoming Odd Lot orders from executing through the NBBO. Amended Rule 5(a) states as follows:

(a) An inbound order for at least a round lot is not eligible for execution on the Exchange if its execution would be improper under Rule 611 of Regulation NMS (but not including the exception set out in Rule 611(b)(8)) (an ''improper trade-through'') and such an order shall be handled by the Exchange as follows:

(1) If the execution of all or part of an inbound Routable Order, as defined under Article 1, Rule 1(oo), would cause an improper trade-through, that Routable Order (or the portion of that order that would cause an improper trade-through) shall be routed away, pursuant to Article 19, Rule 3(a)(1); or

(2) If the execution of all or part of an inbound order would cause an improper trade-through and the order cannot be routed away, the order shall be automatically cancelled; provided, however, that such an order marked

[64] As discussed in detail below, the Exchange proposes to amend current CHX Article 20, Rule 8 in order to clarify how the Exchange currently ranks orders on the CHX book.

[65] *See* BYX Rule 2.11; *see also* Securities Exchange Act Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (In the Matter of the Application of BATS Y-Exchange Inc. for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission).

CHX Only may be subject to the CHX Only Price Sliding Processes, detailed under Article 1, Rule 2(b)(1)(C) and not automatically cancelled.

Specifically, under amended paragraph (a), the Exchange proposes to clarify that ''Rule 611'' refers to Rule 611 of ''Regulation NMS.'' Under proposed paragraph (a)(1), the Exchange proposes to add language clarifying that inbound orders that are ''Routable Orders,'' as defined under proposed Article 1, Rule 1(oo), would be routed away pursuant to proposed Article 19, Rule 3(a)(1),[66] as opposed to current Interpretation and Policy .03 of Article 20, Rule 5, if an improper trade-through would result.[67] Also, under proposed paragraph (a)(2), the Exchange proposes to clarify that all inbound non-Routable Orders that would cause an improper trade-through shall be automatically cancelled; provided, however, that if the order is marked CHX Only and eligible for price sliding, it shall be price slid and not automatically cancelled.[68]

The Exchange also proposes to delete language stating that undisplayed orders resting through the NBBO shall be cancelled to the extent necessary for an inbound order, against which an execution would result in an improper trade-through, to be executed or quoted.[69] This is because the Exchange now proposes to require all resting orders marked Do Not Display to be price slid if the execution of such a resting order would result in an impermissible trade-through of a Protected Quotation of an external market, as discussed below.

Amended paragraph (b) states as follows:

(b) Odd Lot crosses and resting Odd Lot limit orders/remainders priced through a contra-side Protected Quotation of an external market shall be eligible for execution on the Exchange even if the execution would trade-through a Protected Quotation of an external market. Inbound Odd Lot limit and market orders shall not be permitted to trade-through a contra-side Protected Quotation of an external market and shall be treated the same as Round Lots.

Currently, the Exchange permits incoming and resting Odd Lot orders to execute through the NBBO. However, the Exchange now proposes to prohibit incoming Odd Lot orders from trading through a contra-side Protected Quotation of an external market, while continuing to permit resting Odd Lot orders to trade-through a contra-side Protected Quotation of an external market.

As proposed, if an incoming Odd Lot Routable Bid (Offer) were matchable against an offer (bid) resting on the CHX book and the execution of the incoming bid (offer) would result in a trade-through of the NBO (NBB), proposed Routing Event #2 would be triggered and the incoming Odd Lot bid (offer) would be routed away. If, however, the incoming Odd Lot order is not a Routable Order, the incoming Odd Lot order would be price slid if marked CHX Only or cancelled if not eligible for price sliding. Thus, the Exchange proposes to treat incoming Odd Lot orders the same as Round Lots.

Amended Article 1, Rule 2(c)(2) (Do Not Display)

The Exchange proposes to amend the definition of the Do Not Display modifier under current Article 1, Rule 2(c)(2) to add that all limit orders marked Do Not Display resting on the CHX book shall be handled as CHX Only, even if such orders were not originally marked CHX Only, which cannot be overridden by an order sender. By definition, this would include, *inter alia,* Routable Orders marked Do Not Display that immediately posted to the CHX book or where an unexecuted remainder of a Routable Order marked Do Not Display posted to the CHX book (*i.e.,* a routed order returned to the Matching System as unexecuted). In the later situation, the Routable Order marked Do Not Display would only be handled as CHX Only after the order was posted to the CHX book, as handling such an order CHX Only prior to its posting to the CHX book would preclude routing.

The Exchange also proposes to amend current Article 1, Rule 2(c)(2) to delete language that incorrectly states that an order may be marked Do Not Display ''in part,'' as a limit order marked Do Not Display can only be fully-hidden. Incidentally, the Exchange proposes to expand the applicability of the CHX Only modifier to all limit orders, regardless of order display modifier, as discussed below.

Amended Article 20, Rule 6(d) (Locked and Crossed Markets)

In light of the proposed CHX Routing Services, the Exchange proposes to amend current Article 20, Rule 6(d) to clarify how the Matching System will treat orders received by the Matching System that could not be displayed in compliance with Rule 610(d) of Regulation NMS. As such, amended Rule 6(d) states as follows:

(d) *Matching System operation.* Except as permitted in paragraph (c) above, an order is not eligible for display on the Exchange if its display would lock or cross a Protected Quotation of an external market in violation of Rule 610 of Regulation NMS and such an order shall be handled by the Exchange as follows:

(1) If the display of a Routable Order, as defined under Article 1, Rule 1(oo), would impermissibly lock or cross a Protected Quotation of an external market, that Routable Order, or a portion thereof, shall be routed away, pursuant to Article 19, Rule 3(a)(1); or

(2) If the display of an order would impermissibly lock or cross a Protected Quotation of an external market and the order cannot be routed away, that order shall be automatically cancelled; provided, however, that such an order marked CHX Only may be subject to the CHX Only Price Sliding Processes, detailed under Article 1, Rule 2(b)(1)(C) and not automatically cancelled.

Specifically, under paragraph (d), the Exchange proposes to specify that ''Rule 610'' refers to ''Rule 610 of Regulation NMS.'' Thereunder, amended paragraph (d)(1) provides that if the display of a Routable Order would impermissibly lock or cross a Protected Quotation of an external market, that Routable Order, or a portion thereof, shall be routed away, pursuant to Article 19, Rule 3(a)(1),[70] as opposed to current Interpretation and Policy .03 of Article 20, Rule 5. In addition, amended paragraph (b)(2) provides that if the display of an order would impermissibly lock or cross a Protected Quotation of an external market and the order cannot be routed away, that order shall be automatically cancelled; provided however that such an order marked CHX Only may be subject to the CHX Only Price Sliding Processes, detailed under Article 1, Rule

[66] *See supra* Examples 9 and 10.

[67] As discussed above, the Exchange proposes to delete Interpretation and Policy .03 of Rule 5, as the routing functionality contemplated under that language is not what the Exchange now proposes through the proposed CHX Routing Services. With respect to paragraph (a) thereunder, given that the Cross With Satisfy modifier is not currently available and only certain Limit orders could be routed away pursuant to the proposed CHX Routing Services, the Exchange proposes to delete the current paragraph (a). When and if the Exchange decides to reactivate the Cross With Satisfy modifier, the Exchange will propose new language concerning the routing of Cross With Satisfy orders pursuant to Rule 19b–4 under the Act.

[68] *See* CHX Article 1, Rule 2(b)(1)(C). As discussed below, the Exchange proposes to amend the CHX Only modifier to apply to all Limit orders, regardless of display modifier. The CHX Only modifier is currently only applicable to ''fully-displayable'' Limit orders, which exclude orders marked Do Not Display or Reserve Size.

[69] The Exchange also propose [sic] to delete Article 20, Rule 8(e)(6), which provides similar language.

[70] *See supra* Examples 7 and 8.

2(b)(1)(C) and not automatically cancelled.

Amended Article 20, Rule 8 (Operation of the Matching System)

The Exchange proposes to amend Article 20, Rule 8 to adopt provisions concerning the proposed CHX Routing Services and to clarify how orders are currently ranked, displayed and executed by the CHX Matching System.

The Exchange proposes to amend Rule 8(a) to provide that Participants may route orders to the Matching System through any communications line approved by the Exchange and may only route orders away from the Matching System by utilizing the proposed CHX Routing Services, pursuant to proposed Article 19.[71]

Current Rules 8(b) and (d) describes the ranking, display and execution of orders within the Matching System. Although the current language is accurate, the Exchange submits that additional granularity is appropriate in light of the proposed CHX Routing Services and proposed amendment to the CHX Only modifier to expand its applicability to Do Not Display and Reserve Size limit orders, as described below. It is important to note that the Exchange does not propose to substantively modify any functionality described under current paragraphs (b) and (d).

Amended paragraph (b) begins as follows:

(b) All orders accepted by the Matching System that will post to the CHX book shall be ranked at each price point up to its limit price by display status then sequence number. Resting limit orders shall be ranked as follows:

Unlike current paragraph (b), which refers to orders ''sent to'' the Matching System, amended paragraph (b) refers more accurately to orders ''accepted'' by the Matching System, as orders sent to the Matching System may be rejected by the Matching System and never ranked. In addition, unlike current paragraph (b), which simply refers to ranking orders ''according to their price and time of receipt,'' amended paragraph (b) provides that orders are ranked at each price point up to its limit price by ''display status'' then ''sequence number.''[72] That is, when an order is to be posted to the CHX book, at each price point up to its limit price, the order is sorted into one of three pools based on ''display status'' at each price point, and within each pool, prioritized based on ''sequence number,'' which reflects time priority (*e.g.,* a bid that will be posted to CHX book with limit price of $10.00 is ranked at $10.00, $9.99, $9.98, etc . . .). This ranking of orders at numerous price points is particularly necessary given the Exchange's price sliding functionalities, which requires price slid orders to maintain original time priority, even if the price slid order is executable at a price less aggressive than its limit price (*i.e.,* order always execute at its ''Working Price'').[73] Specifically, the ranking of orders at each price point up to its limit price permits such orders to preserve its original time priority within the CHX book, notwithstanding the number of price sliding events. This ranking scheme also prevents the Matching System from having to re-establish time priority after each price sliding event, as their relative rank is established at the time the order is accepted by the Matching System.

Amended paragraph (b)(1) describes display status pool #1 and states as follows:

(1) *Fully-displayable orders and displayed portions of Reserve Size orders.* At each price point up to their limit prices, fully-displayable limit orders of any size and the displayed portion of Reserve Size orders, as defined under Article 1, Rule 2(c)(3), shall be ranked based on their sequence numbers by the Exchange's Matching system and shall be ranked ahead of undisplayed portions of Reserve Size orders and orders marked Do Not Display. Orders sent to an Institutional Broker for handling shall not have any priority within the Matching System unless and until they are received by the Matching System.

Amended paragraph (b)(1) is substantively similar to current paragraph (b)(1), with amendments to explicitly refer to the ranking of orders at each price point up to its limit price and to replace ''times of receipt'' with the more accurate ''sequence numbers.'' Also, the Exchange proposes to eliminate references to Mixed Lot and Odd Lot orders, as Mixed Lot and Odd Lot orders are always ''fully-displayable,'' but may not actually be displayed, if such orders are not at the CHX Best Bid or Offer (''CHX BBO'') and cannot be aggregated into Round Lots.[74] Thus, ''fully-displayable'' orders are limit orders of any size not marked Do Not Display or Reserve Size. Along with fully-displayable orders, the displayed portions of Reserve Size orders are currently part of display status pool #1, which is ranked ahead of other display statuses.

Amended paragraph (b)(2) describes display status pool #2 and states as follows:

(2) *Undisplayed portion of Reserve Size orders.* At each price point up to their limit prices, the undisplayed portions of Reserve Size orders shall be ranked based on their sequence numbers by the Exchange's Matching System, but shall be ranked after any orders as described in paragraph (b)(1) above.

Amended paragraph (b)(2) is substantively similar to current paragraph (b)(2), with amendments to explicitly refer to the ranking of orders at each price point up to its limit price, to clarify that the paragraph applies to the ''undisplayed portion of Reserve Size orders,''[75] to replace ''times of receipt'' with the more accurate ''sequence numbers,'' and to clarify that undisplayed portions of Reserve Size orders are ranked behind orders in display status pool #1.

Amended paragraph (b)(3) describes the display status pool #3 and states as follows:

(3) *Orders marked Do Not Display.* At each price point up to their limit prices, limit orders marked Do Not Display, as defined under Article 1, Rule 2(c)(2), shall be ranked based on their sequence numbers by the Exchange's Matching System, but shall be ranked after all orders as described under subparagraphs (b)(1) and (b)(2) above.

[71] As noted above in the discussion concerning proposed CHX Article 19, Rule 2(a)(3), the use of CHXBD to route orders is optional because Participants are always free to submit orders to away markets without utilizing CHX or CHXBD. However, to the extent that a Participant wishes to route an order directly away from the Matching System, the Participant must use the proposed CHX Routing Services, by submitting a Routable Order to the Matching System.

[72] Time priority in the Matching System is established by a unique ''sequence number'' (*e.g.,* 1, 2, 3, etc . . .) that the Matching System assigns to each incoming order at the original time of order entry. These sequence numbers ensure that orders retain their relative time priority to each other, even as they are priced slid, and these sequence numbers will not be changed nor will an order receive a new sequence number, so long as it is resting in the CHX book. ''Display status'' refers to one of three categories, described in paragraphs (b)(1)–(3), under which each order received by the Matching System is sorted.

[73] Proposed Article 1, Rule 1(pp), defines ''Working Price'' as ''the most aggressive price at which a resting Limit order, as defined under Article 1, Rule 2(a)(1), can execute within the Matching System, in compliance with Rule 611 under Regulation NMS. An order's Working Price may be any price up to and including its limit price.''

[74] *See* CHX Article 20, Rule 8(b)(6).

[75] The only ''orders that are not displayed in part'' are limit orders marked Reserve Size, where the reserve portion is undisplayed. *See* CHX Article 1, Rule 2(c)(3). As discussed above, the Exchange proposes to amend the definition of ''Do Not Display'' to correct a misstatement that orders may be Do Not Display ''in part.'' Only orders marked Reserve Size may be hidden in part.

Amended paragraph (b)(3) is substantively similar to current paragraph (b)(3), with amendments to explicitly refer to the ranking of orders at each price point up to its limit price, to clarify that the paragraph applies to the ''orders marked Do Not Display,'' [76] to replace ''times of receipt'' with the more accurate ''sequence numbers,'' and to clarify that orders marked Do Not Display are ranked orders in display statuses #1 and #2.

The following Examples 17–19 illustrate how orders are currently ranked on the CHX book, as clarified by the proposed amendments:

Example 17. Assume that the CHX book is empty with respect to security XYZ and the NBBO for security XYZ is $10.00 × $10.02. Assume then that the Matching System accepts a limit order to buy 100 shares of security XYZ at $10.00/share marked Do Not Display and the order is assigned a sequence number of ''1'' (''Bid 1'').

In this situation, Bid 1 would be ranked on the CHX book as follows (values in parentheses indicate size): [77]

x ≤ 9.98			9.99			10.00		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
1(100)			**1(100)**			**1(100)**		

Pursuant to amended paragraph (b)(3), Bid 1 would be ranked at each price point up to its limit price of $10.00 and allocated to display status pool #3 for limit orders marked Do Not Display.[78]

Example 18. Assume the same as Example 17 and while Bid 1 is resting on the CHX book, the Matching System accepts a limit order to buy 50 shares of security XYZ at $9.99/share that is ''fully-displayable'' and the order is assigned a sequence number of ''2'' (''Bid 2'').

In this situation, Bid 2 would be ranked on the CHX book as follows:

x ≤ 9.98			9.99			10.00		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
1(100)		**2(50)**	1(100)		**2(50)**	1(100)		

Pursuant to amended paragraph (b)(1), Bid 2 would be ranked at each price point up to its limit price of $9.99 and allocated to display status pool #1 for fully-displayable limit orders. However, as discussed below, although Bid 2 represents the CHX BO, it cannot be *displayed* because it is for an Odd Lot and cannot be aggregated with other Odd Lots or Mixed Lots to be displayed as a Round Lot. This, however, has no bearing on its rank on the CHX book.

Example 19. Assume the same as Example 18 and while Bid 1 and Bid 2 are resting on the CHX book, the Matching System accepts a limit order to buy 500 shares of security XYX at $10.00/share that is marked Reserve Size, with a displayable amount of 100 shares, refresh threshold of 0, and the order is assigned a sequence number 3.

In this situation, Bid 3 would be ranked on the CHX book as follows:

x ≤ 9.98			9.99			10.00		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
1(100)	**3(400)**	2(50)	1(100)	**3(400)**	2(50)	1(100)	**3(400)**	**3(100)**
		3(100)			**3(100)**			

Pursuant to amended paragraph (b)(1), the 100 shares of Bid 3 that represent the displayed portion of Bid 3 will be ranked at each price point up to its limit price of $10.00 and allocated to display status pool #1 for fully-displayable orders and displayed portions of Reserve Size orders. Thus, the displayed portion of Bid 3 will be ranked ahead of Bid 1 at every price point up to $10.00. However, given that Bid 3 has an inferior sequence number to Bid 2, Bid 3 will be ranked behind Bid 2 at each price point up to $9.99. Since Bid 2 has a limit price of $9.99, the displayed portion of Bid 3 will be at the top of the CHX book at the $10.00.

Pursuant to amended paragraph (b)(2), the 400 shares of Bid 3 that represent the undisplayed portion of the Bid 3 will be ranked at each price point up to

[76] The only ''orders that are not displayed at all'' are limit orders marked Do Not Display. *See* CHX Article 1, Rule 2(c)(2). *See id.*

[77] Examples 17–22 represent order execution priority at each price point up to the order's limit price, which starts on the far right from top to bottom, then from right to left.

[78] The Working Price of Bid 1 would be $10.00 as the limit price of the Bid 1 is at the NBB. *See supra* note 73.

its limit price of $10.00 and allocated to display status pool #2 for undisplayed portions of Reserve Size orders. Thus, the undisplayed portion of Bid 3 will be ranked ahead of Bid 1, but behind the displayed portion of Bid 3 and Bid 2 up to $9.99 and behind the displayed portion of Bid 3 only at $10.00.

Amended paragraph (b)(4) clarifies how Reserve Size orders are handled for ranking purposes when the displayed portion is refreshed and states as follows:

(4) *Refreshed portions of Reserve Size orders.* When the displayed portion of a Reserve Size order reaches a threshold set by the Participant submitting the order (the ''submitting Participant''), the displayed portion of the order shall be refreshed to the original displayed quantity (or with the remaining number of shares, if less) and the undisplayed portion of the order shall be decremented by that number of shares. The refreshed displayed portion of the Reserve Size order shall receive a new display sequence number based on the time at which it was refreshed, whereas any remaining undisplayed portion of the Reserve Size order shall retain its original sequence number.

Correspondingly, the Exchange proposes to amend Article 20, Rule 2(c)(3), which defines the ''Reserve Size'' modifier to add that the refreshed displayed portions of Reserve Size orders shall be ranked in the CHX book pursuant to amended Article 20, Rule 8(b)(4).

Amended paragraph (b)(4) is substantively similar to current paragraph (b)(4), with amendments to describe the ranking of the Reserve Size orders in terms of ''sequence numbers,'' so as to be consistent with the foregoing proposed amendments to paragraph (b). That is, amended paragraph (b)(4) clarifies that when the displayed portion of a Reserve Size order is refreshed, the refreshed displayed portion will receive a new sequence number and lose priority to all other orders in the first display status pool, whereas the undisplayed portion will retain its original sequence number and retain its original priority in display status pool #2. The following Example 20 illustrates how the refreshed Reserve Size orders are currently treated, as clarified by the proposed amendment:

Example 20. Assume the same as Example 19. Assume then that Bid 2 is cancelled by the order sender and soon thereafter, the Matching System accepts a limit order to buy 500 shares of security XYX at $10.00/share that is marked Reserve Size, with a displayable amount of 100 shares, with a refresh threshold of 0, and the order is assigned a sequence number 4.

In this situation, Bid 3 would be ranked on the CHX book as follows:

x ≤ 9.98			9.99			10.00		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
1(100)	3(400)	3(100)	1(100)	3(400)	3(100)	1(100)	3(400)	3(100)
	4(400)	**4(100)**		**4(400)**	**4(100)**		**4(400)**	**4(100)**

Assume then that the Matching System receives an incoming limit order to sell 100 shares of security XYZ at $10.00/share that is marked IOC.

In this situation, the incoming offer would execute against the full displayed portion of Bid 3 at $10.00/share. Pursuant to amended paragraph (b)(4), the displayed portion of Bid 3 would then be refreshed to 100 shares and would receive a new sequence number reflecting the time of the refresh, while the undisplayed portion of Bid 3 would be decremented by 100 shares and would retain its original sequence number.

Thus, Bid 3 would now be ranked on the CHX book as follows:

x ≤ 9.98			9.99			10.00		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
1(100)	**3(300)**	4(100)	1(100)	**3(300)**	4(100)	1(100)	**3(300)**	4(100)
	4(400)	**31(100)**		4(400)	**31(100)**		4(400)	**31(100)**

This chart clearly shows that the refreshed display portion of Bid 3 loses priority to the displayed portion of Bid 4, but the undisplayed portion of Bid 3 maintains priority over the undisplayed portion of Bid 4.

Amended paragraph (b)(5) describes the impact of change of size or price to an order and states as follows:

(5) *Other changes in order size or price.* When a Participant reduces the number of shares in an order, the order will continue to be ranked at the price and time at which it was originally received. When a Participant increases the number of shares in an order, the order will be ranked at the original limit price, but shall receive a new ranking based on the time at which shares were added to the order. Any change in the price of an order shall result in a new ranking for the order based on the new limit price and the time at which the price change was received. Any change to the display instruction associated with an order (including, but not limited to, a change that identifies an order as Reserve Size or Do Not Display) must be submitted as a new order and shall be ranked based on the time at which the new order was received.

Amended paragraph (b)(5) is virtually identical to current paragraph (b)(5), with proposed amendments to replace the term ''instruction'' with the more accurate ''modifier,'' to capitalize the

term ''Reserve Size,'' and to replace ''undisplayed orders'' with the more accurate term ''Do Not Display.''

Amended paragraph (b)(6) describes which orders are displayed and how certain Odd Lot and Mixed Lot orders are handled for display purposes and states follows:

(6) *Displayed CHX Best Bid and Offer.* Except as provided in Rule 5 above, all orders or portions of orders described under paragraph (b)(1) above that constitute the best bid(s) or offer(s) in the Matching System in each security, the display of which would not violate Rule 610 under Regulation NMS (''displayable CHX BBO''), shall be immediately and publicly displayed through the processes set out in the appropriate reporting plan for each security, provided that the displayable CHX BBO is for at least a Round Lot. The displayable CHX BBO for a security shall only be displayed in multiples of a Round Lot. If the displayable CHX BBO for a security is for an Odd Lot, it shall not be displayed, but the bids or offers that constitute the undisplayed yet displayable CHX BBO shall maintain their execution priority pursuant to paragraph (b)(1) above. If the displayable CHX BBO for a security is for a Mixed Lot, it shall be rounded down to the nearest integer multiple of a Round Lot for display purposes only and the displayable yet undisplayed Odd Lot remainder(s) shall maintain their execution priority pursuant to paragraph (b)(1) above.

Amended paragraph (b)(6) is substantively identical to current paragraph (b)(6), but changes the way order aggregation for display purposes is described and deletes surplus language already included in the foregoing paragraphs. In sum, amended paragraph (b)(6) makes clear the distinction between aggregation of orders for display purposes and the rank of individual orders on the CHX book. Specifically, it clarifies that the CHX BBO can only be displayed in Round Lots or multiples of Round Lots and Odd Lot and Mixed Lot orders will be displayed to the extent that they can be aggregated together into a multiple of a Round Lot. The amended paragraph further clarifies that order rank will not be affected by aggregation of orders for display purposes as described under amended paragraphs (b)(1)–(5).

Amended paragraph (b)(7) replaces current language concerning the execution priority of price slid orders, with language describing how unexecuted remainders of routed orders would be ranked on the CHX book, as discussed above.[79] The Exchange submits that the current language is redundant of the proposed amendments to the CHX Only modifier and automated matching of orders, both described below, because all orders, regardless of whether or not they are subject to any price sliding functionality, would be executed at its ''Working Price,'' which the Exchange proposes to adopt in the CHX rules as a defined term.[80]

Amended paragraph (d)(1) clarifies how orders resting on the CHX book are currently executed and states as follows:

(1) Except for certain orders which shall be executed as described in Rule 8(e), below, an incoming order shall be matched against one or more resting orders in the Matching System, in the order in which the resting orders are ranked on the CHX book, pursuant to Rule 8(b) above, at the Working Price of each resting order, as defined under Article 1, Rule 1(pp), for the full amount of shares available at that price, or for the size of the incoming order, if smaller.

Amended paragraph (d)(1) is substantively identical to current paragraph (d)(1), with amendments to clarify that orders are executed according to their rank on the CHX book, pursuant to amended paragraph (b), and at the Working Price of each resting order, as defined under proposed Article 1, Rule 1(pp).[81] The Working Price of a resting order that is not eligible for price sliding will always be its limit price, whereas the Working Price of a resting order that is eligible for price sliding will be the most aggressive price at which the order can execute, depending on the prevailing NBBO for the subject security.[82] The following Examples 21–23 illustrate how orders resting on the CHX book are currently executed:

Example 21. Assume the same as Example 20 above, that the NBBO for security XYZ is $10.00 × $10.01, and that the Exchange is the only market at the NBB displaying 200 shares at $10.00.

The CHX book as to security XYZ looks like this:

x ≤ 9.98			9.99			10.00		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
1(100)	3(300)	4(100)	1(100)	3(300)	4(100)	1(100)	3(300)	4(100)
	4(400)	31(100)		4(400)	31(100)		4(400)	31(100)

Assume then that after the displayed portion of Bid 3 is refreshed, the Matching System receives an incoming limit order to sell 1000 shares of security XYZ at $10.00/share. In this situation, since the size of the incoming offer is equal to the total number of shares represented by all resting bids at $10.00, the incoming offer would execute against all resting bids on the CHX book at the Working Price of the resting orders, which are their limit prices because they have not been price slid, in the following order: 4(100), 31 (100), 3(300), 4(400), 1(100).

Example 22. Assume the same as Example 21, except that the CHX book is empty with respect to security XYZ, and the NBBO for security XYZ is $9.99 × $10.00. Assume then that the Matching System accepts two orders in quick succession. The first order is a Routable Order to buy 100 shares of security XYZ at $9.99/share (not eligible for NMS Price Sliding) and is assigned a sequence number of ''5'' (''Bid 5''). The second order is a limit order to buy 100 shares of security XYZ at $10.01/share marked CHX Only (eligible for NMS Price Sliding)[83] and is assigned a sequence number of ''6'' (''Bid 6''). In this situation, pursuant to paragraph (b)(1), Bid 5 would be ranked at every

[79] *See supra* Examples 14–16.

[80] *See supra* note 73.

[81] *Id.*

[82] *Id.*

[83] *See* CHX Article 1, Rule 2(b)(1)(C).

price point up to its limit price of $9.99 and Bid 6 would be ranked at every price point up to its limit price of $10.01. However, since the display of Bid 6 at $10.01 would cross the NBO in violation of Rule 610(d) of Regulation NMS, Bid 6 would be price slid and would only be executable at the NBO locking price of $10.00 (*i.e.,* Working Price) and displayable at one price increment below the NBO, at $9.99. The Matching System would then aggregate Bids 5 and 6 for display purposes, pursuant to amended paragraph (b)(6), and display a CHX Protected Bid at $9.99 for 200 shares of security XYZ. However, the bids would receive order execution priority as follows:

x ≤ 9.99			10.00			~~10.01~~		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
		5 (100)			6 (100)			~~6 (100)~~
		6 (100)						

Thus, Bid 6 would have a Working Price of $10.00/share and Bid 5 would have a Working Price of $9.99/share, which is its limit price. That is, if the Matching System then accepted an incoming offer for 200 shares of security XYZ priced at $9.99/share, the incoming offer would first execute 100 shares against Bid 6 at $10.00/share, then against Bid 5 at $9.99/share.

Example 23. Assume the same as Example 22, except that prior to the Matching System receiving an incoming offer for 200 shares of security XYZ priced at $9.99/share, the Upper Price Band for security XYZ moved to $9.99. As such, order could not be executed at a price more aggressive than $9.99 and the bids would receive order execution priority as follows:

x ≤ 9.99			~~10.00~~			~~10.01~~		
(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)	(b)(3)	(b)(2)	(b)(1)
		5 (100)			~~6 (100)~~			~~6 (100)~~
		6 (100)						

Thus, both Bid 5 and Bid 6 would have a Working Price of $9.99/share. Thus, if the Matching System then accepted an incoming offer for 200 shares of security XYZ priced at $9.99/share, the incoming offer would first execute 100 shares against Bid 5 at $9.99/share, then against Bid 6 at $9.99/share.

Amended paragraph (d)(3) reflects changes to the handling of Odd Lot orders pursuant to the proposed CHX Routing Services and states as follows:

(3) Odd Lot orders and unexecuted Odd Lot remainders that are unable to be immediately displayed according to Rule 8(b)(6) above (because they are at a price that is better than the current CHX quote) shall be posted to, remain in, or be routed or cancelled from, the Exchange's Matching System according to the attached order modifiers. Orders remaining in the Matching System will continue to be ranked at the price and time at which they were originally received.

Specifically, pursuant to proposed Article 19, Rule 3(a), amended paragraph (d)(3) adds that Odd Lot orders could be posted to, or routed away from, the Matching System, in addition to either remaining in, or being cancelled from, the Matching System.[84] Also, amended paragraph (d)(3) replaced the phrase ''Participant's instruction,'' with the more technically accurate ''order modifiers.'' Moreover, as discussed above, the Exchange proposes to delete reference to current Article 20, Rule 8(h) in current paragraph (d)(3), as the Exchange proposes to delete Article 20, Rule 8(h) in its entirety as obsolete.

The Exchange proposes to amend paragraph (d)(4) to adopt style edits and to provide additional detail as to how the Matching System currently handles orders that are subject to Rule 201 of Regulation SHO. Specifically, in order to clarify the scope of the rule, the Exchange proposes to entitle the paragraph ''Rule 201 of Regulation SHO.'' The Exchange also proposes to capitalize all references to ''Trading Center,'' as the Exchange now proposes to define the term in the CHX rules;[85] to replace reference to ''short sale'' orders with ''Sell Short,'' as short sale orders are, more accurately, limit orders marked Sell Short, as defined under Article 1, Rule 2(b)(3)(D); to insert a cross-reference to Article 1, Rule 2(b)(3)(E), which defines ''Short Exempt''; and to replace the current citation to Article 20, Rule 8(h) with a citation to proposed Article 19, Rule 3, which details the proposed Routing Events. Also, given that current Rule 8(d)(4) addresses exceptions to the short sale price test restriction, as provided under Rules 201(b)(1)(iii)(A) and (B) of Regulation SHO, the Exchange proposes to adopt those citations in the amended rule.[86]

[84] Incoming or resting Odd Lots priced at the CHX BBO that could not be aggregated with other orders for display purposes will be cancelled by the Matching System if it is marked Always Quote, as defined under CHX Article 1, Rule 2(c)(1).

[85] *See supra* note 5.

[86] Rule 201(b)(1)(iii)(A) of Regulation SHO provides the Exchange's policies and procedures must be reasonably designed to permit ''the execution of a displayed short sale order of a covered security by a trading center if, at the time of initial display of the short sale order, the order was at a price above the current national best bid.''

In addition, the Exchange proposes to adopt language that clarifies how the Matching System currently applies the Rule 201(b)(1)(iii)(A) exception to resting limit orders marked Sell Short and Reserve Size. The proposed language provides that the Rule 201(b)(1)(iii)(A) exception shall also apply to resting limit orders marked Sell Short and Reserve Size, as defined under Article 1, Rule 2(c)(3), and, pursuant to the exception, such orders shall be permitted to execute at its initially displayed price, up to its full size, including the undisplayed portion, during one order-matching event.[87] The proposed language also provides that Reserve Size orders may not be modified or refreshed during an order-matching event.[88]

The purpose of this language is to clarify that the Rule 201(b)(1)(iii)(A) exception applies to the entire Reserve Size order, including the undisplayed portion, so long as (1) the Reserve Size order was initially displayed at a price above the then-current NBB and (2) any execution(s) against the Reserve Size order at a price below one minimum price increment above the NBB is the result of one order-matching event. Thus, the proposed language continues by providing that if a Reserve Size order is refreshed after an order-matching event (*e.g.,* the incoming order was smaller than the resting Reserve Size order), but the refreshed quote cannot be permissibly displayed at the initially displayed price in compliance with Regulation SHO, the entire Reserve Size order shall be cancelled or price slid, if the order is marked CHX Only, as defined under the amended Article 1, Rule 2(b)(1)(C).

Moreover, the Exchange proposes to adopt language that provides that if the NBBO for a covered security subject to the short sale price test restriction become crossed, a Sell Short order in the covered security may be displayed or executed at a price that is less than or equal to the current NBB while the market is crossed. This language is virtually identical to the response to Question 6.1 of the ''Division of Trading and Markets: Responses to Frequency Asked Questions Concerning Rule 201 of Regulation SHO'' (''Regulation SHO FAQs'').[89]

Amended Article 1, Rule 2(b)(1)(C) (CHX Only)

The Exchange proposes to expand the applicability of the current CHX Only modifier to limit orders marked Do Not Display or Reserve Size and not just ''fully-displayable'' limit orders (*i.e.,* limit orders not marked by an order display modifier).[90] Moreover, in light of the foregoing amendments to the Article 20, Rule 8(b) and (d), the Exchange proposes to make similar amendments to terminology used in defining the CHX Only modifier to be consistent with proposed Article 20, Rule 8(b) and (d).

In 2011, the Exchange introduced the CHX Only order type, amended twice in 2013,[91] which is designed to encourage displayed liquidity on the Exchange and to reduce automatic cancellations by the Matching System.[92] The CHX Only modifier is a limit order modifier that requires the order to be ranked and executed on the Exchange, without routing away to another trading center. Order senders have the option to default all limit orders to ''CHX Only'' and therefore be subject to the CHX Only Price Sliding Processes. The CHX Only Price Sliding Processes is an order handling functionality comprised of NMS Price Sliding and Short Sale Price Sliding designed to ensure compliance with Rule 610(d) of Regulation NMS and Rule 201 of Regulation SHO. The CHX Only Price Sliding Processes are applied to all CHX Only orders that, at the time of order entry, would be in violation of Rule 610(d) of Regulation NMS and/or Rule 201 of Regulation SHO, if displayed or executed at the limit price. However, a CHX Only order that, at the time of order entry, could be displayed or executed in compliance with Regulation NMS and Rule 201 of Regulation SHO will not be subject to the CHX Only Price Sliding Processes and shall be displayed and executable without price sliding.

Mechanically, for those orders subject to the CHX Only Price Sliding Processes, the Matching System will price slide orders multiple times depending on changes to the NBBO (the repricing of CHX Only sell short orders subject to Rule 201 of Regulation SHO is dependent solely on declines to the NBB), so long as the order can be displayed and executable in an increment consistent with the provisions of Rule 610(d) of Regulation NMS and Rule 201 of Regulation SHO, until the order is executed, cancelled or the original limit price is reached. Also, the CHX Only Price Sliding Processes are based on Protected Quotations at equities exchanges other than the Exchange (Short Sale Price Sliding is based on the NBB) and all CHX Only limit orders subject to the CHX Only Price Sliding Processes shall maintain their original limit price and shall retain their time priority with respect to other orders based upon the time those orders were initially received by the Matching System. Like all limit orders ranked on the CHX book, CHX Only orders are ranked at every price point up to its limit price, as fully-displayable orders, then by sequence number. CHX Only orders that are price slid maintain their original sequence number, notwithstanding price sliding.

The Exchange now proposes several amendments to the CHX Only modifier to permit the modifier to be attached to limit orders marked Do Not Display and Reserve Size and to clarify that Odd Lot orders marked CHX Only are also subject to the CHX Only Price Sliding Processes.

Notably, the Exchange proposes to add additional language to Article 1, Rule 2(b)(1)(C)(i)(a), which outlines ''Initial NMS Price Sliding,'' to provide that in addition to when a CHX Only would lock or cross a Protected Quotation of an external market in violation of Rule 610(d), NMS Price Sliding will also occur if, at the time of entry, a CHX Only order is priced at or through a contra-side Protected Quotation of an external market and is for an Odd Lot or is priced through a contra-side Protected Quotation of an external market and is marked Do Not Display. This additional language is necessary because Odd Lots could not, by themselves, be Protected Quotations and, thus, are not subject to Rule 610(d) of Regulation NMS.[93] Moreover, since CHX Only orders marked Do Not Display could never be displayed at any price, a violation of Rule 610(d) of Regulation NMS would never occur.

[87] An ''order-matching event'' refers to the matching of one incoming order against one or more marketable contra-side orders resting on the CHX book. The simplest example involves one incoming order matching against one resting order at one price point. However, an order-matching event could also involve one incoming order matching against two or more orders, sometimes at multiple price points.

[88] During an order matching event, an order sender cannot not change the size or price of the Reserve Size order.

[89] ''Division of Trading and Markets: Responses to Frequency Asked Questions Concerning Rule 201 of Regulation SHO.'' U.S. Securities and Exchange Commission, 20 Jan. 2011. Web. 16 June 2014. <*http://www.sec.gov/divisions/marketreg/rule201faq.htm*>.

[90] *See* Article 1, Rule 2(b)(1)(C).

[91] *See* Securities Exchange Act Release No. 69319 (April 5, 2013), 78 FR 21634 (April 11, 2013) (SR–CHX–2013–08); *see also* Securities Exchange Act Release No. 69075 (March 8, 2013), 78 FR 16311 (March 14, 2013) (SR–CHX–2013–07).

[92] Prior to the recent amendment, the CHX Only order type was originally adopted in 2011. *See* Securities Exchange Act Release No. 64319 (Apr. 21, 2011), 76 FR 23634 (Apr. 27, 2011) (SR–CHX–2011–04).

[93] *See* CHX Article 20, Rule 8(b)(6).

In addition, the Exchange proposes the following global changes under subparagraph (C):

(1) The Exchange proposes to replace all reference to ''ranked'' or ''re-rank'' with the more accurate term ''executable.'' Pursuant to proposed Article 20, Rule 8(b), a limit order is ranked at each price point up to its limit price by its display status then sequence number. Thus, an order subject to price sliding is not quite ''re-ranked,'' as it maintains its original rank in the CHX book behind orders already resting on the CHX book.[94] Thus, the more accurate term is ''executable,'' as price slid orders are ranked at every price point up to its limit price, but only executable at the most aggressive price permissible by Rule 611 of Regulation NMS (*i.e.,* its ''Working Price'').[95]

(2) The Exchange also proposes to adopt the term ''displayable,'' in addition to the current term ''displayed,'' because Odd Lot orders that are marked CHX Only would not be displayed at the Permitted Display Price if it could not be aggregated with other Odd Lots or Mixed Lots for display purposes, pursuant to current Article 20, Rule 8(b)(6). Thus, price slid Odd Lots would be executable at the locking price and displayable at the Permitted Display Price, if the Odd Lot could not be aggregated for display purposes pursuant to current Article 20, Rule 8(b)(6).

(3) The Exchange proposes to eliminate language in current subparagraphs (C)(i)(b)(1) and (2) and (C)(ii)(b) states that CHX Only orders ''shall receive a new timestamp'' at each price sliding event, as such language is confusing and unnecessary. As the Exchange clarified in SR–CHX–2013–07, the purpose of timestamp ''is to simply record the time of the price adjustment, as opposed to establishing or retaining time priority.'' [96] Pursuant to subparagraph (C)(iv), CHX Only orders subject to the Price Sliding Processes retain their time priority versus other orders based upon the time those orders were initially received by the Matching System. Thus, for clarity, the Exchange proposes to delete reference to a ''new timestamp.''

Moreover, the Exchange proposes the following specific amendments. With respect to current subparagraph (C), the Exchange propose to capitalize the term ''Trading Center'' in the first paragraph, as the Exchange proposes to adopt the term as a defined term under Article 1, Rule 1(nn).[97] Moreover, the Exchange proposes to eliminate the first sentence of the fourth paragraph under subparagraph (C), as the Exchange proposes to make the CHX Only modifier applicable to all limit orders, regardless of the attached order display modifier.

In addition, given that the Exchange proposes to permit Do Not Display orders to be marked CHX Only and require all resting limit orders marked Do Not Display to be handled as CHX Only, all resting sell short orders marked Do Not Display shall be subject to Short Sale Price Sliding. As such, if the short sale price test restriction under Rule 201 of Regulation SHO is in effect, resting sell short orders marked Do Not Display will not be cancelled if it would execute at a price at or below the NBB because such resting orders will always be price slid to the Permitted Price (*i.e.,* one minimum price increment above the NBB). Thus, the Exchange proposes to delete the last sentence of the fourth paragraph under subparagraph (C), as such orders will be subject to the Short Sale Price Sliding Processes.

Incidentally, the Exchange proposes to add a sentence to current Article 1, Rule 2(b)(1)(C)(ii)(b), which provides that to reflect increases in the NBB, the Matching System will continue to reprice an undisplayed CHX Only Sell Short order (*i.e.,* CHX Only Sell Short order for an Odd Lot that could not be aggregated into a displayed round lot or a CHX Only Sell Short order marked Do Not Display) to the greater of the Permitted Price or the Lower Price Band, until the order is executed, cancelled or its original limit price is reached.

With respect to subparagraph (C)(i)(a), aside from the amendments discussed above, the Exchange also proposes to add ''if not marked Do Not Display,'' prior to the word ''displayed,'' to clarify that orders marked Do Not Display would never be displayed at any price. The Exchange proposes to make similar amendments to the second paragraph under subparagraph (C)(i)(a), which details the interplay between the CHX Only Price Sliding Processes and Limit Up-Limit Down Price Sliding (''LULD Price Sliding''),[98] which currently provides that the more aggressive of the NBB (NBO) and Lower (Upper) Price Band will dictate how an order would be price slid.[99] Also, with respect to subparagraph (C)(i)(b), the Exchange proposes to replace ''re-ranked and re-displayed'' with the more general ''price slid,'' because the price sliding of orders marked Do Not Display will never result in the order being ''re-displayed.''

The Exchange proposes to adopt subparagraphs (C)(i)(b)(5) and (6) to address ''multiple NMS Price Sliding'' for CHX Only orders marked Do Not Display and Reserve Size, respectively. Proposed subparagraph (C)(i)(b)(5) provides that in the event that a Protected Offer (Bid) of an external market crosses a resting CHX Only bid (offer) marked Do Not Display, the resting bid (offer) marked Do Not Display shall be price slid to lock the Protected Offer (Bid) of the external market.[100] The following Example 24 illustrates this price sliding for resting CHX Only orders marked Do Not Display:

Example 24. Assume that the NBBO for security XYZ is $10.00 × $10.01. Assume that the CHX book has one resting bid marked Do Not Display and CHX Only for 100 shares of security XYZ priced at $10.01/share (''CHX Only Bid 1''). Assume then that the NBBO moves to $9.99 × $10.00.

In this situation, pursuant to proposed subparagraph (C)(i)(b)(5), CHX Only Bid would be price slid and executable at the NBO locking price of $10.00.

Proposed subparagraph (C)(i)(b)(6) provides that a resting CHX Only order marked Reserve Size shall be price slid to a less aggressive price if a refreshed display of the order would lock or cross a Protected Quotation of an external market and shall receive execution priority pursuant to Article 20, Rule 8(b)(4). If a contra-side Protected Quotation of an external market locked or crossed the displayed portion of a CHX Only Reserve Size order, the CHX Only Reserve Size order would be permitted to remain displayed at its current displayed price because displayed portions of reserve size orders are treated the same as fully-displayed limit orders for the purposes of Rule 610(d) of Regulation NMS. The following Examples 25 and 26 illustrates this price sliding for CHX Only orders marked Do Not Display:

[94] This concept is already codified under current Article 20, Rule 2(b)(1)(C)(iv), which provides that CHX Only order subject to the Price Sliding Processes will retain their time priority versus other orders based upon the time those orders were initially received by the Matching System.

[95] *See supra* note 73.

[96] *See* Securities Exchange Act Release No. 69075 (March 8, 2013), 78 FR 16311 (March 14, 2013) (SR–CHX–2013–07).

[97] *See supra* note 5.

[98] *See* CHX Article 20, Rule 2A(b)(2)(A)(i).

[99] *See* the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''Plan''), Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[100] This is in contrast to fully-displayed CHX Only orders, which would be permitted to stand its ground at its displayed price where a subsequent contra-side Protected Quotation of an external market locked or crossed the fully-displayed CHX Only order.

Example 25. Assume the same as Example 24, except that the resting bid is marked Reserve Size and CHX Only and is for 500 shares of security XYZ, 100 of which are displayed, priced at $10.00/share (''CHX Only Bid 2''). Assume then that the NBBO moves to $9.99 × $10.00.

In this situation, CHX Only Bid 2 would be permitted to remain displayed at $10.00 because it was displayed at a price below the NBO at the time it was initially displayed. Furthermore, pursuant to Interpretation and Policy .01(d) of Article 20, Rule 5, the Matching System would ignore the crossing quotes and execute orders pursuant to the first uncrossed set of Protected Quotations.

Example 26. Assume the same as Example 25 and that prior to the NBBO moving to $9.99 × $10.00, the Matching System receives a limit order to sell 100 shares of security XYZ at $10.00/share, which is immediately executed against the displayed portion of CHX Only Bid 2. Assume then that prior to the displayed portion of CHX Only Bid 2 being refreshed, the NBBO moves to $9.99 × $10.00. Thus, a refreshed display of 100 shares of security XYZ at $10.00/share would lock the markets in violation of Rule 610(d) of Regulation NMS.

In this situation, the remaining 400 shares of CHX Only Bid 2 would be price slid and executable at the NBO locking price of $10.00/share, but the displayed portion would be displayed at the Permitted Display Price of $9.99. Thus, if an incoming offer for 400 shares of security XYZ priced at $9.99/share were subsequently received by the Matching System, the incoming offer would execute against the full size of CHX Only Bid 2 (*i.e.,* the first 100 displayed shares, followed by the 300 shares that are undisplayed) at $10.00/share.

Also, the Exchange proposes to amend the last sentence under subparagraph (c)(i)(b) to include ''subparagraphs (3) to (6).''

Pursuant to current Article 20, Rule 8(b)(4), when the displayed portion of a Reserve Size order is refreshed, the displayed portion receives a new sequence number reflecting the time at which the display was refreshed, regardless of whether the Reserve Size order is price slid. However, the undisplayed portion of a Reserve Size order will always maintain its original sequence number, provided that the size of the undisplayed portion is only decremented. As such, the Exchange proposes to amend subparagraph (C)(iv) to provide that CHX Only orders subject to the Price Sliding Processes will retain their time priority versus other orders based upon the time those orders were initially received by the Matching System; provided, however, that the displayed portion of a Reserve Size CHX Only order that is refreshed shall have time priority based on the time the displayed order was refreshed.[101]

Under subparagraph (C)(ii), aside from the amendments discussed above, the Exchange proposes several amendments. Immediately after the title of subparagraph (C)(ii) ''Short Sale Price Sliding,'' the Exchange proposes to add language clarifying that a limit order marked Sell Short, as defined under Article 1, Rule 2(b)(3)(D), must comply with the requirements of Article 20, Rule 8(d)(4), which outlines how the Matching System handles orders subject to the short sale price test restriction under Rule 201 of Regulation SHO. The proposed language continues by providing that if the Sell Short order is marked CHX Only, the order shall be price slid pursuant to the Short Sale Price Sliding rule.

In addition, the Exchange proposes to replace all reference under subparagraph (C)(ii) to ''repriced and displayed'' and ''reprice and display'' with the more accurate ''repriced (and displayed, if applicable)'' and ''reprice (and re-display, if applicable),'' respectively, since limit orders marked Do Not Display and CHX Only will never be displayed at any price. The Exchange also proposes to capitalize all references to the term ''Sell Short,'' as it is a defined term under Article 1, Rule 2(b)(3)(D).

Under subparagraph (C)(ii)(a), the Exchange proposes to delete reference to the Limit Up-Limit Down Lower Price Band within subparagraph (C)(ii)(a) and restate that language as a separate paragraph, which provides that if the Permitted Price is priced below the Lower Price Band, an incoming CHX Only Sell Short order that, at the time of entry, is priced below the Lower Price Band, shall be repriced (and displayed, if applicable) at the Lower Price Band, pursuant to Article 20, Rule 2A(b)(2)(A)(i). The Exchange submits that this proposed amendment will improve the logical flow of the rule. Similarly, the Exchange proposes to replace ''irrespective of the prices at which such orders are priced and displayed'' with the simplified ''notwithstanding price sliding.''

Under subparagraph (C)(ii)(b), the Exchange proposes to add language that provides that to reflect increases in the NBB, the Matching System will continue to reprice an undisplayed CHX Only Sell Short order to the greater of the Permitted Price or the Lower Price Band, until the order is executed, cancelled or its original limit price is reached, pursuant to Article 20, Rule 2A(b)(2)(A)(ii). This language is necessary because undisplayed CHX Only Sell Short orders cannot not rely upon the Rule 201(b)(1)(iii)(A) of Regulation SHO exception to the short sale price test restriction to be executable at a price below one minimum price above the then current NBB.[102] Given that the Exchange proposes to handle all orders marked Do Not Display as CHX Only, the Exchange intends to price slide these orders, as opposed to cancelling them, as the Exchange does currently.

Under subparagraph (C)(ii)(d)(1), the Exchange proposes to add language to cross-reference current Article 20, Rule 8(b)(4), which currently codifies Rule 201(b)(1)(iii)(A) of Regulation SHO in CHX rules.[103] The Exchange also proposes to delete language referring to CHX Only Sell Short orders that are ''subject to Short Sale Price Sliding,'' as all CHX Only Sell Short orders are eligible for this exception, even if the order was not initially price slid upon acceptance by the Matching System. Finally, the Exchange proposes to amend the language referring to the Lower Price Band to simply provide that a CHX Only Sell Short order may never execute (or be displayed, if applicable) at a price below the Lower Price Band.

Aside from the foregoing, the Exchange does not propose to otherwise amend the operation of the CHX Only modifier. Thus, the CHX Only modifier shall remain compatible or incompatible with other order modifiers as described under SR–CHX–2013–07.[104]

Amended Article 20, Rule 2A(b) (LULD Price Sliding)

In light of the proposed amendment to the CHX Only modifier, the Exchange proposes to amend Article 20, Rule 2A(b)(1), which details the operation of Limit Up-Limit Down Price Sliding (''LULD Price Sliding''), to amend the definition of ''eligible orders'' for LULD Price Sliding to provide that ''all incoming and resting limit orders shall be eligible for LULD Price Sliding.'' This amendment would make LULD Price Sliding consistent with the amended CHX Only modifier, which the Exchange now proposes to make applicable to Do Not Display and Reserve Size orders. Aside from this amendment, the Exchange does not

[101] *See supra* Example 20.

[102] *See supra* note 86.

[103] *Id.*

[104] *See supra* note 96.

propose to otherwise amend the operation of LULD Price Sliding as described under SR–CHX–2013–08.[105]

Operative Date of Proposed Rule Change

This proposed rule filing shall become effective upon filing, pursuant to Section 19(b)(3)(A) of the Act[106] and Rule 19b–4(f)(6) thereunder,[107] but will be implemented upon two weeks' notice by the Exchange to its Participants via Regulatory Notice. The Exchange anticipates that the proposed CHX Routing Services and other amendments described herein will become operational, at earliest, by the end of 2014. In addition, prior to the proposed CHX Routing Services becoming operational, the Exchange will adopt a fee for use of the proposed CHX Routing Services, in a separate Rule 19b–4 filing.

2. Statutory Basis

The Exchange submits that the proposed rule change to adopt the proposed CHX Routing Services, modify the Exchange's price sliding functionalities, and clarify the operation of the Matching System, is consistent with Section 6(b) of the Act in general[108] and furthers the objectives of Section 6(b)(5) in particular,[109] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and, in general, protect investors and the public interest.

The proposed CHX Routing Services will increase the likelihood of order executions resulting from orders submitted to the Matching System, as Routable Orders that could not be executed within the Matching System will be routed for execution at an away routing destination by the Exchange, provided that a Routing Event is triggered. As such, the routing of orders to execute against Protected Quotations of external markets will enhance the efficiency of the National Market System by permitting Participants to obtain executions for orders at protected markets displaying better priced contra-side quotes, without having to submit orders in addition to Routable Orders already submitted to the Matching System. This will, in turn, result in more efficient order sending activity, which is consistent with the aforementioned objectives of Section 6(b)(5).

Also, the proposed expansion of the CHX Only modifier and LULD Price Sliding to include limit orders marked Do Not Display and Reserve Size and amendment to the Do Not Display modifier to require all resting Do Not Display orders to be handled as CHX Only will reduce the number of order cancellations within the Matching System by price sliding orders that would otherwise be cancelled if they could not be displayed or executed in compliance with Regulation NMS. Consequently, there will be more liquidity resting on the CHX book, which will increase the likelihood of order executions, which is also consistent with the aforementioned objectives of Section 6(b)(5).

In addition, the proposed amendment to the Do Not Display modifier to correct a misstatement that such orders may [sic] hidden ''in part'' will result in the description of the order modifier to be more accurate, which is consistent with the aforementioned objectives of Section 6(b)(5).

Moreover, the proposed amendments to Article 20, Rule 8 to clarify how orders are currently ranked, displayed, and automatically executed within the Matching System will promote a better understanding of how orders are handled within the Matching System. This greater transparency will provide better protection to investors and promote the public interest, which is consistent with the aforementioned objectives of Section 6(b)(5).

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will have an impact on competition that is unnecessary or inappropriate in furtherance of the purposes of the Act. To the contrary, the proposed CHX Routing Services and proposed amendments to the CHX Only and Do Not Display modifier and the LULD Price Sliding Processes should act as a positive force for competition by providing a more transparent and versatile alternative to similar routing services and price sliding functionalities offered by other exchanges. Moreover, the proposed clarification of the operation of the Matching System would have no impact on competition as it does not introduce any new functionality not already offered by the Exchange.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[110] and subparagraph (f)(6) of Rule 19b–4 thereunder.[111]

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–CHX–2014–15 *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–CHX–2014–15. This file

[105] *See* Exchange Act Release No. 69319 (April 5, 2013), 78 FR 21634 (April 11, 2013) (SR–CHX–2013–08).

[106] 15 U.S.C. 78s(b)(3)(A).

[107] 17 CFR 240.19b–4(f)(6).

[108] 15 U.S.C. 78f(b).

[109] 15 U.S.C. 78f(b)(5).

[110] 15 U.S.C. 78s(b)(3)(A).

[111] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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 CHX. 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–CHX–2014–15 and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[112]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22787 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[112] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73144; File No. SR–BSECC–2014–001]

Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

September 19, 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 10, 2014, Boston Stock Exchange Clearing Corporation (''BSECC'') 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 BSECC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

BSECC is filing this proposed rule change with respect to amendments of the Amended and Restated Certificate of Incorporation (the ''Charter'') and By-Laws (the ''By-Laws'') of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Company''). The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission. The text of the proposed rule change is available on BSECC's Web site at *http://nasdaqomxbx.cchwallstreet.com,* at the principal office of BSECC, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BSECC 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. BSECC 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

NASDAQ OMX is proposing to make certain amendments to its Charter and By-Laws.

(i) Background

Article Fourth, Paragraph C of NASDAQ OMX's Charter includes a voting limitation that generally prohibits a stockholder from voting shares beneficially owned, directly or indirectly, by such stockholder in excess of 5% of the then-outstanding shares of capital stock of NASDAQ OMX entitled to vote as of the record date in respect of any matter. Pursuant to Article Fourth, Paragraph C(6) of the Charter, NASDAQ OMX's Board may grant exemptions to this limitation prior to the time a stockholder beneficially owns more than 5% of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. NASDAQ OMX's Board has never granted an exemption to the 5% voting limitation and has no current plans to do so. However, in the event the Board decides to grant such an exemption in the future, Article Fourth, Paragraph C(6) of the Charter and Section 12.5 of the By-Laws limit the Board's authority to grant the exemption. These provisions, which are intended to be substantively identical, currently contain some language differences. Following discussions with the SEC staff,[3] NASDAQ OMX proposes the amendments described below to the Charter and By-Laws to conform these provisions and remove any ambiguity that may exist because of the current language differences.

(ii) Proposed Amendments to Charter

First, unlike the Charter, the By-Laws state that for so long as NASDAQ OMX shall control, directly or indirectly, any self-regulatory subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Paragraph C(6) of the Charter shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Act. NASDAQ OMX proposes that this requirement be added to the Charter and that ''self-regulatory subsidiary,'' which is currently not a defined term in the Charter, be defined as any subsidiary of NASDAQ OMX that is a ''self-regulatory organization'' as defined under Section 3(a)(26) of the Act.[4] At present, this defined term would include NASDAQ, BX and Phlx, which are national securities exchanges, and BSECC and SCCP, which are registered clearing agencies that are both currently dormant.

Second, both the Charter and the By-Laws state that the Board may not approve an exemption to the 5% voting limitation for: (i) a registered broker or dealer or an affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The By-Laws include a further proviso stating that, for these purposes, an ''affiliate'' shall not be deemed to include an entity that either owns 10% or less of the equity of a

[3] *See* Securities Exchange Act Release No. 71353 (January 17, 2014), 79 FR 4209 (January 24, 2014) (SR–BSECC–2013–001, SR–BX–2013–057, SR–NASDAQ–2013–148, SR–Phlx–2013–115, SR–SCCP–2013–01), at note 14.

[4] Under Section 3(a)(26) of the Act, a ''self-regulatory organization'' is ''any national securities exchange, registered securities association, or registered clearing agency . . .'' 15 U.S.C. 78c(a)(26).

broker or dealer, or receives 1% or less of its consolidated gross revenues from a broker or dealer. This proviso, which is not currently included in the Charter, allows NASDAQ OMX's Board to grant exemptions to the 5% voting limitation for entities that either own 10% or less of the equity of a broker or dealer, or receive 1% or less of their consolidated gross revenues from a broker or dealer. NASDAQ OMX proposes that this proviso be added to the Charter to ensure consistency between the Charter and By-Laws.

Third, both the Charter and By-Laws require the Board to make certain determinations prior to granting an exemption to the 5% voting limitation. Regarding the first of these determinations, the Charter states that the Board must determine that granting such an exemption would not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or The NASDAQ Stock Market LLC or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public. The By-Laws include similar language, but state that the Board must make this determination with respect to NASDAQ OMX or its self-regulatory-subsidiaries. Because the term ''self-regulatory subsidiary'' includes The NASDAQ Stock Market LLC but also includes other entities, NASDAQ OMX proposes that the provisions be made fully consistent by amending the Charter to refer to NASDAQ OMX or the self-regulatory subsidiaries, and to define the term ''self-regulatory subsidiary'' as described above.

Fourth, unlike the Charter, the By-Laws further provide that prior to granting an exemption from the 5% voting limitation, the Board must also determine that granting the exemption would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the self-regulatory subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. NASDAQ OMX proposes that this language be added to the Charter.

Finally, NASDAQ OMX proposes that Article Fourth, Paragraph C(6) of the Charter be amended to correct a cross-reference to subparagraph 6(b), which no longer exists.

(iii) Proposed Amendments to the By-Laws

NASDAQ OMX also proposes amendments to NASDAQ OMX's By-Laws to further conform the Charter and By-Law provisions discussed above. Specifically, the proposed amendment to Article I(s) revises the definition of ''self-regulatory subsidiary'' in the By-Laws to refer to any subsidiary of NASDAQ OMX that is a self-regulatory organization as defined under Section 3(a)(26) of the Act, rather than list specific subsidiaries that would fall within this category. This revised definition, which is the same definition of ''self-regulatory subsidiary'' proposed for purposes of the Charter as described above, will capture NASDAQ OMX's current self-regulatory subsidiaries as well as any subsidiaries that in the future meet the definition of ''self-regulatory organization'' under the Act. Consequently, such future self-regulatory subsidiaries will automatically be subject to the By-Law provisions relating to these subsidiaries without NASDAQ OMX having to take formal action to amend the By-Laws to include them.

The proposed By-Law amendments also include the correction of a typographical error in Article I and minor edits to Section 12.5 to conform the language regarding the 5% voting limitation to the language in the analogous provision of the Charter.

2. Statutory Basis

BSECC believes that its proposal is consistent with Section 17A(b)(3)(C) of the Act,[5] in that it assures a fair representation of shareholders and participants in the selection of directors and administration of its affairs. While the proposals relate to the organizational documents of NASDAQ OMX, rather than BSECC, BSECC is indirectly owned by NASDAQ OMX, and therefore, NASDAQ OMX's stockholders have an indirect stake in BSECC. In addition, the participants in BSECC, to the extent any exist, could purchase stock in NASDAQ OMX in the open market, just like any other stockholder. The proposals ensure that NASDAQ OMX stockholders have clarity about the existing voting limitation in NASDAQ OMX's Charter and By-Laws. As a result, BSECC believes that the proposals assure a fair representation of NASDAQ OMX's stockholders in the selection of directors and administration of NASDAQ OMX's affairs, as well as the affairs of BSECC.

Specifically, NASDAQ OMX is proposing changes to its Charter and By-Laws to conform the provisions in each document relating to the procedures by which NASDAQ OMX's Board may grant an exemption to the prohibition on any NASDAQ OMX stockholder voting shares in excess of 5% of the Company's then-outstanding shares of capital stock. BSECC believes that the changes will eliminate confusion that may exist because of the current language differences between the two provisions. In addition, NASDAQ OMX is proposing to define ''self-regulatory subsidiary'' with reference to a definition in the Act. This will ensure that any NASDAQ OMX subsidiary that meets the definition of ''self-regulatory organization'' in the Act will be subject to the Charter and By-Law provisions relating to self-regulatory subsidiaries. Finally, the remaining changes are clarifying in nature, and they protect stockholders by making NASDAQ OMX's governance documents clearer and easier to understand.

(B) Clearing Agency's Statement on Burden on Competition

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of BSECC, BSECC 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.

(C) Clearing Agency'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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which BSECC consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

[5] 15 U.S.C. 78q–1(b)(3)(C).

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–BSECC–2014–001 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–BSECC–2014–001. 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 BSECC. 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–BSECC–2014–001 and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22782 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73148; File No. SR–ISEGemini–2014–09]

Self-Regulatory Organizations; ISE Gemini, LLC; Order Approving Proposed Rule Change Related to Market Maker Risk Parameters

September 19, 2014.

I. Introduction

On March 10, 2014, the ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Gemini Rule 804 to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The proposed rule change was published for comment in the **Federal Register** on March 26, 2014.[3] The Commission received no comments on the proposal. On May 7, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 24, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] In response to the Order Instituting Proceedings, the Commission received five comment letters on the proposal.[7] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend ISE Gemini Rule 804 to enhance its risk management offering for market maker quotes.[8]

Currently, there are four parameters that can be set by market makers on a class-by-class basis. These parameters are available for market maker quotes in single options series and in complex instruments on the complex order book. Market makers establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker's quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and sold in an options class, and (4) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. Once the limits for each of the four parameters are exceeded within the prescribed time frame, the market maker's quotes in all series of that class are automatically removed or curtailed. Additionally, ISE Gemini's rules provide that if a specified number of curtailment events are exceeded within the prescribed time period, the market maker quotes in all classes will be automatically removed from ISE Gemini's trading system.[9] The Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71758 (March 20, 2014), 79 FR 16846 (March 26, 2014) (SR–ISEGemini–2014–09) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 72118, 79 FR 27355 (May 13, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it would have sufficient time to consider the proposed rule change. Accordingly, the Commission designated June 24, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 72454, 79 FR 36854 (Jun. 30, 2014) (''Order Instituting Proceedings''). In the Order Instituting Proceedings, the Commission noted, among other things, that questions remain as to whether the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Commission questioned whether the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[7] *See* Letters to the Commission from Andrew Killion, Chief Executive Officer, Akuna Securities LLC, dated July 24, 2014 (''Akuna Letter''); Brent Hippert, President/CCO, Hardcastle Trading USA LLC, dated July 28, 2014 (''Hardcastle Letter''); John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated July 29, 2014 (''Group One Letter''); Sebastiaan Koeling, Chief Executive Officer, Optiver US LLC, dated July 29, 2014 (''Optiver Letter''); and Andrew Stevens, General Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 18, 2014 (''IMC Letter'').

[8] For a more complete description of the proposal, *see* Notice, *supra* note 3.

[9] *See* Securities Exchange Act Release Nos. 70644 (October 9, 2013), 78 FR 62785 (October 22, 2013) (SR–Topaz–2013–06) and 71447 (January 30, 2014), 79 FR 6956 (February 5, 2014) (SR–Topaz–2014–04).

now proposes to implement functionality to allow market maker quotes to be removed from the trading system if a specified number of curtailment events occur across both ISE Gemini and the International Securities Exchange, LLC (''ISE'').

To the extent that a market maker utilizes the offered functionality, ISE and ISE Gemini's trading systems will count the number of times a market maker's pre-set curtailment events occur on each exchange and aggregate them. Once a market maker's specified number of curtailment events across both markets is reached, the trading systems will remove the market maker's quotes in all classes on both ISE and ISE Gemini. The Exchange will then reject any quotes sent by the market maker after the parameters across both exchanges have been triggered until the market maker notifies the market operations staff of the Exchange that it is ready to come out of its curtailment. Once notified by the market maker, the Exchange will reactivate the market maker's quotes on the Exchange.

The Exchange believes that the proposal will enhance the Exchange's current risk management offering by allowing market makers to manage their risk across ISE and ISE Gemini. The Exchange also provides that the proposal will protect market makers from inadvertent exposure to excessive risk and thereby allow them to quote aggressively and provide more liquidity with greater size to both markets. The Exchange further represents that its proposal will operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is not mandatory.

III. Summary of Comment Letters

As noted above, the Commission received five comment letters in response to the Order Instituting Proceedings.[10] All of the commenters support the proposal. Three of the five commenters are registered options market makers on ISE,[11] while the other two are registered options market makers on both ISE and ISE Gemini.[12]

The commenters note that, while the current risk protections on the Exchange help manage risk, systems and other issues that trigger such risk parameters are normally not confined to a member firm's activity on a single exchange.[13] Accordingly, the commenters believe that the Exchange's proposal to aggregate curtailment events across both ISE and ISE Gemini would allow market makers to more effectively manage risk.[14] The commenters state that the proposed rule change would allow market makers to continue to actively provide liquidity, while facilitating effective management of the risks associated with quoting a large number of option series across multiple exchanges.[15] Further, the commenters believe that allowing market makers to better manage their risk would benefit the broader market, as it would reduce disruptive trading events.[16]

Two commenters who are registered market makers on ISE but not on ISE Gemini also believe that the proposal is not unfairly discriminatory in violation of Section 6(b)(5) of the Act.[17] These two commenters note that the proposal is optional to market makers and is not unfairly discriminatory to firms who simply have no need for the proposal's additional protections by virtue of only trading on either ISE or ISE Gemini.[18]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal could assist ISE Gemini market makers manage and reduce inadvertent exposure to excessive risk across both ISE and ISE Gemini. The Commission notes that the proposed functionality is not mandatory and must operate consistent with the firm quote obligations of Rule 602 of Regulation NMS. The Commission also notes that all five commenters expressed support for the proposal.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[21] that the proposed rule change (SR–ISEGemini–2014–09) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22785 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[10] *See supra* note 7.

[11] *See* Akuna Letter; Hardcastle Letter; and Group One Letter, *supra* note 7.

[12] *See* Optiver Letter and IMC Letter, *supra* note 7.

[13] *See* Akuna Letter; Group One Letter, Hardcastle Letter; IMC Letter; and Optiver Letter, *supra* note 7.

[14] *See, e.g.,* Akuna Letter at 2; Hardcastle Letter at 2; and Optiver Letter, *supra* note 7.

[15] *See* Optiver Letter and IMC Letter, *supra* note 7.

[16] *See* Akuna Letter at 2; Hardcastle Letter at 2; and Optiver Letter, *supra* note 7.

[17] *See* Akuna Letter at 2 and Hardcastle Letter at 2, *supra* note 7.

[18] *Id.* One commenter also states that it does not believe the proposal places any undue burden on competition between options exchanges. *See* Group One Letter at 2, *supra* note 7.

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73153; File No. SR–NYSE–2014–51]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 902.03, 902.04, 902.05, 902.06 and 902.08 of the Listed Company Manual To Increase Certain of the Fees Set Forth Therein and To Delete Obsolete Rule Text

September 19, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 8, 2014, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 Sections 902.03, 902.04, 902.05, 902.06 and 902.08 of the Listed Company Manual (the ''Manual'') to increase certain of the fees set forth therein and to delete obsolete rule text. The Exchange proposes to immediately reflect the proposed changes in the Manual, but not to implement the proposed fee changes until January 1, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Sections 902.03, 902.04, 902.05, 902.06 and 902.08 of the Manual to increase certain of the fees set forth therein and to delete obsolete rule text. The Exchange proposes to immediately reflect the proposed changes in the Manual, but not to implement the proposed fee changes until January 1, 2015.[4]

The Exchange proposes to amend Section 902.03 of the Manual which currently provides, in part, for minimum listing fees for subsequent listing of additional equity securities. The Exchange proposes to increase such minimum listing fee from $7,500 to $10,000 effective January 1, 2015.

Section 902.03 of the Manual also currently provides, in part, for a fee for applications for changes that involve modifications to Exchange records (e.g., changes of name, par value, title of security or designation) and for applications relating to poison pills. The Exchange proposes to increase such application fee from $7,500 to $10,000 effective January 1, 2015.

Section 902.03 of the Manual also currently provides, in part, for annual fees for listed equity securities. Currently, the annual fee for an issuer's primary class of common shares or, if no class of common shares is listed on the Exchange, the preferred stock of such issuer is the greater of $42,000 or $0.00093 per share. The Exchange proposes to increase these thresholds to $45,000 and $0.001, respectively. Currently, the annual fee for each additional class of common shares, each additional class of preferred stock and each class of warrants is calculated as the greater of a specified minimum fee or $0.00093 per share. The Exchange proposes to leave the minimum fee for those three categories unchanged, but to increase the fee per share for each category to $0.001 per share.

Sections 902.04, 902.05 and 902.06 of the Manual set forth, in part, the annual fees for closed-end funds, structured products and short-term securities, respectively. In each case, the current annual fee for these securities is calculated as the greater of a specified minimum fee or $0.00093 per share. The Exchange proposes to leave the minimum fee for those three categories of securities unchanged, but to increase the fee per share for each category to $0.001 per share. The Exchange also proposes to delete obsolete text from Sections 902.05 and 902.06.

Section 902.08 of the Manual provides, in part, for initial and annual fees for debt securities and listed structured products traded on NYSE Bonds. The Exchange proposes to increase the initial listing fee for such securities from $5,000 to $15,000 and the annual fee from $5,000 to $15,000. The Exchange also proposes to delete certain obsolete text from Section 902.08 of the Manual.

For the same reasons set forth below in the Statutory Basis section, the Exchange proposes to make the aforementioned fee increases to better reflect (i) the Exchange's costs related to listing equity securities and the corresponding value of such listing to issuers and (ii) the increased compliance and technology costs required to operate and maintain the Exchange's bond platform

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5)[7] of the Act in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that amending Section 902.03 of the Manual to increase the minimum listing fee for subsequent listing of additional equity securities and the application fee for changes that involve modifications to Exchange records from $7,500 to $10,000 is reasonable because the resulting fees would better reflect the Exchange's costs related to such listing. For the same reasons, the Exchange believes it is reasonable to increase the minimum annual fee for an issuer's primary class of equity securities, to the greater of $45,000 or $0.001 per share and to increase the fee per share for each additional class of common shares, each additional class of preferred stock, each class of warrants, each class of listed securities of closed-end funds, and each listed issue of structured products and short-term securities to $0.001 per share. In this regard, the Exchange notes that it will have been two years since it last increased these fees.

The Exchange believes that it is reasonable to increase the initial and annual fee for debt securities and listed structured products traded on NYSE Bonds, in each case from $5,000 to $15,000. The proposed fee increases set forth herein will enable the Exchange to ensure that it is providing a high standard of regulation and oversight of the market. To that end, the Exchange believes it is reasonable to increase the initial and annual fee for listed debt securities and structured products to ensure that the fees for such regulation and market oversight are equitably allocated amongst all issuers of securities listed on the Exchange. The Exchange notes that its compliance and technology costs to operate the NYSE Bonds platform are constantly increasing and that it works continually

[4] The Exchange has proposed changes to the Manual, as reflected in Exhibit 5 attached hereto, in a manner that would permit readers of the Manual to identify the changes that would be implemented on January 1, 2015. The Commission notes that Exhibit 5 is attached to the filing, not to this Notice.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

to enhance the platform, including the recent addition of Bondwatch, a web-based system that enables investors to obtain real-time pricing information. The proposed increases, therefore, will help defray the Exchange's costs to operate the platform.

The Exchange believes that it is equitable and not unfairly discriminatory to have different pricing schemes for equity and bond issuers because, while the overall costs to operate and maintain the Exchange's equity and bond platforms have both increased, the costs attributable to the equity platform are proportionately higher than those to the bond platform.

The Exchange believes that the non-substantive changes that are proposed are reasonable because they will result in the removal of obsolete text from the Manual.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The proposed fee increases will apply to all issuers listed on the Exchange, therefore they will be equitably allocated amongst all issuers and will not be unfairly discriminatory towards an individual issuer or class of issuers. Further, because issuers have the option to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [10] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2014–51 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–NYSE–2014–51. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2014–51 and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22790 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 15 U.S.C. 78s(b)(2)(B).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73156; File No. SR–ICEEU–2014–13]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the 2014 ISDA Credit Derivatives Definitions

September 19, 2014.

I. Introduction

On August 14, 2014, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–ICEEU–2014–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on August 20, 2014.[3] The Commission did not receive comments on the proposed rule change. On September 19, 2014, ICE Clear Europe filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by

[1] 15 U.S.C. 78(s)(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–72849 (August 14, 2014), 79 FR 49357 (August 20, 2014) (SR–ICEEU–2014–13) (hereinafter referred to as the ''Initial Rule Filing'').

[4] ICE Clear Europe filed Amendment No. 1 to the proposed rule change to address the timing of the commencement of clearing of transactions incorporating the 2014 ISDA Credit Derivatives Definitions in light of changes in the implementation timing of the industry-wide ISDA protocol, as discussed in more detail below.

Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

A. Description of the Initial Rule Filing

ICE Clear Europe has stated that the principal purpose of the proposed rule change is to revise the ICE Clear Europe Clearing Rules (the ''Rules'') and the ICE Clear Europe CDS Procedures (the ''CDS Procedures'') to incorporate references to revised Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc. (''ISDA'') on February 21, 2014 (the ''2014 ISDA Definitions''). In the Initial Rule Filing, ICE Clear Europe anticipated that, consistent with the approach being taken throughout the CDS market at that time, the industry standard 2014 ISDA Definitions would be applicable to certain products cleared by ICE Clear Europe beginning on September 22, 2014.[5]

ICE Clear Europe principally proposes to (i) revise the Rules and CDS Procedures to make proper distinctions between the 2014 ISDA Definitions and the ISDA Credit Derivatives Definitions published previously in 2003 (as amended in 2009, the ''2003 ISDA Definitions'') and related documentation; and (ii) make conforming changes throughout the Rules and the CDS Procedures to reference provisions from the proper ISDA Definitions. In addition, ICE Clear Europe proposes to revise its CDS Risk Policy to reflect appropriate portfolio margin treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions.

ICE Clear Europe has stated that, as described by ISDA, the 2014 Definitions make a number of changes from the 2003 ISDA Definitions to the standard terms for CDS Contracts, including (i) introduction of new terms applicable to credit events involving financial reference entities and settlement of such credit events, (ii) introduction of new terms applicable to credit events involving sovereign reference entities and settlement of such credit events, (iii) implementation of standard reference obligations applicable to certain reference entities, and (iv) various other improvements and drafting updates that reflect market experience and developments since the 2009 amendments to the 2003 ISDA Definitions.

ICE Clear Europe proposes to accept for clearing new transactions in eligible contracts that reference the 2014 ISDA Definitions. ICE Clear Europe also proposes revisions that would provide for the conversion of certain existing contracts currently based on the 2003 ISDA Definitions into contracts based on the 2014 ISDA Definitions, an approach consistent with expected industry practice for similar contracts not cleared by ICE Clear Europe, and these converting contracts will be subject to a multilateral amendment ''protocol'' sponsored by ISDA. For contracts that are not converting automatically, ICE Clear Europe expects to continue to accept for clearing both new transactions referencing the 2014 ISDA Definitions and new transactions referencing the 2003 ISDA Definitions (and such contracts based on different definitions will not be fungible). ICE Clear Europe understands, through industry consensus, that Clearing Members plan to adhere to the ISDA protocol and would desire ICE Clear Europe to convert certain protocol-eligible contracts cleared at ICE Clear Europe into contracts based on the 2014 ISDA Definitions, consistent with the ISDA protocol. In an effort to achieve consistency across the CDS marketplace, ICE Clear Europe's implementation plan is intended to be fully consistent with the planned ISDA protocol implementation. ICE Clear Europe anticipates that, consistent with the protocol, most ICE Clear Europe CDS Contracts will convert, with certain exceptions including CDS on so-called protocol excluded reference entities, which are principally sovereigns and financial reference entities.

To this end, ICE Clear Europe proposes to (i) revise the Rules to make proper distinctions between the 2014 ISDA Definitions and the 2003 ISDA Definitions and related documentation; and (ii) make conforming changes throughout the Rules to reference provisions from the proper ISDA Definitions. ICE Clear Europe proposes changes to Parts 1, 9 and 15 of the Rules. ICE Clear Europe also proposes revisions to the CDS Procedures to reflect proper distinctions between the 2003 ISDA Definitions and the 2014 ISDA Definitions.[6]

Finally, ICE Clear Europe proposes revisions to its CDS Risk Policy to provide for appropriate portfolio treatment between CDS Contracts cleared under the 2003 and 2014 ISDA Definitions. ICE Clear Europe intends to introduce a ''Risk Sub-Factor'' in the CDS Risk Policy as a specific single name and any unique combination of instrument attributes (e.g., restructuring clause, 2003 or 2014 ISDA Definitions, debt tier, etc), so that the union of all Risk Sub-Factors that share the same underlying single name would form a single name Risk Factor. ICE Clear Europe intends the portfolio treatment at the Risk Sub-Factor level would be provided for in the risk policy, as appropriate. Additionally, ICE Clear Europe proposes that the CDS Risk Policy would be revised to reflect a change in the 2014 ISDA Definitions that restructuring credit events (including sovereign restructurings) other than M(M)R Restructuring will not require separate triggering of each contract and will therefore be treated as ''hard'' credit events such as bankruptcy and failure to pay. ICE Clear Europe also intends to revise its CDS Risk Policy regarding physical settlement, including referencing the cash settlement fallback where physical settlement fails.

B. Description of Amendment No. 1

On September 19, 2014, ICE Clear Europe filed Amendment No. 1 to the proposed rule change to address the timing of the commencement of clearing of transactions incorporating the 2014 ISDA Definitions in light of changes in the implementation timing of the industry-wide ISDA protocol. ICE Clear Europe has represented that, except as described in Amendment No. 1, the proposed rule changes in the Initial Rule Filing are unchanged.

As described in the Initial Rule Filing, ICE Clear Europe is proposing changes to incorporate the 2014 ISDA Definitions, which make a number of changes to the standard terms for CDS Contracts. ICE Clear Europe has stated that, based on consultation with its Clearing Members and others, ICE Clear Europe has sought to implement these revisions in a manner and at a time consistent with the expected industry implementation of the 2014 ISDA Definitions for similar contracts not cleared by ICE Clear Europe, as provided under a multilateral amendment protocol sponsored by ISDA.

ICE Clear Europe has stated that, as has been publicly announced by ISDA, the implementation date for the conversion of existing transactions to the 2014 ISDA Definitions under the ISDA protocol has been delayed until October 6, 2014. In addition, ICE Clear Europe has stated that the industry consensus date for the commencement of trading of new transactions based on the 2014 ISDA Definitions has similarly been delayed until October 6, 2014, with the exception of certain European

[5] *See supra* note 4 and the discussion of Amendment No. 1 below.

[6] A more detailed description of the proposed changes to the Rules, CDS Procedures and CDS Risk Policy is set forth in the notice of the Initial Rule Filing. *See supra* note 3.

corporate, financial and sovereign CDS contracts for which new transactions based on the 2014 ISDA Definitions may be entered into commencing on September 22, 2014 (so-called ''protocol excluded transactions'' or ''Non-STEC Contracts'' [7]). Following consultation with its Clearing Members, and in an effort to maintain consistency across the CDS marketplace, ICE Clear Europe proposes to modify certain of the proposed rule changes in the Initial Rule Filing so that the clearing of CDS contracts at ICE Clear Europe after the implementation of the 2014 ISDA Definitions by the industry is consistent with this revised schedule.

Accordingly, ICE Clear Europe proposes to make certain additional changes to the CDS Procedures. In Paragraph 1 of the CDS Procedures, a new definition of ''2014 CDD Implementation Date'' (defined to be September 22, 2014) is proposed to be added. As described below, this definition will be used to distinguish the 2014 ISDA Definitions implementation date for protocol excluded transactions from that of other transactions. ICE Clear Europe also proposes to revise the definition of ''2014 CDD Protocol'' to reflect the fact that the protocol has been modified as discussed above. The definition of ''Protocol Effective Date'' would be clarified to refer to the first Amendment Effective Date under the protocol, which is now expected to be October 6, 2014. The remaining provisions in Paragraph 1 of the CDS Procedures would be renumbered and cross-references would be updated.

Paragraph 4.3(c) would be revised to distinguish single-name CDS contracts with different implementation times for the 2014 ISDA Definitions. Revised subparagraph (i) would address contracts for which use of the 2014 ISDA Definitions will not commence until the Protocol Effective Date. Proposed revisions to subparagraph (ii) would address the protocol excluded contracts for which use of the 2014 ISDA Definitions may commence on the 2014 CDD Implementation Date.

Similarly, Paragraph 10.1 would be revised to reflect the revised implementation timing for the 2014 ISDA Definitions for Non-STEC Contracts (i.e., protocol excluded contracts). Under revised Paragraph 10.1(e), Non-STEC Contracts accepted for clearing prior to the 2014 CDD Implementation Date would be subject to the 2003 ISDA Definitions. Under revised Paragraph 10.1(f), Non-STEC Contracts accepted for clearing on or following the 2014 CDD Implementation Date would be subject to the 2014 ISDA Definitions, unless the 2003 ISDA Definitions are specified to be applicable to such contracts.

ICE Clear Europe has represented that the purpose of, and statutory basis for, the proposed rule changes, as set forth in the Initial Rule Filing, are otherwise unchanged.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act [8] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act [9] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and, in general, to protect investors and the public interest.

The Commission finds that the proposed revisions to the Rules, CDS Procedures and CDS Risk Policy, as modified by Amendment No. 1, are consistent with the requirements of Section 17A of the Act [10] and the rules and regulations thereunder applicable to ICE Clear Europe. The proposed rule change, which is principally designed to incorporate and implement the 2014 ISDA Definitions, will permit clearing of contracts, both new and existing, referencing the new definitions, while distinguishing, where applicable, contracts cleared by ICE Clear Europe between those referencing the 2014 ISDA Definitions and those referencing the 2003 ISDA Definitions for purposes of risk management and clearing operations. Additionally, the proposed rule change, as modified by Amendment No. 1, will allow ICE Clear Europe to implement the clearing of contracts referencing the 2014 ISDA Definitions in a manner consistent with the implementation of the industry-wide ISDA protocol for similar uncleared contracts, as discussed above, thereby facilitating the trading and clearing of CDS throughout the entire credit derivatives market. Finally, ICE Clear Europe states that the proposed rule change is necessary to provide the market with the assurances that ICE Clear Europe plans to implement the 2014 ISDA Definitions consistent with industry practice, thereby facilitating prompt and accurate clearance and settlement. The Commission therefore believes that the proposed rule change, as modified by Amendment No. 1, is reasonably designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[11]

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendment No. 1 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–2014–13 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–2014–13. 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

[7] As defined in the Initial Rule Filing.

[8] 15 U.S.C. 78s(b)(2)(C).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78q–1.

[11] 15 U.S.C. 78q–1(b)(3)(F).

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 ICE Clear Europe and on ICE Clear Europe's Web site at *https://www.theice.com/clear-europe/regulation.*

V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1

As discussed above, ICE Clear Europe submitted Amendment No. 1 to the proposed rule change to address the necessary change in the timing of the clearing of transactions incorporating the 2014 ISDA Definitions in light of the change in the implementation timing of the industry-wide ISDA protocol. The Commission believes that Amendment No. 1 does not modify the proposed rule change as described in the Initial Rule Filing [12] in any substantive manner, but will facilitate the trading and clearing of CDS throughout the entire credit derivatives market. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,[13] to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of Amendment No. 1 in the **Federal Register**.

VI. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act [14] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–ICEEU–2014–13), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.[16]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22791 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[12] The Initial Rule Filing was published in the **Federal Register** on August 20, 2014, for 21-day comment and the comment period ended on September 10, 2014. The Commission did not receive comments on the Initial Rule Filing.

[13] 15 U.S.C. 78s(b)(2)(C)(iii).

[14] 15 U.S.C. 78q–1.

[15] 15 U.S.C. 78s(b)(2).

[16] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73152; File No. SR–Phlx–2014–54]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Add a New Complex Order Process Called Legging Orders

September 19, 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 10, 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 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 Rule 1080.08(f)(iii) to add a new Complex Order process called Legging Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement functionality to provide additional liquidity for Complex Orders resting on top of the Complex Order Book (''CBOOK'') at a price which improves the cPBBO.[3] Today, a Complex Order resting on the CBOOK may be executed either by: (i) trading against an incoming Complex Order that is marketable against the resting Complex Order,[4] or (ii) legging into the market when the net price of the Complex Order can be satisfied by executing all of the legs against the best bids or offers on the Exchange for the individual options series.[5] Legging Orders are designed to increase the opportunity for Complex Orders to ''leg'' into the market.

As proposed herein, a Legging Order is a limit order on the regular order book in an individual series that represents one leg of a two-legged Complex Order (which improves the cPBBO) to buy or sell an equal quantity of two option series resting on the CBOOK.[6] As explained further below, Legging Orders may be automatically generated on behalf of Complex Orders resting on the top of the CBOOK so that they are represented at the best bid and/or offer on the Exchange for the individual legs. Accordingly, Legging Orders serve to *attract* interest to trade, while the existing functionality that legs into the market is merely *reacting* to liquidity that arrives and is placed on the book.

The system will evaluate the CBOOK when a Complex Order enters the CBOOK and at a regular time interval to be determined by the Exchange (which interval shall not exceed 1 second) following a change in the National Best Bid/Offer (''NBBO'') or PHLX Best Bid/Offer (''PBBO'') in any component of a Complex Order eligible to generate Legging Orders to determine whether Legging Orders may be generated. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''cPBBO'' means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. *See* Rule 1080.08(a)(iv).

[4] *See* Rule 1080.08(f)(iii)(A)(2).

[5] *See* Rule 1080.08(f)(iii)(A)(1).

[6] *See* proposed Rule 1080.08(f)(iii)(C). Legging Orders may only be generated for two-legged Complex Orders involving a one-to-one ratio. This is the same as ISE Rule 715(k). Also, both components must be options, and therefore stock-option orders are not permitted.

Exchange may determine to limit the number of Legging Orders generated on an objective basis and may determine to remove existing Legging Orders in order to maintain a fair and orderly market in times of extreme volatility or uncertainty.[7]

Legging Orders are firm orders that are included in the Exchange's displayed best bid or offer. The Exchange will determine the options for which, if any, Legging Order functionality will be available and will communicate this to its participants.

Generating Legging Orders

A Legging Order may be automatically generated for one leg of a Complex Order at a price: (i) That matches or improves upon the best Phlx displayed bid or offer; and (ii) at which the net price can be achieved when the other leg is executed against the best displayed bid or offer (other than against a Legging Order).[8] For example:

A Complex Order to buy 10 series A and to buy 10 series B at a net price of $2.25 is entered into the CBOOK and there is no offsetting Complex Order to sell. The Complex Order cannot leg into the regular market because the net price available for the Complex Order on the PHLX's regular order book is $2.40 as follows:

PHLX bid	PHLX offer
A 10 at $1.00	20 at $1.20.
B 10 at $1.00	20 at $1.20.

Buying A and B at $1.20 would result in a net price of $2.40, but the Complex Order is only willing to pay $2.25.

Legging Orders to buy 10 A at $1.05 and 10 B at $1.05 may be automatically generated, improving the PHLX's best bid for both A and B to $1.05:

PHLX bid	PHLX offer
A 10 at $1.05 (Legging Order).	20 at $1.20.
B 10 at $1.05 (Legging Order).	20 at $1.20.

If a marketable order to sell 10 A is received, it will execute against the Legging Order to buy A at $1.05, there will be an automatic execution of the other leg of the Complex Order against the displayed offer for B at $1.20, and the Legging Order to buy B at $1.05 will be automatically removed. As a result, the net price of $2.25 is achieved for the Complex Order (buy A at $1.05 + buy B at $1.20 = $2.25 net).[9] Following the execution of the Complex Order, the PHLX BBO is:

PHLX bid	PHLX offer
A 10 at $1.00	20 at $1.20.
B 10 at $1.00	10 at $1.20.

In addition to enabling the execution of the Complex Order at a net price of $2.25, the Legging Order enhanced execution for orders in the regular order book as (i) the incoming marketable order to sell A received a better price ($1.05 instead of $1.00), and (ii) liquidity to execute resting interest to sell 10 B at $1.20 was provided by the Complex Order.

As explained above, the proposed rule specifies when a Legging Order can be generated. Specifically, Legging Orders may be generated only for two-legged options orders with the same quantity on both legs.[10] A Legging Order may be automatically generated for one leg of a Complex Order at a price: (i) That matches or improves upon the best displayed bid or offer; and (ii) at which the net price can be achieved when the other leg is executed against the best Phlx displayed bid or offer (other than against a Legging Order).[11] Two Legging Orders relating to the same Complex Order can be generated, but only one of those can execute as part of the execution of a particular Complex Order.[12]

However, Legging Orders will not be generated at a price that would lock or cross the price of an away market. Nor will a Legging Order be generated if there is an auction, including but not limited to a Complex Order Live Auction (''COLA'') or a PIXL auction in either side or Posting Period under Rule 1080(p) regarding Acceptable Trade Range (''ATR'') on the same side in progress in the series.[13] Furthermore, a Legging Order will not be generated if the price of the Complex Order is outside of the Acceptable Complex Execution (''ACE'') Parameter of Rule 1080.08(i), which is explained further below. Legging Orders will not be generated respecting a Complex Order that is an all-or-none order, because of the difficulty of fulfilling an order size contingency.[14] Finally, Legging Orders will not be generated for a Complex Order if it will immediately cause Legging Orders to be removed pursuant to proposed Rule 1080.08(f)(iii)(C)(4)(ix).[15]

There can be only one Legging Order on the same side of the market in a series, unless a Legging Order, if generated, would have priority at the same price over an existing Legging Order based on the participant (in which case the lower priority order would be removed). For example, an order for a broker-dealer has a lower priority under Exchange rules than an order for a customer.[16] A Legging Order with a higher priority may be generated and cause a lower priority Legging Order at the same price to be removed. If a Legging Order would have the same priority as another Legging Order at the same price, the second Legging Order would not be generated, because Legging Orders would only be generated in the same series on the same side of the market respecting the first Complex Order received. This discussion applies to the priority of *generating* orders, as opposed to execution priority, which is discussed below.

In addition to these limitations, the Exchange will carefully manage and curtail the number of Legging Orders being generated so that they do not negatively impact system capacity and performance.[17] Accordingly, Legging Orders may not be generated for all eligible Complex Orders resting on the CBOOK.

A Legging Order may be generated and executed in an increment other than the minimum increment for that series and will be ranked on the order book at its generated price and displayed at a price that is rounded, down for Legging Orders to buy and up for Legging Orders to sell, to the nearest minimum increment allowable for that series. In

[7] *See* proposed Rule 1080.08(f)(iii)(C).

[8] *See* proposed Rule 1080.08(f)(iii)(C)(1).

[9] If a marketable order to sell 10 B is received, it will execute against the Legging Order to buy B at $1.05, there will be an automatic execution of the other leg of the Complex Order against the displayed offer for A at $1.20, and the Legging Order to buy A at $1.05 will be automatically removed. As a result, the net price of $2.25 is achieved for the Complex Order (buy A at $1.20 + buy B at $1.05 = $2.25 net).

[10] This is the same as ISE Rule 715(k).

[11] *See* proposed Rule 1080.08(f)(iii)(C)(1). CBOE similarly does not generate its version of this order when there is a ''legging order'' that comprises the best bid/offer for the other leg.

[12] *See* proposed Rule 1080.08(f)(iii)(C)(2).

[13] *See* Phlx Rules 1080.08, 1080(n) and 1080(p) regarding COLA, PIXL auction and ATR, respectively.

[14] Rule 1080.08 (b)(v) provides that Complex Orders may be submitted as All-or-None orders—to be executed in their entirety or not at all. These orders can only be submitted for non-broker-dealer customers. -Notwithstanding this rule language, All-or-None Complex Orders are not affirmatively permitted to be submitted at this time. The Exchange anticipates that it will file a proposed rule change in the near future to permit the trading system to accept All-or-None Complex Orders. *See* SR–Phlx–2014–42P at footnote 21. The instant proposed rule change describes how All-or-None Complex Orders, once they are permitted under Exchange rules, will not generate Legging Orders.

[15] *See* proposed Rule 1080.08(f)(iii)(C)(2).

[16] *See* Phlx Rule 1014(g)(vii).

[17] The Exchange will curtail the number of Legging Orders on an objective basis, such as limiting the number of orders generated in a particular option. The Exchange will not limit the generation of Legging Orders on the basis of the entering participant or the participant category of the order (*e.g.,* professional or public customer).

other words, although the Legging Order may be displayed at a rounded price, it will be ranked on the order book and executed at its actual price.[18] This is the same as BOX Rule 7240(c)(1).

Legging Orders, like all regular orders, will be disseminated by the Exchange to the Options Price Reporting Authority (''OPRA'') as part of its best bid and offer, as well as over the Exchange's own data feeds, TOPO Plus Orders and PHLX Orders. TOPO Plus Orders and PHLX Orders will indicate that an order is a Legging Order. Currently, orders on TOPO Plus Orders and PHLX Orders are indicated to be simple orders or Complex Orders. Indicating an order is a Legging Order is consistent with that behavior.

Of course, Legging Orders will not be generated if the Exchange or a particular option has not opened, is halted or is otherwise not available for trading. Similarly, the particular Complex Order Strategy must be available for trading. Legging Orders are not routable and are limit orders with a time-in-force of DAY, as they represent an individual component of a Complex Order.

Execution of Legging Orders

In terms of execution priority, a Legging Order is executed only after all other executable orders (including any non-displayed size) and quotes at the same price are executed in full pursuant to the Phlx priority rule applicable to Phlx XL non-Complex Orders, rather than based on the time of receipt of the Complex Order.[19] Accordingly, the generation of a Legging Order will not affect the existing priority, or execution opportunities, currently provided to participants in the regular market in any way. When a Legging Order is executed, the other leg of the Complex Order will be automatically executed against the displayed best bid or offer on the Exchange and any other Legging Order based on that Complex Order will be removed.[20]

For example:

A Complex Order to buy 50 A and to buy 50 B at a net price of $2.25 (buy A/B 50 at $2.25) is entered into the CBOOK and there is no off-setting Complex Order to sell.

The Complex Order cannot leg into the regular market because the PBBO net price available for the Complex Order on the PHLX's regular order book is $2.40 as follows:

PHLX bid	PHLX offer
A 40 at $1.05	60 at $1.20.
B 20 at $1.05	80 at $1.20.

Legging Orders to buy 50 A at $1.05 and 50 B at $1.05 may be automatically generated, increasing the size of the PHLX's best bid for both A and B as follows:

PHLX bid	PHLX offer
A 90 at $1.05 (50 Legging Order).	60 at $1.20.
B 70 at $1.05 (50 Legging Order).	80 at $1.20.

If a marketable order to sell 30 A is received, it will execute against the orders and/or quotes at $1.05 other than the Legging Order pursuant to the Exchange's regular allocation algorithm,[21] and the size of the bid for A will be reduced to 60 contracts as follows:

PHLX bid	PHLX offer
A 60 at $1.05 (50 Legging order).	60 at $1.20.
B 70 at $1.05 (50 Legging order).	80 at $1.20.

If a marketable order to sell 50 A were then received, it would first execute the remaining 10 A from the orders and/or quotes at $1.05 that are not the Legging Order, and then execute 40 A against the Legging Order.

At this time, the Complex Order will also execute 40 B at $1.20. The residual 10 contracts of the Legging Orders in A and the Legging Order for 50 contracts of B will be removed. As a result, the net price of $2.25 is achieved for a partial execution of the Complex Order (buy 40 A at $1.05 + buy 40 B at $1.20 = 40 at $2.25 net).

Following the partial execution of the Complex Order, the PHLX BBO is:

PHLX bid	PHLX offer
A $0.00	60 at $1.20.
B 20 at $1.05	40 at $1.20.

Removal

Pursuant to proposed Rule 1080.08(f)(iii)(C)(4), a Legging Order will be removed from the regular limit order book automatically: (i) If the price of the Legging Order is no longer at the Exchange's displayed best bid or offer on the regular limit order book; (ii) if execution of the Legging Order would no longer achieve the net price of the Complex Order when the other leg is executed against the Exchange's best displayed bid or offer on the regular limit order book (other than another Legging Order); (iii) if the Complex Order is executed in full or in part; (iv) if the Complex Order is cancelled or modified; (v) if the price of the Complex Order is outside of the ACE Parameter of Rule 1080.08(i); (vi) upon receipt of a Qualified Contingent Cross Order or an order that will trigger an auction under Exchange rules in a component in which there is a Legging Order (whether a buy order or a sell order); (vii) if a Legging Order is generated by a different Complex Order in the same leg at a better price or the same price for a participant with a higher priority; (viii) if a Complex Order is marketable against the cPBBO where a Legging Order is present and has more than one leg in common with the existing Complex Order that generated the Legging Order; (ix) if a Complex Order becomes marketable against multiple Legging Orders; (x) if a Complex Order consisting of an unequal quantity of components is marketable against the cPBBO where a Legging Order is present but cannot be executed due to insufficient size in at least one of the components of the cPBBO; or (xi) if an incoming all-or-none order is entered onto the order book at a price which is equal to or crosses the price of a Legging Order. Once a Legging Order is removed, it no longer exists as an order, even though the ''parent'' Complex Order may still exist. Upon occurrence of any of these conditions, the system will recognize the condition and remove the Legging Order accordingly.

For example:

A Complex Order to buy 20 A and to buy 20 B at a net price of $2.25 (buy A/B 20 at $2.25) is entered into the CBOOK and there is no offsetting Complex Order to sell.

The Complex Order cannot leg into the regular market because the PBBO net price available for the Complex Order is $2.40 as follows:

PHLX bid	PHLX offer
A 10 at $1.05	20 at $1.20.
B 10 at $1.05	50 at $1.20.

Legging Orders to buy 20 A at $1.05 and 20 B at $1.05 may be automatically generated, increasing the size of the PHLX's best Bid for both A and B as follows:

PHLX bid	PHLX offer
A 30 at $1.05 (20 Legging Order).	20 at $1.20.
B 30 at $1.05 (20 Legging Order).	50 at $1.20.

If a limit order to buy 10 A at $1.10 is received, the Legging Order to buy 20 A at $1.05 will be removed because it is no longer at the PHLX best Bid.

PHLX bid	PHLX offer
A 10 at $1.10	20 at $1.20.
B 30 at $1.05 (20 Legging Order).	50 at $1.20.

If a marketable order to buy 20 A is received, the PHLX best Offer will move

[18] *See* proposed Rule 1080.08(f)(iii)(C)(2).

[19] *See* proposed Rule 1080.08(f)(iii)(C)(3).

[20] This is the same as ISE Rule 715(k).

[21] *See* Rule 1014(g)(vii), which is the Phlx XL priority provision that allocates orders based on participant type.

above $1.20, resulting in the removal of the Legging Order to buy B at $1.05 because the net price of $2.25 can no longer be achieved.

PHLX bid	PHLX offer
A 10 at $1.10	20 at $1.25.
B 10 at $1.05	50 at $1.20. (buy A at $1.25 + buy B at $1.05 = $2.30 net)

As noted above,[22] a Legging Order is also removed from the regular order book if the price of the Complex Order is outside the ACE Parameter of Rule 1080.08(i). The ACE Parameter feature is designed to help maintain a fair and orderly market by helping to mitigate the potential risk of executions at prices which are extreme and potentially erroneous. Specifically, the ACE Parameter prevents Complex Orders from automatically executing at potentially erroneous prices by establishing a price range outside of which a Complex Order will not be executed. The ACE Parameter is based on the Complex National Best Bid or Offer (''cNBBO'')[23] at the time an order would be executed. A Complex Order to sell will not be executed at a price that is lower than the cNBBO Bid by more than the ACE Parameter. A Complex Order to buy will not be executed at a price that is higher than the cNBBO Offer by more than the ACE Parameter. A Complex Order or a portion of a Complex Order that cannot be executed within the ACE Parameter will be placed on the CBOOK. This proposal does not change the ACE Parameter.

For example:

A Complex Order to buy 20 A and to buy 20 B at a net price of $3.25 (buy A/B 20 at $3.25) is entered into the CBOOK and there is no offsetting Complex Order to sell. Assume legging orders to buy 20 A at $1.05 and 20 B at $1.05 were automatically generated.

PHLX bid	PHLX offer
A 20 at $1.05 (legging order)	20 at $2.20.
B 20 at $1.05 (legging order)	20 at $2.20.

Now, assume the away markets move and the NBBO is as follows,

NBBO Bid	NBBO Offer
A 50 at $1.05	20 at $1.20.
B 50 at $1.05	50 at $1.20.

The cNBBO for the Complex Order strategy is $2.10 Bid, Offered at $2.40.

Assuming an ACE Parameter setting of 5%, the Exchange will not allow the Complex Order to buy 20 A and to buy 20 B to execute more than 5% above the cNBBO Offer of $2.40, or no higher than $2.52 [$2.40+($2.40*.05)]. Since the Complex Order is no longer executable at its limit price of $3.25 due to the ACE Parameter protection, the legging orders associated with the Complex Order are removed from the limit order book.

As noted above,[24] a Legging Order is also removed from the regular order book upon receipt by the Exchange of an order that will trigger an auction under Exchange rules in a component where a Legging Order (whether a buy order or a sell order) has been generated, such as a COLA-eligible Order or PIXL Order, or upon receipt of a Qualified Contingent Cross (''QCC'') Order.[25] These types of orders may involve multiple option components which may have multiple Legging Orders for various Complex Orders included in the option BBOs. In order to ensure that Legging Orders do not adversely affect the execution of these orders and in order to avoid the system complexities that would result from combining the execution of Legging Orders and thus Complex Orders with the already complex auction processes, the Exchange will remove Legging Orders upon acceptance of an auctionable order or QCC order and will not consider generation of any new Legging Orders until the auction has been completed or the QCC order has been executed. For example, assume two separate Complex Orders have generated Legging Orders which are represented in the PBBO. Complex Order 1 has generated a Legging Order in A and Complex Order 2 has generated a Legging Order in B.

PHLX bid	PHLX offer
A 20 at $1.05 (legging order 1).	20 at $1.20.
B 20 at $0.50 (legging order 2).	20 at $0.80.
C 20 at $0.25	20 at $0.50.

Assume an auctionable Complex Order is received. Upon receipt of an auctionable order, a Complex Auction is initiated. The Legging Orders in A and B are therefore removed from the system and no new Legging Orders will be generated until the end of the Auction. This removal eliminates system complexities that would result from combining regular Complex Auction executions and Legging Orders executions. In addition, scenarios could arise in which incoming Complex Orders or QCC Orders consist of the same components as the Complex Orders which generated Legging Orders and are reliant on the execution of the same interest as the Legging Orders. Since the purpose of Legging Orders is to provide additional liquidity for Complex Orders resting on the CBOOK without negatively affecting the trading opportunities of unrelated interest, the Exchange believes that removing Legging Orders upon receipt of an auctionable order or QCC order eliminates the need for system complexities and ensures trading opportunities remain unaffected for auctions and QCC Orders.

In order to ensure Complex Orders are executed in accordance with the priority rules associated with such order, the Exchange proposes to remove a Legging Order from the limit order book when another Legging Order is generated by a different Complex Order in the same leg at a better price or at the same price for a participant with a higher priority.[26] For example the system will remove a Legging Order representing a leg of a Complex Order for a Market Maker when a Legging Order is also generated in that leg at the same price for a Customer Complex Order.

As noted above, a Legging Order will be removed when a Complex Order is marketable against the cPBBO where a Legging Order is present and has more than one leg in common with the existing Complex Order that generated the Legging Order.[27] This behavior ensures there is no risk of resting Complex Orders which have generated Legging Orders and incoming Complex Orders both relying on executions against the same displayed interest in order to satisfy all of their component legs. Consider the following example, with the following Legging Orders already generated by Complex Order 1:

PHLX bid	PHLX offer
A 30 at $1.05 (20 Legging Order).	20 at $1.20.
B 30 at $1.05 (20 Legging Order).	50 at $1.20.

Consider a scenario where the Exchange then received Complex Order 2 to buy 20 contracts of A and sell 20 contracts of B for a net debit of $0.15. Complex Order 2 has more than one leg in common with Complex Order 1.

[22] *See* proposed Rule 1080.08(f)(iii)(C)(4)(v).

[23] *See* Rule 1080.08(a)(vi).

[24] *See* proposed Rule 1080.08(f)(iii)(C)(4)(vi).

[25] *See* Rule 1080(o), which defines a QCC Order as an originating order to buy or sell at least 1000 contracts (or 10,000 contracts in the case of mini options) that is identified as being part of a qualified contingent trade coupled with a contra-side order or orders totaling an equal number of contracts.

[26] *See* proposed Rule 1080.08(f)(iii)(C)(4)(vii).

[27] *See* proposed Rule 1080.08(f)(iii)(C)(3)(viii).

Complex Order 2 would need to execute against all 20 contracts of A Offered at $1.20 and 20 contracts of B at $1.05 (10 contracts against the $1.05 regular quote in B and 10 contracts against the Legging Order in B). However, when the 10 contracts of the Legging Order of B are executed at $1.05, an execution of 10 contracts of A at $1.20 must occur in order to satisfy Complex Order 1. There is now an issue because Complex Order 2 will have already executed all available contracts of A at $1.20 making it impossible for Complex Order 1 to be executed in accordance with the component strategy. To avoid this situation, the Legging Order in B to buy 20 for $1.05 which was generated by Complex Order 1 will be removed upon receipt of Complex Order 2. To illustrate the rule further, if the example above were revised such that Complex Order 2 is to sell 20 contracts of A and to sell 20 contracts of B for a net credit of $2.25, the system will cancel the Legging Orders in A and B and trade Complex Order 2 against Complex Order 1. In this particular scenario the system has Complex Order 1 on the book in the same strategy as Complex Order 2 which Complex Order 2 is marketable against. Upon receipt of Complex Order 2, the system will trade the order against the buy Complex Order. There is no need to trade with the Legging Orders.

Similarly, a Legging Order will also be removed when a Complex Order becomes marketable against multiple Legging Orders.[28] Legging Orders will be removed in this instance in order to minimize system complexities as well as to mitigate any risk of Complex Orders executing only certain components. For example, assume a Legging Order in A and a Legging Order in B represent two unique Complex Orders (Complex Order 1 and Complex Order 2 respectively) both reliant on the quoted market of another option, C, and a third Complex Order (Complex Order 3) arrived consisting of options A, B, and C. The execution of Complex Order 3 could result in the inability of Complex Orders 1 and 2 to execute if Complex Order 3 executes against the interest in C, which Complex Orders 1 and 2 were also reliant upon. In order to mitigate any risk of Complex Orders executing only certain components, in both cases, the Exchange will remove the existing Legging Orders created by Complex Orders 1 and 2. Thereafter, if conditions change, new Legging Orders could be generated. To illustrate the application of the rule to a different scenario, assume the existence of Complex Order 1 to Buy A and Buy B, with a Legging Order generated in A, and Complex Order 2 to Buy C and Buy D, with a Legging Order generated in C. Assume the system then receives a marketable Complex Order 3 to Sell A and Sell C. Since Complex Order 3 is marketable against multiple Legging Orders (in A and C), the Legging Orders in both A and C are removed.

As noted above, the Exchange also proposes to remove Legging Orders from the limit order book if a Complex Order consisting of an unequal quantity of components is marketable against the cPBBO where a Legging Order is present but cannot be executed due to insufficient size in at least one of the components of the cPBBO.[29] Since Complex Orders are accepted by the Exchange consisting of ratios of up to 3:1,[30] a Complex Order may appear to be executable against the cPBBO but in fact cannot trade due to the ratio of the components of the strategy and the size available in each component in the cPBBO. In order to mitigate the risk of incoming Complex Orders appearing to be tradable against Legging Orders and to limit the complexity of the system in relation to Legging Orders, the Exchange proposes to remove Legging Orders from the limit order book if a Complex Order consisting of an unequal quantity of components is marketable against the cPBBO where a Legging Order is present but cannot be executed due to insufficient size in at least one of the components of the cPBBO. For example, assume the following example of a Complex Order (Complex Order 1) to buy 1 A and buy 1 B for $2.25 on the CBOOK which has generated Legging Orders,

	PHLX bid	PHLX offer
A	1 at $1.05 (Legging Order)	20 at $1.20.
B	1 at $1.05 (Legging Order)	20 at $1.20.
C	5 at $0.50	5 at $0.60.

Assume a second Complex Order (Complex Order 2) arrives to sell 3 A and sell 1 C at a net price of $3.65. The limit price of $3.65 is marketable against the cPBBO bid of $3.65 ((3*$1.05)+$0.50). However, Complex Order 2 cannot be executed because the volume available at the cPBBO does not line up correctly with the ratio of the legs. Complex Order 2 requires the sale of 3 contracts of A for every sale of a contract in C. However, there is only one contract in A (the Legging Order bidding $1.05 for one contract) available. Since Complex Order 2 cannot be executed, it will go onto the CBOOK. The Legging Order in A will be removed. In order to minimize the appearance that a Complex Order (in this example, Complex Order 2) is tradable against a Legging Order when in fact it is not tradable due to the ratio of the components of the Complex Order, the Exchange proposes to remove a Legging Order (in the example, the Legging Order to buy A associated with Complex Order 1) when another Complex Order consisting of an unequal quantity of components is marketable against the cPBBO where a Legging Order is present but cannot be executed due to insufficient size in at least one of the components of the cPBBO. The purpose of removing the Legging Order in this case is to minimize any possible misperception on the part of market participants that Complex Order 2 is tradable against a Legging Order, when in fact it is not. Elimination of the Legging Order will thus mitigate possible investor confusion due to market participants' focus on price alone rather than price and size. In situations in which Complex Orders consisting of an unequal quantity of components are in fact tradable against Legging Orders, an execution will occur.

Lastly, the Exchange proposes to remove Legging Orders from the limit order book when an incoming all-or-none order is entered onto the order book at a price which is equal to or crosses the price of a Legging Order.[31] An all-or-none order received at a price which can be executed against PBBO interest, inclusive of Legging Orders, will execute against such interest. However, if an all-or-none order is received which cannot be executed due to the size of the all-or-none contingency, such all-or-none order will rest on the order book and cause any Legging Order which it crosses or is equal to in price to be removed. This removal eliminates the risk of the system having to handle and maintain Legging Orders which cross the order book.

To summarize, proposed Rule 1080.08(f)(iii)(C)(4) addresses when a Legging Order will be removed from the regular limit order book automatically, which results in the Legging Order no longer existing as such. In each case of removal, the system removes the Legging Order when one of the conditions in subparagraph (C)(4) occurs, which the system assesses continuously.

[28] *See* proposed Rule 1080.08(f)(iii)(C)(4)(ix).

[29] *See* proposed Rule 1080.08(f)(iii)(C)(4)(x).

[30] *See* Rule 1080.08(a)(ix).

[31] *See* proposed Rule 1080.08(f)(iii)(C)(4)(xi).

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [32] in general, and furthers the objectives of Section 6(b)(5) of the Act [33] in particular, in that it 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, by increasing the opportunity for Complex Orders to receive an execution, while also enhancing execution quality for orders in the regular market.

In particular, the Exchange believes that automatically generating Legging Orders, which will only be executed after all other executable interest at the same price (including non-displayed interest and quotes) is executed in full, will provide additional execution opportunities for Complex Orders, without negatively impacting any investors in the regular market. In fact, the generation of Legging Orders may enhance execution quality for investors in the regular market by improving the price and/or size of the PBBO and by providing additional execution opportunity for resting orders on the regular order book. The Exchange believes Legging Orders will provide market participants with another tool for adding trading interest on Phlx. Legging Orders may serve to increase liquidity to the extent market participants find Legging Orders result in better executions. This may result in more aggressive trading interest in the overall Phlx market, thereby perfecting the mechanism of a free and open market.

The Exchange believes Legging Orders will increase opportunities for execution of Complex Orders, potentially increase executions of interest on the regular order book, and lead to tighter spreads and finer pricing on Phlx, which will benefit investors. Legging Orders may provide investors with opportunities to trade at better prices than would otherwise be available—possibly inside the otherwise existing PBBO in a leg series. The Exchange believes that the potential for investors to receive executions inside the otherwise existing PBBO could result in better executions for investors, thus making Legging Orders consistent with the Act.

The Exchange also believes that the generation of Legging Orders is fully compliant with all regulatory requirements. In particular, Legging Orders are firm orders that will be displayed within the PBBO. A Legging Order will be automatically removed if it is no longer displayable at the PBBO, if the net price of the Complex Order can no longer be achieved, or in other limited situations which could cause normal trading to be adversely affected or unnecessary system complexities to arise.[34] Moreover, to assure compliance with inter-market rules,[35] a Legging Order will not be generated at a price that would lock or cross another market. Finally, the generation of Legging Orders is limited in scope, as they may be generated only for Complex Orders with two legs. Additionally, the Exchange will closely manage and curtail the generation of Legging Orders if needed to assure that they do not negatively impact system capacity and performance.

Furthermore, the Exchange notes that its proposed rule change is similar to International Securities Exchange LLC's (''ISE's'') previously approved Legging Orders, as well as certain aspects of the Chicago Board Options Exchange (''CBOE'') and BOX Options Exchange LLC (''BOX'') rules, which the Commission has previously found to be consistent with the Act. In most respects, the proposal is similar to ISE Rules 715(k) and 722(b)(3)(ii). However, the Exchange proposes to handle its proposed Legging Orders the same way that BOX does respecting: (i) Orders that are generated in an increment other than the minimum increment allowable for that series,[36] and (ii) executing Complex Orders outside a certain price.[37] The Exchange believes that its application of its ACE Parameter to both generating and removing Legging Orders is akin to BOX's NBBO protection, but does not believe that this is a material difference because the Exchange believes that users would *expect* an exchange's normal price protections to apply to its execution of Complex Orders, regardless of the particular circumstance that caused the execution. Moreover, the ACE parameter is a protection intended to benefit users submitting Complex Orders.

In addition, the Exchange proposes to handle the following aspects of Legging Orders in the same manner as CBOE: [38] (i) The Exchange will not generate Legging Orders with an all-or-none contingency; [39] (ii) the Exchange will not generate a Legging Order unless the other leg can be executed against the PBBO without regard to another Legging Order; [40] (iii) the Exchange will periodically evaluate whether a Legging Order should be generated or removed; [41] and (iv) when a Legging Order is executed, the other leg is executed against the PBBO and the second Legging Order, if generated, of the Complex Order represented by the executed Legging Order is removed.[42]

Certain aspects of the Exchange's proposal potentially differ from the rules of other options exchanges in a few minor ways, but these differences are not material. First, if a Legging Order

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] In particular, Legging Orders will be removed when a Complex Order is marketable against the cPBBO where a Legging Order is present and has more than one leg in common with the existing Complex Order that generated the Legging Order, as well as when a Complex Order becomes marketable against multiple Legging Orders. Elimination of Legging Orders in those instances should eliminate the operational difficulties that may otherwise result from those executions and the potential for those executions to interfere with the system and other trading. The Exchange notes that its existing rules contain provisions that prevent the execution of Complex Orders that might otherwise be executable. *See, e.g.,* Rule 1080.08(i), Acceptable Complex Execution (''ACE'') parameter. Legging Orders are not firm on Phlx with respect to other Complex Orders and will not trade against legs of other Complex Orders, which is consistent with the existing Complex Order execution provisions in Rule 1080.08 that do not allow execution of overlapping legs of Complex Orders. *See also* Securities and Exchange Act Release No. 69364 (April 11, 2013), 78 FR 22926 (April 17, 2013) (Notice of CBOE Filing of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to Complex Orders), at footnote 25: ''Leg orders are thus not firm with respect to other complex orders and will not trade against legs of other complex orders, which is consistent with the existing complex order execution provisions in Rule 6.53C that do not allow execution of overlapping legs of complex orders.''

[35] *See, e.g.,* Phlx Rule 1084, Order Protection.

[36] *See* BOX Rule 7240(c)(1). Specifically, BOX will price and rank a Legging Order at its generated price to buy (sell) but it will be displayed at the minimum trading increment permitted for the series below (above) its price. If an incoming order is executable against such Legging Order, it will be executed at the Legging Order's generated price.

[37] BOX does not permit Complex Order executions outside the NBBO for the Complex Order, which is akin to the Exchange applying its ACE parameter. *See* BOX Rule 7130(b) and (c).

[38] The Exchange cannot discern from ISE's rules how these particular aspects are specifically handled.

[39] *See* CBOE Rule 6.53(x).

[40] *See* CBOE Rule 6.53C(c)(iv)(1)(A) referring to ''other than leg orders.''

[41] *See* CBOE Rule 6.53C(c)(iv)(1). The evaluation methodologies differ somewhat. CBOE's evaluation occurs ''when a Complex Order enters the COB, when the Exchange BBO changes and at a regular time interval to be determined by the Exchange (which interval shall not exceed one (1) second . . . (emphasis added)''. Phlx, however, will evaluate ''when a Complex Order enters the CBOOK and at a regular time interval, to be determined by the Exchange (which interval shall not exceed 1 second) following a change in the NBBO or PBBO in any component of a Complex Order eligible to generate Legging Orders . . .''. Phlx's evaluation methodology avoids complexities associated with evaluation of flickering quotes while still updating Legging Orders regularly to provide liquidity to the market.

[42] *See* CBOE Rule 6.53C(c)(iv)(2)(B).

would otherwise be generated, the Exchange will not do so if there is an auction on the either side in progress in the series. The Exchange will also remove existing Legging Orders when an order arrives that will trigger an auction in a component in which there is a Legging Order (whether a buy order or a sell order), or upon receipt of a QCC Order which includes a component in which there is a Legging Order.[43] The Exchange does not believe the way in which removal or generation of Legging Orders is affected by auctions is a material difference, because the Exchange does not believe that there is one particular expectation on the part of market participants about how orders like Legging Orders should co-exist with auctions. Further, there are certain system complexities associated with having to coordinate Legging Orders with an ongoing auction or complex execution.[44] The Exchange believes it will be simpler from both a system processing and user acceptance standpoint to wait for an auction in that series to be complete or a QCC Order to be executed, which is a minimal amount of time.

In addition, the Exchange will not generate a Legging Order if there is already a Legging Order in that series on the same side of the market at the same price unless it has priority based on the participant type under existing Exchange rules. Likewise, a Legging Order will be automatically removed if a Legging Order is generated by a different Complex Order in the same leg at a better price or the same price for a participant with a higher priority. The Exchange does not believe that this is a material difference, because this behavior serves to ensure that the priority rules relating to resting Complex Orders are maintained.[45] The Exchange will also remove the Legging Order when (1) a Complex Order is marketable against the cPBBO where a Legging Order is present and has more than one leg in common with the existing Complex Order that generated a Legging Order or (2) if a Complex Order becomes marketable against multiple Legging Orders. Moreover, pursuant to proposed Rule 1080.08(f)(iii)(C)(2)(vi), no Legging Orders will be created for a Complex Order if the Complex Order will immediately cause existing Legging Orders to be removed under Rule 1080.08(f)(iii)(C)(4)(ix)—*i.e.,* because the Complex Order has become marketable against multiple Legging Orders. The Exchange does not believe that this is a material difference, because the situation of overlapping Legging Orders and Legging Order dependencies on other components has to be addressed and the Exchange believes its approach is reasonable.[46]

The Exchange will remove a Legging Order when a Complex Order consisting of components of unequal quantities is marketable against the cPBBO where a Legging Order is present but cannot be executed due to insufficient size in at least one of the components of the cPBBO. The Exchange does not believe that this is a material difference, because this behavior serves to minimize occurrences where there may be the appearance of potential execution when in fact, there is no potential execution due to the ratio of the components. Lastly, the Exchange proposes to remove Legging Orders from the limit order book when an incoming all-or-none order is entered onto the order book at a price which is equal to or crosses the price of a Legging Order. This removal eliminates the risk of the system having to handle and maintain Legging Orders which cross the order book, thereby eliminating unnecessary system complexity to the benefit of investors.

In conclusion, the Exchange believes that its proposed rules are similar to rules of other exchanges that the Commission has already determined to be consistent with the Act and in the public interest, with any differences raising no new regulatory issues.

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. To the contrary, the proposal is pro-competitive. The proposal will permit the Exchange to compete against other options exchanges with similar functionality, such as BOX, CBOE and ISE.[47] The Exchange believes the proposed rule change could result in improved liquidity, finer pricing, better executions and increased competition within its Complex Order market to the benefit of the Exchange and market participants and thus allow the Exchange to better compete with other options exchanges for Complex Order flow. The Exchange also believes Legging Orders may facilitate additional executions and enhance execution quality for investors in the regular market by improving the price and/or size of the PBBO and by providing additional execution opportunities for resting orders on the regular order book. Within the Exchange's market for Complex Orders, the Legging Order functionality will be available to all participants who participate in the Complex Orders system. All market participants have the option to send their Complex Orders to Phlx in order to take advantage of this order type.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–54 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–2014–54. This file number should be included on the subject line if email is used. To help the Commission process and review your

[43] Auctions include a COLA as well as a PIXL auction.

[44] CBOE, on the other hand, considers which side of the market is affected when an auction could impact one of its legging orders. *See* CBOE Rule 6.53C.07.

[45] CBOE addresses priority in its Rule 6.53C(c)(iv)(2)(A).

[46] CBOE takes into account the size of an order. *See* CBOE Rule 6.53C(c)(iv)(3)(A).

[47] *See* ISE Rules 715(k) and 722(b)(3)(ii), BOX Rule 7240(c) and CBOE Rule 6.53C(c)(iv).

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–Phlx–2014–54, and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22789 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73147; File No. SR–ISE–2014–09]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change Related to Market Maker Risk Parameters

September 19, 2014.

I. Introduction

On March 10, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend ISE Rules 722 and 804 to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The proposed rule change was published for comment in the **Federal Register** on March 26, 2014.[3] The Commission received no comments on the proposal. On May 7, 2014, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On June 24, 2014, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[6] In response to the Order Instituting Proceedings, the Commission received five comment letters on the proposal.[7] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend ISE Rule 722 and ISE Rule 804 to enhance its risk management offering for market maker quotes.[8]

Currently, there are four parameters that can be set by market makers on a class-by-class basis. These parameters are available for market maker quotes in single options series and in complex instruments on the complex order book. Market makers establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker's quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and sold in an options class, and (4) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. Once the limits for each of the four parameters are exceeded within the prescribed time frame, the market maker's quotes in all series of that class are automatically removed or curtailed. Additionally, ISE's rules provide that if a specified number of curtailment events are exceeded within the prescribed time period, the market maker quotes in all classes will be automatically removed from ISE's trading system.[9] The Exchange now proposes to implement functionality to allow market maker quotes to be removed from the trading system if a specified number of curtailment events occur across both ISE and ISE Gemini, LLC (''ISE Gemini'').

To the extent that a market maker utilizes the offered functionality, ISE and ISE Gemini's trading systems will count the number of times a market maker's pre-set curtailment events occur on each exchange and aggregate them. Once a market maker's specified number of curtailment events across both markets is reached, the trading systems will remove the market maker's quotes in all classes on both ISE and ISE Gemini. The Exchange will then reject any quotes sent by the market maker after the parameters across both exchanges have been triggered until the market maker notifies the market operations staff of the Exchange that it is ready to come out of its curtailment. Once notified by the market maker, the Exchange will reactivate the market maker's quotes on the Exchange.

The Exchange believes that the proposal will enhance the Exchange's current risk management offering by allowing market makers to manage their

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71759 (March 20, 2014), 79 FR 16850 (March 26, 2014) (SR–ISE–2014–09) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 72117, 79 FR 27360 (May 13, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it would have sufficient time to consider the proposed rule change. Accordingly, the Commission designated June 24, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Securities Exchange Act Release No. 72455, 79 FR 36849 (Jun. 30, 2014) (''Order Instituting Proceedings''). In the Order Instituting Proceedings, the Commission noted, among other things, that questions remains as to whether the Exchange's proposal is consistent with the requirements of Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Commission questioned whether the proposal is consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[7] *See* Letters to the Commission from Andrew Killion, Chief Executive Officer, Akuna Securities LLC, dated July 24, 2014 (''Akuna Letter''); Brent Hippert, President/CCO, Hardcastle Trading USA LLC, dated July 28, 2014 (''Hardcastle Letter''); John Kinahan, Chief Executive Officer, Group One Trading, L.P., dated July 29, 2014 (''Group One Letter''); Sebastiaan Koeling, Chief Executive Officer, Optiver US LLC, dated July 29, 2014 (''Optiver Letter''); and Andrew Stevens, General Counsel, IMC Chicago, LLC d/b/a IMC Financial Markets, dated August 18, 2014 (''IMC Letter'').

[8] For a more complete description of the proposal, *see* Notice, *supra* note 3.

[9] *See* Securities Exchange Act Release Nos. 70132 (August 7, 2013), 78 FR 49311 (August 13, 2013) (SR–ISE–2013–38) and 71446 (January 30, 2014), 79 FR 6951 (February 5, 2014) (SR–ISE–2014–04).

risk across ISE and ISE Gemini. The Exchange also provides that the proposal will protect market makers from inadvertent exposure to excessive risk and thereby allow them to quote aggressively and provide more liquidity with greater size to both markets. The Exchange further represents that its proposal will operate consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS and that the functionality is not mandatory.

III. Summary of Comment Letters

As noted above, the Commission received five comment letters in response to the Order Instituting Proceedings.[10] All of the commenters support the proposal. Three of the five commenters are registered options market makers on ISE,[11] while the other two are registered options market makers on both ISE and ISE Gemini.[12]

The commenters note that, while the current risk protections on the Exchange help manage risk, systems and other issues that trigger such risk parameters are normally not confined to a member firm's activity on a single exchange.[13] Accordingly, the commenters believe that the Exchange's proposal to aggregate curtailment events across both ISE and ISE Gemini would allow market makers to more effectively manage risk.[14] The commenters state that the proposed rule change would allow market makers to continue to actively provide liquidity, while facilitating effective management of the risks associated with quoting a large number of option series across multiple exchanges.[15] Further, the commenters believe that allowing market makers to better manage their risk would benefit the broader market, as it would reduce disruptive trading events.[16]

Two commenters who are registered market makers on ISE but not on ISE Gemini also believe that the proposal is not unfairly discriminatory in violation of Section 6(b)(5) of the Act.[17] These two commenters note that the proposal is optional to market makers and is not unfairly discriminatory to firms who simply have no need for the proposal's additional protections by virtue of only trading on either ISE or ISE Gemini.[18]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal could assist ISE market makers manage and reduce inadvertent exposure to excessive risk across both ISE and ISE Gemini. The Commission notes that the proposed functionality is not mandatory and must operate consistent with the firm quote obligations of Rule 602 of Regulation NMS. The Commission also notes that all five commenters expressed support for the proposal.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[21] that the proposed rule change (SR–ISE–2014–09) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22784 Filed 9–24–14; 8:45 am]

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[10] *See supra* note 7.

[11] *See* Akuna Letter; Hardcastle Letter; and Group One Letter, *supra* note 7.

[12] *See* Optiver Letter and IMC Letter, *supra* note 7.

[13] *See* Akuna Letter; Group One Letter, Hardcastle Letter; IMC Letter; and Optiver Letter, *supra* note 7.

[14] *See, e.g.,* Akuna Letter at 2; Hardcastle Letter at 2; and Optiver Letter, *supra* note 7.

[15] *See* Optiver Letter and IMC Letter, *supra* note 7.

[16] *See* Akuna Letter at 2; Hardcastle Letter at 2; and Optiver Letter, *supra* note 7.

[17] *See* Akuna Letter at 2 and Hardcastle Letter at 2, *supra* note 7.

[18] *Id.* One commenter also states that it does not believe the proposal places any undue burden on competition between options exchanges. *See* Group One Letter at 2, *supra* note 7.

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73149; File No. SR–NYSEArca–2014–102]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the Greenhaven Coal Fund Under NYSE Arca Equities Rule 8.200, Commentary .02

September 19, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 5, 2014, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On September 18, 2014, the Exchange filed Amendment No. 1, which replaced and superseded the proposal in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Greenhaven Coal Fund under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts (''TIRs'') either by listing or pursuant to unlisted trading privileges.[4] The Exchange proposes to list and trade shares (''Shares'') of the Greenhaven Coal Fund (the ''Fund''), pursuant to NYSE Arca Equities Rule 8.200, Commentary .02.[5]

The Exchange notes that the Commission has previously approved the listing and trading of other issues of TIRs on the American Stock Exchange LLC,[6] and listing on NYSE Arca.[7] Among these are the Teucrium Corn Fund, Teucrium Wheat Fund, Teucrium Soybean Fund and Teucrium Sugar Fund, each a series of the Teucrium Commodity Trust.[8] In addition, the Commission has approved other exchange traded fund-like products linked to the performance of underlying commodities.[9]

The Fund is a commodity pool that is organized as a Delaware statutory trust.[10] The Fund's trustee is Christiana Trust, a division of Wilmington Savings Fund Society, FSB (the ''Trustee''), and the Fund's sponsor is GreenHaven Coal Services, LLC (the ''Sponsor''). Under the Fund's trust agreement, the Trustee has delegated to the Sponsor the exclusive power and authority to manage the business and affairs of the Fund. The Sponsor is registered with the Commodity Futures Trading Commission (the ''CFTC'') as a commodity pool operator, and approved as a member of the National Futures Association. The Sponsor is a wholly-owned subsidiary of GreenHaven Group, LLC and affiliated with GreenHaven Commodity Services, LLC, a commodities trading firm. ALPS Distributors, Inc. will be the Fund's marketing agent and distributor (''Marketing Agent''). Bank of New York Mellon will be the Fund's administrator and transfer agent (''Administrator'').

The business of the Fund will be limited to (i) creating and redeeming Baskets (as defined below) of Shares on a continuous basis, and (ii) investing proceeds in a portfolio of coal futures and U.S. Treasuries (as further described below).

Investment Objective

According to the Registration Statement and as further described below, the Fund will seek to provide investors with exposure to the daily change in the price of coal futures, before expenses and liabilities of the Fund. The Fund intends to achieve this objective by investing substantially all of its assets in a three month strip[11] of the nearest calendar quarter of Rotterdam coal futures contracts (''Coal Futures'') traded via the CME Group, Inc. (''CME'') (i) Globex (''CME Globex'') and (ii) CME ClearPort clearing services (''CME ClearPort'') trading platforms (collectively, the ''CME Facilities'') depending on liquidity and otherwise at the Sponsor's discretion. The Fund will invest in Coal Futures on a non-discretionary basis (i.e., without regard to whether the value of the Fund is rising or falling over any particular period). The Fund may also realize interest income from its holdings in three month U.S. Treasuries.

According to the Registration Statement, it is not the intent of the Fund to be operated in a fashion such that its net asset value (''NAV'') will equal, in dollar terms, the coal spot price, any spot price coal indexes, or any particular coal futures contract. It is also not the intent of the Fund to be operated in a fashion such that its NAV will reflect the percentage change of the price of any particular coal futures contract as measured over a period greater than one day.

Investments in Coal Futures

Subject to margin and certain other requirements and conditions described below and in the Registration Statement, the Fund, under normal market conditions,[12] will use available offering proceeds to purchase Coal Futures that are traded on CME Facilities, including smaller sized ''mini'' contracts (if they are available) to the greatest extent possible, without being leveraged or exceeding relevant position limits. The Fund will place purchase or sale orders for Coal Futures with a ''Commodity Broker''[13] and may use an ''Execution Broker''[14] to execute trades on CME ClearPort. If the CME does not accept the transaction for any reason, the transaction will be considered null and void and of no legal effect. As a result, all of the Fund's positions in Coal Futures will be cleared by CME clearing member firms, thereby minimizing counterparty risk.

The Fund intends to hold the three month strip of the nearest calendar quarter of Coal Futures contracts traded

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in ''Financial Instruments''. The term ''Financial Instruments'', as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] This Amendment No. 1 to SR–NYSEArca–2014–102 replaces SR–NYSEArca–2014–102 as originally filed and supersedes such filing in its entirety.

[6] *See, e.g.,* Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39).

[7] *See, e.g.,* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91).

[8] *See* Securities Exchange Act Release Nos. 62213 (June 3, 2010), 75 FR 32828 (June 9, 2010) (SR–NYSEArca–2010–22) (order approving listing on the Exchange of Teucrium Corn Fund); 65344 (September 15, 2011), 76 FR 58549 (September 21, 2011) (SR–NYSEArca–2011–48) (order approving listing on the Exchange of the Teucrium Wheat Fund, Teucrium Soybean Fund, and Teucrium Sugar Fund).

[9] *See, e.g.,* Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for listing and trading on NYSE Arca of the iShares GS Commodity Trusts); 58983 (November 20, 2008), 73 FR 73368 (December 2, 2008) (SR–NYSEArca–2008–126) (order approving listing and trading on NYSE Arca of GreenHaven Continuous Commodity Index Fund); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (order granting accelerated approval for NYSE Arca listing and trading of the ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009)(SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing and trading of the ETFS Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR–NYSEArca–2009–95) (order approving listing and trading on NYSE Arca of the ETFS Platinum Trust).

[10] On September 5, 2014, the Fund filed with the Commission a pre-effective amendment to its registration statement on Form S–1 under the Securities Act of 1933 (15 U.S.C. 77a) relating to the Fund. (File No. 333–182301) (the ''Registration Statement''). The description of the Fund and the Shares herein is based, in part, on the Registration Statement.

[11] With respect to reference to a ''three month strip'', 'strip' is a term used in futures markets to describe a series of delivery months for an individual futures contract. A calendar strip would be a three month strip of one of the four calendar quarters. For example, a three month calendar strip for the third quarter 2014 would include July 2014, August 2014, and September 2014 coal futures contracts.

[12] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the coal futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[13] The Commodity Broker will execute and clear trades via CME Facilities, whereby it becomes a cleared futures transaction with the CME as the counterparty.

[14] The Execution Broker will execute trades of block traded coal futures traded on CME ClearPort, and the Commodity Broker will clear such trades. A block trade is executed by an Execution Broker who facilitates two parties reaching an agreement on a price to buy and sell futures contracts. Once the price is agreed upon the Execution Broker then submits the block trade information to the CME via the CME ClearPort order entry systems whereby it becomes a cleared futures transaction with the CME as the counterparty for the parties entering said trade.

on the CME Facilities. The four calendar quarters are January, February, and March (''Q1''); April, May, and June (''Q2''); July, August, and September (''Q3''); and October, November, and December (''Q4''). The Fund intends to invest an equal tonnage (equal number of futures contracts) in each of the three months comprising the nearby calendar quarter.

Four times a year, the Fund will attempt to roll its positions in the nearby calendar quarter to the next calendar quarter over 5 business days on a pro-rata basis. The first roll day is the second Monday of the month prior to the nearby calendar quarter. For example, if the Fund was currently holding the Q1 calendar quarter it would roll over a 5 business day period starting on the second Monday in December. Each day during the roll period, the Fund would decrease the percentage of its portfolio that is in Q1 by 20% and increase its percentage in Q2 by 20%.

The Sponsor estimates that (i) approximately 10% of the Fund's NAV will be held as margin deposits in segregated accounts with the Commodity Broker, in accordance with applicable CFTC rules, and (ii) approximately 90% of the Fund's NAV will be held to pay current obligations and as reserves in the form of U.S. Treasuries, cash and/or cash equivalents in segregated accounts with the Commodity Broker. The Fund will be credited with all interest earned on its deposits. All interest income earned on these investments will be retained for the Fund's benefit.

The Sponsor does not anticipate that the Fund's Coal Futures positions will be held until expiration, and does not expect the Fund to take or make delivery of any physical commodities. Instead, the Sponsor expects to sell near to expiry Coal Futures and reinvest the proceeds in new Coal Futures to achieve the Fund's investment objective. Positions may also be closed out to meet orders for the redemption of Baskets (as defined below), in which case the proceeds from closing the positions will not be reinvested.

Margin; Composition of Portfolio

According to the Registration Statement, when the Fund purchases Coal Futures, the Fund will be required to deposit a portion of the value of the contract or other interest as security to ensure payment for the underlying obligation. This deposit is known as initial margin. Transactions traded through CME ClearPort have the same collateral requirements as CME Globex futures transactions.

For example, the purchase of a notional $10 million of Coal Futures would require the Fund to make an initial margin deposit representing only a fraction of the notional amount. The Fund would deposit the required initial margin with a Commodity Broker in the form of a mix of cash and U.S. Treasuries. Fund assets in an amount equal to the difference between the initial margin and the notional value of the Coal Futures will be held in U.S. Treasuries, cash and/or cash equivalents in a segregated account with a Commodity Broker and used to meet future margin payments, if any.

The Sponsor has the sole authority to determine the percentage of assets that will be held as margin or collateral and held in U.S. Treasuries, cash and/or cash equivalents to pay current obligations and as reserves.

The assets deposited by the Fund with a Commodity Broker as margin must be segregated pursuant to the regulations of the CFTC. Such segregated funds may be invested only in instruments approved by the CFTC, which include (i) U.S. government securities, (ii) municipal securities, (iii) U.S. agency obligations, (iv) certificates of deposit, (v) commercial paper guaranteed by the U.S. government, (vi) corporate notes or bonds guaranteed by the U.S. government, and (vii) interests in money market mutual funds; however, the Sponsor anticipates that the Fund's margin deposit assets will be invested only in U.S. Treasuries or otherwise held as cash and/or cash equivalents.

The Coal Market

General. According to the Registration Statement, the following is a brief introduction to the global coal industry. The data presented below is derived from information released by various third-party sources, including the World Coal Association, the U.S. Energy Information Administration, the American Coal Foundation and the American Geosciences Institute.

Coal is a safe, reliable, easily stored and readily available source of energy produced in over 50 countries, consumed in over 70 countries and traded globally. Coal is a low-cost fossil fuel used primarily for electric power generation, and is typically significantly less expensive than oil and generally competitive with natural gas and nuclear power generation. Coal is also used to produce steel (coal is used in nearly 70% of global steel production) and by a variety of other industrial consumers to heat and power foundries, cement plants, paper mills, chemical plants and other manufacturing and processing facilities. In general, coal is characterized by end use as either steam coal or metallurgical coal. Steam coal is used primarily as fuel by utilities to generate electrical power. It is also used by industrial facilities to produce steam, electricity or both. Metallurgical coal is refined into coke, which is used in the production of steel.

Coal is classified into four general categories, or ''ranks,'' based on carbon content. Carbon is the source of coal's heating value, but other factors also influence the amount of coal's energy per unit of weight. The amount of energy in coal is often expressed in British thermal units (''BTU'') per pound. A BTU is the amount of heat required to raise the temperature of one pound of water by one degree Fahrenheit. The four ranks of coal include:

- *Lignite.* Lignite is geologically young coal that has the lowest carbon content (approximately 25% to 35%), and consequently the lowest energy content, of the four ranks of coal. Lignite has a heat value ranging between 4,000 and 8,300 BTUs-per-pound. Sometimes called brown coal, lignite is mainly used for electric power generation primarily in power plants close in proximity to the source.
- *Sub-Bituminous.* Sub-bituminous coal contains about 35% to 45% carbon and has a heat value between 8,300 and 13,000 BTUs-per-pound. Approximately half of the coal produced within North America is sub-bituminous. Although the heat value of sub-bituminous coal is lower than bituminous, it tends to be lower in sulfur content and cleaner burning.
- *Bituminous.* Bituminous, or black coal, is the most abundant type of coal. Bituminous contains approximately 45% to 86% carbon and has a heat value between 10,500 and 15,500 BTUs-per-pound. Bituminous has little water content or other impurities except for sulfur, and is easily ignited.
- *Anthracite.* Anthracite coal contains approximately 92% to 98% carbon and has a heat value of nearly 15,000 BTUs-per-pound. Anthracite has a heat value greater than that of Bituminous, but is hard to light, scarcer and more expensive.

Production and Supply. China remains the largest producer of coal in the world, with an estimated production of 3.991 billion metric tonnes (''mt'') in 2012. The United States and India follow China with estimated hard coal production of approximately 1.016 billion mt and 694 million mt,

respectively, in 2012.[15] Among the nations principally supplying coal to the global power and steel markets are Australia, historically the world's largest coal exporter with exports of approximately 332 million mt in 2012, as well as Indonesia, Russia, United States, Colombia and South Africa. Total United States exports of coal decreased in 2013 by approximately 6% over 2012 to 118 million mt.[16]

Coal supply can be influenced by changes in coal mining capacity, productivity and depletion rates, changes in government subsidization, regulation, new capacity, climate events (i.e., floods, rains), availability of mining equipment and availability and cost of skilled labor and railroad/river barge/ocean bulk services.

Demand. Global coal consumption grew by 3.0% in 2013 over 2012.[17] In 2011, China, the United States and India were the world's largest consumers of coal (ranked 1st, 2nd and 3rd, respectively). In 2012 China was the largest consumer of coal with consumption of 4.151 billion mt. The United States and India consumed 889 and 745 million mt in 2012, respectively.[18]

Factors impacting coal demand include the demand for electricity, governmental regulation impacting power generation, technological developments, transportation costs, climate events (i.e., floods and rains), exchange rates and the location, availability and cost of other fuels such as natural gas, oil, nuclear and hydroelectric power.

European Coal Markets. European coal is often classified into two broad categories: Hard coal and lignite or brown coal. Hard coal is further subdivided into two types of coal as steam (or thermal) coal, used for power generation and for industrial applications; and coking coal which is used by the iron and steel industry to make coke. Hard coal has an energy content above 4,500 kilocalories/kilogram (''kcal/kg'') and water content lower than 35%. Only hard coal is traded internationally because of its higher energy content relative to freight costs. The other broad category, lignite or brown coal, has an energy content of less than 4,500 kcal/kg, and water content above 35%. It is mostly used in local markets for power generation.[19]

Although coal is mined in many European coal countries, as of 2013 only about 35% of hard coal consumption was covered by production in the European Union (the ''EU''). Coal consumption of hard coal in the EU reached its lowest level in 2009 at 715 million tons. Since then, consumption has resumed growing and the most recent figures indicate an increase of 4.7% was recorded in 2013 from 2009 levels.[20]

Although economic slowdowns in the EU in 2011 and 2012 reduced overall electricity demand, coal demand by utilities actually increased during this period replacing the relatively more expensive natural gas. This is thought to be largely a result of relatively high priced natural gas in Europe and low priced coal as well as the collapse of the price of carbon credits. The low priced coal was in part caused by the ''shale revolution'' of cheap natural gas in the United States, which resulted in a surge in coal imports from the United States and Colombia that pressured coal prices downward in Europe.

Within Europe, Germany is one of the largest producers and importers of coal, importing some 45 million tons of hard coal in 2012 which represented 79% of Germany's national consumption.[21] In addition to Germany, major European importing countries of coal also include the United Kingdom, Spain, and Italy.[22]

One of the largest ports in Europe in terms of total cargo is the port of Rotterdam[23] which also often provides benchmark prices for coal transactions across Europe. The largest exporting countries to Europe in order of tons exported are Russia, Colombia, and the United States as of 2013.[24]

Rotterdam Coal Futures. The CME lists ''Rotterdam Coal Futures'' under the symbol ''MTF''. The trading unit for the Rotterdam contract is 1,000 tons. Rotterdam Coal Futures are financially settled against the Argus/McCloskey Coal Price Index (''API 2 Index'')[25] as published in the Argus/McCloskey Coal Price Index Report and are subject to CME position and accountability limits. The API 2 Index is calculated by Argus Media.[26] Coal included in the API 2 Index calculation must generally be delivered to the ports of Antwerp, Rotterdam, or Amsterdam with certain exceptions for coal that is delivered to North West European countries and netted back to a Rotterdam delivery equivalent using freight differentials between discharge ports. Coal included in the API 2 Index must be bituminous and meet several criteria to qualify including having an energy value of 6,000 kcal/kg, a maximum sulfur content of 1.00%, and be part of a cargo with a minimum quantity of 50,000 tons of coal on the most economic vessel from the port of origin.[27]

Trading of Rotterdam Coal Futures contracts terminates on the last Friday of the delivery month. Trading can occur in any of up to 84 consecutive months. Contracts for each new year are added following the termination of trading in the December contract of the current year.

The Fund's Investments

According to the Registration Statement, the Fund will attempt to invest in an equal amount of contracts (an equal amount of tonnage) across the nearest calendar quarter of Coal Futures resulting in three delivery months of Coal Futures price exposure. The Sponsor will seek to invest the Fund's cash collateral in 13 week U.S. Treasury Bills.

Currently, due to liquidity concerns with respect to futures contracts for other ''types'' of coal (such as Central Appalachian or ''CAPP''), the Sponsor anticipates that the Fund will only

[15] Source: U.S. Energy Information Administration: (*http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=1&pid=1&aid=24*).

[16] Source: U.S. Energy Administration Association: (*http://www.eia.gov/beta/coal/data/browser/#/topic/41?agg=0,2,1&rank=g&freq=A&start=2001&end=2012&ctype=map&ltype=pin&rtype=s&maptype=0&rse=0&pin=*).

[17] Source: BP Statistical Review of World Energy, 2013, page 33: (*http://www.bp.com/content/dam/bp/pdf/Energy-economics/statistical-review-2014/BP-statistical-review-of-world-energy-2014-full-report.pdf*).

[18] Source: US Energy Information Administration, 2014: (*http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=1&pid=1&aid=24*).

[19] Source: Cornot-Gandolphe, Sylvie. ''Global Coal Trade From Tightness to Oversupply.'' February 2013. Institut Francais des Relations Internationales, page 11. (*http://www.ifri.org/?page=contribution-detail&id=7570&lang=uk*).

[20] Source: EuroStat, February 2014: (*http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Coal_consumption_statistics*).

[21] Source: ''Coal Industry Across Europe.'' 5th Edition 2013. European Association for Coal and Lignite, page 31. (*http://www.euracoal.org/pages/medien.php?idpage=1410*).

[22] Source: Cornot-Gandolphe, Sylvie. ''Global Coal Trade From Tightness to Oversupply.'' February 2013. Institut Francais des Relations Internationales, page 32. (*http://www.ifri.org/?page=contribution-detail&id=7570&lang=uk*).

[23] Source: Port of Rotterdam Web site. February 2014: (*http://www.portofrotterdam.com/en/Port/port-in-general/Pages/default.aspx*).

[24] Source: EuroStat, February 2014: (*http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/File:Hard_coal_imports_into_EU–28_by_country_of_origin,_2013_(%25_based_on_kt).png*).

[25] Neither the Fund, the Sponsor, nor any of their affiliates are sponsored, endorsed or promoted by, or otherwise associated with, Argus Media Inc., IHS Global Ltd., or the CME Group.

[26] Source: Argus Media: (*http://www.argusmedia.com/Coal/Argus-McCloskeys-Coal-Price-Index-Report*).

[27] Source: IHS McCloskey, November 2010: (*http://cr.mccloskeycoal.com/journals/McCloskey/McCloskeyCR/Issue_249_-_26_November_2010/attachments/Methodology_May%202012_(October%202013%20Edited%20Version).pdf*).

invest in Coal Futures. However, if the liquidity of other exchange- traded coal futures increases in the future, the Sponsor may consider amending the Registration Statement and to revise the description of the Fund's investment strategy to include futures contracts for other types of coal.[28]

Commodity futures contracts normally specify a certain date for the delivery of the underlying physical commodity. To avoid expiration and maintain a long futures position, contracts nearing a delivery date must be sold and contracts that have not yet reached delivery must be purchased. This process is known as ''rolling'' a futures position. The Fund will employ the strategy of rolling futures as it will replace futures contracts as they approach maturity by notionally selling and purchasing offsetting contracts to avoid delivery and maintain long futures positions. Four times each year, the Fund will roll the nearby calendar quarter contracts over five days on a pro rata basis. The five day rolling period starts on the second Monday of the month just prior to the nearby full calendar quarter with an equal amount of tonnage, or ⅕th of the contracts in the portfolio, rolled each of the five days from the front month calendar quarter to the next available calendar quarter. For example, the Fund would start rolling out of the first calendar quarter (January, February, March) on the second Monday of December into the second calendar quarter consisting of April, May, and June.

The Sponsor anticipates that the Fund's position in each of the Coal Futures contract months represented, outside of roll periods, will contain an equal number of contracts (an equal tonnage per coal future delivery month).

Net Asset Value

The NAV for the Shares will equal the market value of the Fund's total assets less total liabilities calculated in accordance with Generally Accepted Accounting Principles (''GAAP''). Under the Fund's proposed operational procedures, the Administrator will calculate the NAV once each NYSE Arca trading day. To calculate the NAV, the Administrator will use the CME settlement prices (typically determined after 5:00 p.m. Eastern Time (''E.T.'')) for the Coal Futures traded on the CME Facilities plus the value of any United States Treasury Bills and cash equivalents. The NAV for a particular trading day will be released after 5:00 p.m. E.T. and will be posted at *www.greenhavenfunds.com.*

Creation and Redemption Procedures

On any business day, an ''Authorized Participant'' may place an order with the Fund's ''Marketing Agent'' [29] to create one or more aggregations of 25,000 Shares (each, a ''Basket'').[30] Creation orders will be accepted only on a business day during which the NYSE Arca is open for regular trading. Purchase orders must be placed no later than 10:00 a.m. E.T., on each business day the NYSE Arca is open for regular trading. The day on which the Marketing Agent receives a valid purchase order is the purchase order date. Purchase orders are irrevocable. By placing a purchase order, and prior to delivery of the applicable Baskets, an Authorized Participant's DTC account will be charged a non-refundable transaction fee due for the purchase order.[31]

The total payment required to create each Basket will be the NAV of 25,000 Shares on the purchase order date, but only if the required payment is timely received. Because orders to purchase Baskets must be placed no later than 10:00 a.m. E.T., but the total payment required to create a Basket typically will not be determined until after 5:00 p.m. E.T., on the date the purchase order is received, Authorized Participants will not know the total amount of the payment required to create a Basket at the time they submit an irrevocable purchase order.

An Authorized Participant who places a purchase order shall transfer to the Administrator the required amount of U.S. Treasuries and/or cash by the end of the next business day following the purchase order date. Upon receipt of the deposit amount, the Administrator will direct DTC to credit the number of Baskets ordered to the Authorized Participant's DTC account on the next business day following the purchase order date.

The Sponsor acting by itself or through the Administrator or the Marketing Agent may suspend the right of purchase, or postpone the purchase settlement date, for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or for any period when trading on the NYSE Arca is suspended.

The Sponsor acting by itself or through the Administrator or the Marketing Agent may reject a purchase order if (1) it determines that the purchase order is not in proper form, (2) circumstances outside the control of the Sponsor make it, for all practical purposes, not feasible to process creations of Baskets such as during force majeure events, or (3) the Sponsor believes that it or the Fund would be in violation of any securities or commodities rules or regulations regarding position limits or otherwise by accepting a creation.

Redemption Procedures

According to the Registration Statement, the procedures by which an Authorized Participant can redeem one or more Baskets will mirror in reverse the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Marketing Agent to redeem one or more Baskets. Redemption orders must be placed no later than 10:00 a.m. E.T., on each business day. The day on which the Marketing Agent receives a valid redemption order is the redemption order date. Redemption orders are irrevocable.

[28] In such event, the Exchange would file a proposed rule change pursuant to Rule 19b–4 under the Act to permit the Fund to invest in other exchange-traded coal futures contracts.

[29] The Marketing Agent will be a broker-dealer registered with FINRA and a member of the Securities Investor Protection Corporation.

[30] Baskets may be created or redeemed only by Authorized Participants. Each Authorized Participant must (1) be a registered broker-dealer or other securities market participant, such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions, (2) be a participant in the Depository Trust Company (''DTC''), and (3) have entered into a ''Participant Agreement'' with the Fund and the Sponsor, a form of which is available from the Sponsor, Administrator or Marketing Agent. The Participant Agreement sets forth the procedures for the creation and redemption of Baskets and the delivery of cash required for such creations or redemptions.

[31] The Exchange notes that the Commission previously has approved representations relating to issues of Trust Issued Receipts whereby the cut-off time for placing orders to create or redeem shares of an issue of Trust Issued Receipts is earlier than 4:00 p.m. E.T. See, e.g., Securities Exchange Act Release Nos. 63915 (February 15, 2011), 76 FR 9843 (February 22, 2011) (SR–NYSEArca–2010–121) (order approving listing and trading on the Exchange of FactorShares Funds); 63753 (January 21, 2011), 76 FR 4963 (January 27, 2011) (SR–NYSEArca–2010–110) (order approving listing and trading of shares of Teucrium Natural Gas Fund under NYSE Arca Equities Rule 8.200); 63869 (February 8, 2011), 76 FR 8799 (February 15, 2011) (SR–NYSEArca–2010–119) (order approving listing and trading of shares of Teucrium WTI Crude Oil Fund). *See also* Securities Exchange Act Release No. 71909 (April 9, 2014), 79 FR 21337 (April 15, 2014) (SR–NYSEArca–2014–28) (notice of filing and immediate effectiveness of proposed rule change to change to 11:00 a.m. E.T. the time by which purchase and redemptions orders must be placed with respect to the Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF). The Sponsor represents that a 10:00 a.m. E.T. cut-off time for purchase and redemption orders could permit the Sponsor to more efficiently engage in transactions in Coal Futures in connection with orders to create or redeem Shares, which may help reduce the premium or discount on the Shares, and reduce the difference between the price of the Shares and the NAV of such Shares.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Fund not later than 12:00 p.m. E.T., on the next business day immediately following the redemption order date. By placing a redemption order, and prior to receipt of the redemption proceeds, an Authorized Participant's DTC account will be charged the non-refundable transaction fee due for the redemption order.

The redemption proceeds from the Fund will consist of a cash redemption amount equal to the NAV of the number of Baskets requested in the Authorized Participant's redemption order on the redemption order date.

Because orders to redeem Baskets must be placed no later than 10:00 a.m. E.T., but the total amount of redemption proceeds typically will not be determined until after 5:00 p.m. E.T., on the date the redemption order is received, Authorized Participants will not know the total amount of the redemption proceeds at the time they submit an irrevocable redemption order.

The redemption proceeds due from the Fund will be delivered to the Authorized Participant at 12:00 p.m. E.T., on the next business day immediately following the redemption order date if, by such time, the Fund's DTC account has been credited with the Baskets to be redeemed. If the Fund's DTC account has not been credited with all of the Baskets to be redeemed by such time, the redemption distribution will be delivered to the extent of whole Baskets are received.

The Sponsor, acting by itself or through the Administrator or the Marketing Agent, may suspend the right of redemption, or postpone the redemption settlement date, (1) for any period during which the NYSE Arca is closed other than customary weekend or holiday closings, or trading on the NYSE Arca is suspended or restricted, (2) for any period during which an emergency exists as a result of which the redemption distribution is not reasonably practicable, or (3) in the event any price limits imposed by the CME or the CFTC are reached and the Sponsor believes that permitting redemptions under such circumstances may adversely impact investors.

The Sponsor acting by itself or through the Marketing Agent or the Administrator may reject a redemption order if the order is not in proper form as described in the Participant Agreement or if the fulfillment of the order, in the opinion of the Sponsor's counsel, might be unlawful.

Availability of Information

According to the Registration Statement, to provide updated information relating to the Fund for use by investors and market professionals, NYSE Arca will calculate and disseminate during the NYSE Arca Core Trading Session (normally, 9:30 a.m. E.T. to 4:00 p.m. E.T.) an updated ''Indicative Fund Value'' (''IFV'').[32] The IFV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during the NYSE Arca Core Trading Session to reflect changes in the value of the Fund's Coal Futures during the trading day. The IFV disseminated during NYSE Arca trading hours should not be viewed as an actual real time update of the NAV, which will be calculated only once at the end of each trading day.

The IFV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors. The normal trading hours for Coal Futures on the CME Facilities are 6:00 p.m. E.T. Sunday through 6:00 p.m. E.T. Friday, with a 45 minute break each day from 5:15 p.m. E.T. to 6:00 p.m. E.T. In addition, the IFV will be published on the NYSE Euronext Global Index Feed and will be available through on-line information services such as Bloomberg and Reuters.

The Fund will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 [33] under the Act, the Trust will rely on the exception contained in Rule 10A–3(c)(7).[34] A minimum of 100,000 Shares for the Fund will be outstanding as of the start of trading on the Exchange.

The Web site for the Fund and/or the Exchange, which will be publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the midpoint of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) the bid-ask price of Shares determined using the highest bid and lowest offer as of the time of calculation of the NAV; (e) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (f) the prospectus; and (g) other applicable quantitative information. The Fund will also disseminate the Fund's holdings on a daily basis on the Fund's Web site. The combined value of the applicable three month strip and U.S. Treasuries, will be made available by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session.

The NAV for the Fund will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. The Exchange will also make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and the corresponding NAV for the Fund. The closing price and settlement prices of Coal Futures are also readily available from the CME. In addition, such prices are available from automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA.

The Exchange represents that quotation and last sale information for the Coal Futures will be widely disseminated through a variety of major market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange further represents that complete real-time price (and volume) data for such contracts is available by subscription from Reuters and Bloomberg. The CME also provides delayed futures price (and volume) information on current and past trading sessions and market news free of charge on its Web site for Coal Futures. The specific contract specifications for such contracts are also available at the CME Web site, as well as other financial informational sources. CME also makes available real time futures pricing information for a fee. The spot price of coal also is available on a 24-hour basis from major market data vendors. Information relating to trading, including price and volume information, in Coal Futures will be available from major market data vendors and from the exchanges on which Coal Futures trade.

The Fund will provide Web site disclosure of its portfolio holdings daily and will include the names, quantity, price and market value of the Coal Futures held by the Fund and other

[32] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IFVs taken from Consolidated Tape Association (''CTA'') or other data feeds.

[33] 17 CFR 240.10A–3.

[34] 17 CFR 240.10A–3(c)(7).

financial instruments such as Treasury Bills, if any, and the characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Fund. The Web site disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Fund through the Fund's Web site.

A more detailed description of the Fund, Coal Futures and other aspects of the applicable commodities markets, as well as investment risks, are set forth in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in TIRs to facilitate surveillance.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Coal Futures, (2) if the creation or redemption of Shares is suspended for a period that, in the judgment of the Exchange, may detrimentally impact Exchange trading of the Shares, or (3) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [35] or by the halt or suspension of trading of the Coal Futures.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of Coal Futures occurs. If the interruption to the dissemination of the IFV or the value of Coal Futures persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[36] In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[37] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and Coal Futures with other markets that are members of the Intermarket Surveillance Group (''ISG''), and FINRA may obtain trading information regarding trading in the Shares and Coal Futures from such markets. In addition, the Exchange may obtain information regarding trading in the Shares, and Coal Futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. CME is a member of the ISG. A list of ISG members is available at *www.isgportal.org*.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions, or a portion of the Core Trading Session, when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Basket size (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IFV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund will receive a prospectus. ETP Holders purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory

[35] *See* NYSE Arca Equities Rule 7.12.

[36] The Exchange notes that the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of the applicable futures contracts occurs.

[37] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

jurisdiction over the trading of coal futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Fund and that the NAV for the Shares is calculated after 5:00 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Fund is publicly available on the Fund's Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [38] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and Coal Futures with other markets that are members of the ISG, and FINRA may obtain trading information regarding trading in the Shares and Coal Futures from such markets. In addition, the Exchange may obtain information regarding trading in the Shares and Coal Futures from markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. CME is a member of the ISG.

The closing price and settlement prices of Coal Futures are readily available from the CME. In addition, such prices are available from automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund will provide Web site disclosure of its portfolio holdings daily. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the CTA. The IFV will be widely disseminated on a per Share basis every 15 seconds during the NYSE Arca Core Trading Session (normally 9:30 a.m. E.T. to 4:00 p.m. E.T.) by one or more major market data vendors. In addition, the IFV will be published on the NYSE Euronext Global Index Feed and will be available through on-line information services such as Bloomberg and Reuters. The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IFV or the value of Coal Futures occurs. If the interruption to the dissemination of the IFV or the value of Coal Futures persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The NAV per Share will be calculated daily and made available to all market participants at the same time. One or more major market data vendors will disseminate for the Fund on a daily basis information with respect to the recent NAV per Share and Shares outstanding.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of commodity futures-related exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, IFV, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of commodity futures-related exchange-traded product, and the first such product based on coal futures, which will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–102. 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

[38] 15 U.S.C. 78f(b)(5).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–102, and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22786 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73145; File No. SR–SCCP–2014–01]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing of Proposed Rule Change To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

September 19, 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 10, 2014, Stock Clearing Corporation of Philadelphia (''SCCP'') 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 SCCP. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing this proposed rule change with respect to amendments of the Amended and Restated Certificate of Incorporation (the ''Charter'') and By-Laws (the ''By-Laws'') of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX'' or the ''Company''). The proposed amendments will be implemented on a date designated by NASDAQ OMX following approval by the Commission. The text of the proposed rule change is available on SCCP's Web site at *http://nasdaqomxphlx.cchwallstreet.com/nasdaqomxphlx/sccp/,* at the principal office of SCCP, and at the Commission's Public Reference Room.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP 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. SCCP 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

NASDAQ OMX is proposing to make certain amendments to its Charter and By-Laws.

(i) Background

Article Fourth, Paragraph C of NASDAQ OMX's Charter includes a voting limitation that generally prohibits a stockholder from voting shares beneficially owned, directly or indirectly, by such stockholder in excess of 5% of the then-outstanding shares of capital stock of NASDAQ OMX entitled to vote as of the record date in respect of any matter. Pursuant to Article Fourth, Paragraph C(6) of the Charter, NASDAQ OMX's Board may grant exemptions to this limitation prior to the time a stockholder beneficially owns more than 5% of the outstanding shares of stock entitled to vote on the election of a majority of directors at such time. NASDAQ OMX's Board has never granted an exemption to the 5% voting limitation and has no current plans to do so. However, in the event the Board decides to grant such an exemption in the future, Article Fourth, Paragraph C(6) of the Charter and Section 12.5 of the By-Laws limit the Board's authority to grant the exemption. These provisions, which are intended to be substantively identical, currently contain some language differences. Following discussions with the SEC staff,[3] NASDAQ OMX proposes the amendments described below to the Charter and By-Laws to conform these provisions and remove any ambiguity that may exist because of the current language differences.

(ii) Proposed Amendments to Charter

First, unlike the Charter, the By-Laws state that for so long as NASDAQ OMX shall control, directly or indirectly, any self-regulatory subsidiary, a resolution of the Board to approve an exemption for any person under Article Fourth, Paragraph C(6) of the Charter shall not be permitted to become effective until such resolution has been filed with and approved by the SEC under Section 19 of the Act. NASDAQ OMX proposes that this requirement be added to the Charter and that ''self-regulatory subsidiary,'' which is currently not a defined term in the Charter, be defined as any subsidiary of NASDAQ OMX that is a ''self-regulatory organization'' as defined under Section 3(a)(26) of the Act.[4] At present, this defined term would include NASDAQ, BX and Phlx, which are national securities exchanges, and BSECC and SCCP, which are registered clearing agencies that are both currently dormant.

Second, both the Charter and the By-Laws state that the Board may not approve an exemption to the 5% voting limitation for: (i) a registered broker or dealer or an affiliate thereof or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The By-Laws include a further proviso stating that, for these purposes, an ''affiliate'' shall not be deemed to include an entity that either owns 10% or less of the equity of a broker or dealer, or receives 1% or less of its consolidated gross revenues from a broker or dealer. This proviso, which is not currently included in the Charter, allows NASDAQ OMX's Board to grant

[3] *See* Securities Exchange Act Release No. 71353 (January 17, 2014), 79 FR 4209 (January 24, 2014) (SR–BSECC–2013–001, SR–BX–2013–057, SR–NASDAQ–2013–148, SR–Phlx–2013–115, SR–SCCP–2013–01), at note 14.

[4] Under Section 3(a)(26) of the Act, a ''self-regulatory organization'' is ''any national securities exchange, registered securities association, or registered clearing agency . . .'' 15 U.S.C. 78c(a)(26).

exemptions to the 5% voting limitation for entities that either own 10% or less of the equity of a broker or dealer, or receive 1% or less of their consolidated gross revenues from a broker or dealer. NASDAQ OMX proposes that this proviso be added to the Charter to ensure consistency between the Charter and By-Laws.

Third, both the Charter and By-Laws require the Board to make certain determinations prior to granting an exemption to the 5% voting limitation. Regarding the first of these determinations, the Charter states that the Board must determine that granting such an exemption would not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or The NASDAQ Stock Market LLC or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public. The By-Laws include similar language, but state that the Board must make this determination with respect to NASDAQ OMX or its self-regulatory-subsidiaries. Because the term ''self-regulatory subsidiary'' includes The NASDAQ Stock Market LLC but also includes other entities, NASDAQ OMX proposes that the provisions be made fully consistent by amending the Charter to refer to NASDAQ OMX or the self-regulatory subsidiaries, and to define the term ''self-regulatory subsidiary'' as described above.

Fourth, unlike the Charter, the By-Laws further provide that prior to granting an exemption from the 5% voting limitation, the Board must also determine that granting the exemption would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), assure the safeguarding of securities and funds in the custody or control of the self-regulatory subsidiaries that are clearing agencies or securities and funds for which they are responsible, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. NASDAQ OMX proposes that this language be added to the Charter.

Finally, NASDAQ OMX proposes that Article Fourth, Paragraph C(6) of the Charter be amended to correct a cross-reference to subparagraph 6(b), which no longer exists.

(iii) Proposed Amendments to the By-Laws

NASDAQ OMX also proposes amendments to NASDAQ OMX's By-Laws to further conform the Charter and By-Law provisions discussed above. Specifically, the proposed amendment to Article I(s) revises the definition of ''self-regulatory subsidiary'' in the By-Laws to refer to any subsidiary of NASDAQ OMX that is a self-regulatory organization as defined under Section 3(a)(26) of the Act, rather than list specific subsidiaries that would fall within this category. This revised definition, which is the same definition of ''self-regulatory subsidiary'' proposed for purposes of the Charter as described above, will capture NASDAQ OMX's current self-regulatory subsidiaries as well as any subsidiaries that in the future meet the definition of ''self-regulatory organization'' under the Act. Consequently, such future self-regulatory subsidiaries will automatically be subject to the By-Law provisions relating to these subsidiaries without NASDAQ OMX having to take formal action to amend the By-Laws to include them.

The proposed By-Law amendments also include the correction of a typographical error in Article I and minor edits to Section 12.5 to conform the language regarding the 5% voting limitation to the language in the analogous provision of the Charter.

2. Statutory Basis

SCCP believes that its proposal is consistent with Section 17A(b)(3)(C) of the Act,[5] in that it assures a fair representation of shareholders and participants in the selection of directors and administration of its affairs. While the proposals relate to the organizational documents of NASDAQ OMX, rather than SCCP, SCCP is indirectly owned by NASDAQ OMX, and therefore, NASDAQ OMX's stockholders have an indirect stake in SCCP. In addition, the participants in SCCP, to the extent any exist, could purchase stock in NASDAQ OMX in the open market, just like any other stockholder. The proposals ensure that NASDAQ OMX stockholders have clarity about the existing voting limitation in NASDAQ OMX's Charter and By-Laws. As a result, SCCP believes that the proposals assure a fair representation of NASDAQ OMX's stockholders in the selection of directors and administration of NASDAQ OMX's affairs, as well as the affairs of SCCP.

[5] 15 U.S.C. 78q–1(b)(3)(C).

Specifically, NASDAQ OMX is proposing changes to its Charter and By-Laws to conform the provisions in each document relating to the procedures by which NASDAQ OMX's Board may grant an exemption to the prohibition on any NASDAQ OMX stockholder voting shares in excess of 5% of the Company's then-outstanding shares of capital stock. SCCP believes that the changes will eliminate confusion that may exist because of the current language differences between the two provisions. In addition, NASDAQ OMX is proposing to define ''self-regulatory subsidiary'' with reference to a definition in the Act. This will ensure that any NASDAQ OMX subsidiary that meets the definition of ''self-regulatory organization'' in the Act will be subject to the Charter and By-Law provisions relating to self-regulatory subsidiaries. Finally, the remaining changes are clarifying in nature, and they protect stockholders by making NASDAQ OMX's governance documents clearer and easier to understand.

(B) Clearing Agency's Statement on Burden on Competition

Because the proposed rule change relates to the governance of NASDAQ OMX and not to the operations of SCCP, SCCP 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.

(C) Clearing Agency'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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SCCP consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–SCCP–2014–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–SCCP–2014–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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 SCCP. 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–SCCP–2014–01 and should be submitted on or before October 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–22783 Filed 9–24–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day Notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before October 27, 2014.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: SBA Form 641 and 888 are used to collect information from the Agency's resource partners, including: Small Business Development Centers, SCORE, and Women's Business Centers that provide training and counseling to existing or potential small business owners through SBA funded grants, or cooperative agreements. SBA uses the information to facilitate its management and oversight of these SBA funded grants, assist in evaluating their impact on the small business community, and facilitate performance reporting to Congress and the President. The information is uploaded to SBA through the Entrepreneurial Development Management Information System (EDMIS).

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

(1) *Title:* Entrepreneurial Development Management Information System (EDMIS) Customer Intake Form & Management Training Report Form.

Description of Respondents: SBA resource partners, including Small Business Development Centers (SBDCs), Women's Business Centers (WBCs), and SCORE, Form Numbers: Form 641 (Counseling Information Form) and Form 888 (Management Training Report).

Form Numbers: SBA Form 641, 888.

Estimated Annual Respondents: 1,265,000.

Estimated Annual Responses: 1,265,000.

Estimated Annual Hour Burden: 379,500.

Curtis B. Rich,

Management Analyst .

[FR Doc. 2014–22826 Filed 9–24–14; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act (PRA) of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA), Social Security Administration, OLCA, Attn: Reports

Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 24, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Letter to Employer Requesting Information About Wages Earned By Beneficiary—20 CFR 416.703, 404.801 & 404.820—0960–0034. Social Security disability recipients receive payments based on their inability to engage in substantial gainful activity (SGA) because of a physical or mental condition. If the recipients work, SSA must evaluate and determine if they continue to meet the disability requirements of the law. Therefore, we use Form SSA–L725 to request monthly earnings information from the recipient's employer. We then use the earnings data to determine whether the recipient is engaging in SGA, since work after a recipient becomes entitled to benefits can cause a cessation of disability. The respondents are businesses that employ Social Security disability recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L725	150,000	1	40	100,000

2. Letter to Employer Requesting Wage Information—0960–0138. SSA must establish and verify wage information for Supplemental Security Income (SSI) applicants and recipients when determining SSI eligibility and payment amounts. SSA uses Form SSA–L4201 to collect wage data from employers. SSA uses the information to determine eligibility and proper payment amounts for SSI applicants and recipients. The respondents are employers of SSI applicants and recipients.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L4201	133,000	1	30	66,500

3. Statement of Living Arrangements, In-Kind Support, and Maintenance—20 CFR 416.1130–416.1148—0960–0174. SSA determines SSI payment amounts based on applicants' and recipients' needs. We measure individuals' needs, in part, by the amount of income they receive, including in-kind support and maintenance in the form of food and shelter provided by other persons. SSA uses Form SSA–8006–F4 to determine if in-kind support and maintenance exists for SSI applicants and recipients. This information also assists SSA in determining the income value of in-kind support and maintenance SSI applicants and recipients receive. The respondents are individuals who apply for SSI payments, or who complete an SSI eligibility redetermination.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–8006–F4	173,380	1	7	20,228

4. Claimant's Recent Medical Treatment—20 CFR 404.1512 and 416.912—0960–0292. When Disability Determinations Services (DDS) deny a claim at the reconsideration level, the claimant has a right to request a hearing before an administrative law judge (ALJ). For the hearing, SSA asks the claimant to complete and return the HA–4631 if the claimant's file does not reflect a current, complete medical history as the claimant proceeds through the appeals process. ALJs must obtain the information to update and complete the record and to verify the accuracy of the information. Through this process, ALJs can ascertain whether the claimant's situation changed. The ALJs and hearing office staff use the response to make arrangements for consultative examination(s) and the attendance of an expert witness(es), if appropriate. During the hearing, the ALJ offers any completed questionnaires as exhibits and may use them to (1) refresh the claimant's memory; and (2) shape their questions. The respondents are claimant's requesting hearings on entitlement to Old Age, Survivors, and Disability Insurance (OASDI) benefits or SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
HA–4631	200,000	1	10	33,333

5. Supplemental Security Income (SSI) Claim Information Notice—20 CFR 416.210—0960–0324. Section 1611(e)(2) of the Social Security Act requires individuals to file for and obtain all payments (annuities, pensions, disability benefits, veteran's compensation, etc.) for which they are eligible before qualifying for SSI payments. Individuals do not qualify for SSI if they do not first apply for all other benefits. SSA uses the information on Form SSA–L8050–U3 to verify and establish a claimant or recipient's eligibility under the SSI program. Respondents are SSI applicants or recipients who may be eligible for other payments from public or private programs.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L–8050–U3	17,044	1	10	2,841

6. You Can Make Your Payment by Credit Card—0960–0462. Using information from Form SSA–4588 and its electronic application, Form SSA–4589, SSA updates individuals' Social Security records to reflect payments made on their overpayments. In addition, SSA uses this information to process payments through the appropriate credit card company. SSA provides the SSA–4588 when we inform an individual that we detected an overpayment. Individuals may choose to make a one-time payment or recurring monthly payments by completing and submitting the SSA–4588. SSA uses the SSA–4589 electronic intranet application only when individuals choose to telephone the Program Service Centers to make a one-time payment in lieu of completing Form SSA–4588. An SSA debtor contact representative completes the SSA–4589 electronic intranet application. Respondents are OASDI beneficiaries and SSI recipients who have outstanding overpayments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–4588 paper form	13,200	1	10	2,200
SSA–4589 electronic intranet application	221,316	1	5	18,443
Totals	234,516			20,643

7. Application for Extra Help with Medicare Prescription Drug Plan Costs—20 CFR 418.3101—0960–0696. The Medicare Modernization Act of 2003 mandated the creation of the Medicare Part D prescription drug coverage program and the provision of subsidies for eligible Medicare beneficiaries. SSA uses Form SSA–1020 or the Internet i1020, the Application for Extra Help with Medicare Prescription Drug Plan Costs, to obtain income and resource information from Medicare beneficiaries and to make a subsidy decision. The respondents are Medicare beneficiaries applying for the Part D low-income subsidy.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–1020 (paper application form)	617,070	1	30	308,535
i1020 (online application)	282,228	1	25	117,595
Field Office Interview	155,687	1	30	77,844
Totals	1,054,985			503,974

8. Certification of Low Birth Weight for SSI Eligibility of Funds You Provided to Another and Statement of Funds You Received—20 CFR 416.931, 416.926a(m), and 416.924—0960–0720. Hospitals and claimants use Form SSA–3380 to provide medical information to local field offices (FO) and DDSs on behalf of infants with low birth weight. FOs use the form as a protective filing statement and the medical information to make presumptive disability findings, which allow expedited payment to eligible claimants. DDSs use the medical information to determine disability and continuing disability. The respondents are hospitals and claimants who have information identifying low birth weight babies and their medical conditions.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–3380	28,125	1	15	7,031

Dated: September 22, 2014.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2014–22809 Filed 9–24–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8884]

Culturally Significant Objects Imported for Exhibition Determinations: ''Picasso/Dali, Dali/Picasso''

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 ''Picasso/Dali, Dali/Picasso,'' 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 Salvador Dali Museum, St. Petersburg, Florida, from on or about November 8, 2014, until on or about February 16, 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 19, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–22845 Filed 9–24–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending September 6, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0152.

Date Filed: September 2, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 23, 2014.

Description: Application of Caribbean Sun Airlines, Inc. d/b/a World Atlantic Airlines (''World Atlantic'') requesting a certificate of public convenience and necessity authorizing World Atlantic to engage in interstate charter air transportation of persons, property, and mail.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–22146 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 9, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0134.

Date Filed: August 5, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 2014.

Description: Application of Aeroenlaces Nacionales, S.A. de C.V.(d/b/a vivaAerobus) requesting an exemption authorizing it to engage in scheduled foreign airtransport of persons, property and mail between Houston, Texas and Cancun, Mexico. In addition, vivaAerobus requests that the Department amend the carrier's foreign air carrier permit to integrate the

exemption authority requested and vivaAerobus's existing exemption authority to eliminate the need to apply for repeated renewals of the exemption authority.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–22144 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 2, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0076 and DOT–OST–2014–0133.

Date Filed: July 31, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 2014.

Description: Application of Frontier Airlines, Inc. (''Frontier'') requesting a consolidated certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property and mail between: (1) Chicago, Illinois; Lansing, Michigan; Milwaukee, Wisconsin; and Rockford, Illinois; on the one hand, and Puerto Vallarta, Mexico; (2) Cincinnati, Ohio; Cleveland, Ohio; Lansing, Michigan; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Rockford, Illinois; and Washington, DC, on the one hand, and Cancun, Mexico; (3) Chicago, Illinois and St. Louis, Missouri, on the one hand, and San Jose del Cabo, Mexico; and (4) Chicago, Illinois and St. Louis, Missouri, on the one hand, and Huatulco, Mexico. Frontier also requests a designation to operate in the Milwaukee-Puerto Vallarta market.

Docket Number: DOT–OST–2014–0131.

Date Filed: July 31, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 21, 2014.

Description: Application of Frontier Airlines, Inc. requesting a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property, and mail between a point or points in the United States and a point or points in the Dominican Republic.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–22145 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 23, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 302.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2014–0139.

Date Filed: August 18, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 8, 2014.

Description: Application of London Executive Aviation Limited (''LEA'') requesting a foreign air carrier permit and an exemption authorizing LEA to engage in: (i) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign charter air transportation of cargo between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements; and (v) charter transportation authorized by any additional route rights made available to European Union carriers in the future.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–22143 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0124; Notice 1]

Custom Glass Solutions Upper Sandusky Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: Custom Glass Solutions Upper Sandusky Corporation (Custom Glass), a subsidiary of Guardian Industries Corporation, has determined that certain laminated glass panes, other than windscreens, do not fully comply with paragraph S6 of Federal Motor Vehicle Safety Standard (FMVSS) No. FMVSS 205, *Glazing Materials.* Custom Glass has filed an appropriate report dated September 17, 2013, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is October 27, 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. Custom Glass's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Custom Glass 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 Custom Glass'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. Glazing Involved: Approximately 160 laminated glass panes, other than windscreens, intended for the cabs of approximately twenty mining vehicles being manufactured by Atlas Copco in Australia. The panes consist of two 4.0 mm tempered panes manufactured by Auto Temp, Inc. (ATI) that were bonded together with a 0.76 mm PVB layer by Custom Glass and then shipped to Angus Palm, Watertown, South Dakota between August 1, 2013 and September 4, 2013.

III. Noncompliance: Custom Glass explains that the noncompliance is that the labeling on the subject laminated glass panes does not fully meet the requirements of paragraph S6 of FMVSS No. 205. The panes were labeled with the incorrect DOT number, manufacturer's trademark, manufacturer's model number (i.e., ''M number'') and were incorrectly marked as Tempered.

IV. Rule Text: Refer to the entire text of Paragraph S6 of FMVSS No. 205 for requirements and contextual restrictions.

V. Summary of Custom Glass's Analyses: Custom Glass stated its belief that the subject noncompliance is inconsequential to motor vehicle safety based on the following reasoning:

The parts are labeled with the DOT number, ''M number'' and trademark belonging to the tempered glazing supplier, ATI. The correct DOT number, which should have been affixed to the parts at issue, is DOT 22. The correct ''M number'' is M85L2 (which corresponds to a laminated glass construction with an 8.5 mm nominal thickness, from which Guardian fabricates automotive parts for use anywhere in a motor vehicle except windshields). The panes are marked with the correct AS Item number.

Although the subject laminated glass panes are affixed with the incorrect DOT number, ''M number'' and manufacturer's trademark, the glass construction from which the laminated glass parts were fabricated is in full compliance with the technical requirements of FMVSS No. 205 that currently apply to laminated glass for use anywhere in a motor vehicle except windshields.

Custom Glass also asserts that the subject noncompliance could not result in the wrong part being used in an OEM or ARG application given that the part would be ordered by its unique part number and not the ''M number'' (which corresponds to the glass construction from which the part is fabricated). The parts are also easily traceable back to Custom Glass since they are the only glazing supplier for this particular vehicle.

Custom Glass has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles delivered with laminated glass will comply with FMVSS No. 205.

In summation, Custom Glass believes that the described noncompliance of the subject laminated glass parts is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

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 laminated glass parts that Custom Glass no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motor laminated glass parts under their control after Custom Glass 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. 2014–22814 Filed 9–24–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 22, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before October 27, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including

suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0019.
Type of Review: Revision of a currently approved collection.
Title: Application for Amended Basic Permit under the Federal Alcohol Administration Act.
Form: TTB F 5100.18.
Abstract: TTB F 5100.18 is completed by permittees who change their operations in a manner that requires a new permit or receive a new notice. The information allows TTB to identify the permittee, the changes to the permit or business, and to determine whether the applicant still qualifies for a basic permit.
Affected Public: Private sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 1,255.

OMB Number: 1513–0054.
Type of Review: Extension without change of a currently approved collection.
Title: Offer in Compromise of liability incurred under the provisions of Title 26 U.S.C. enforced and administered by TTB; Collection Information Statement (CIS) for Individuals; CIS for Businesses.
Form: TTB F 5640.1, 5600.17, and 5600.18.
Abstract: TTB F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the IRC. If accepted, the offer in compromise is a settlement between the government and the party in violation in lieu of legal proceedings or prosecution. If the party is unable to pay the offer in full, TTB F 5600.17 and 5600.18 are used to gather financial information to develop an installment agreement to allow the party to pay without incurring a financial hardship.
Affected Public: Private sector: Businesses or other for-profits; individuals or households.
Estimated Annual Burden Hours: 140.

OMB Number: 1513–0073.
Type of Review: Extension without change of a currently approved collection.
Title: Manufacturers of Nonbeverage Products—Records to Support Claims for Drawback, TTB REC 5530/2.
Abstract: Records required to be maintained by manufacturers of nonbeverage products are used to prevent diversion of drawback spirits to beverage use. The records are necessary to maintain accountability over these spirits. The records make it possible to trace spirits using audit techniques, thus enabling TTB officers to verify the amount of spirits used in nonbeverage products and subsequently claimed as eligible for drawback of tax. The record retention requirement for this information collection is 3 years.
Affected Public: Private sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 10,521.

OMB Number: 1513–0075.
Type of Review: Extension without change of a currently approved collection.
Title: Proprietors or Claimants Exporting Liquors, TTB REC 5900/1.
Abstract: Distilled spirits, wine, and beer may be exported from bonded premises without payment of excise taxes, or, they may be exported if their taxes have been paid and the exporters may claim drawback of the taxes paid. The recordkeeping requirement makes it possible to trace movement of distilled spirits, wine, and beer, thus enabling TTB officers to verify the amount of these liquors eligible for exportation without payment of tax or exportation subject to drawback.
Affected Public: Private sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 7,200.

OMB Number: 1513–0099.
Type of Review: Extension without change of a currently approved collection.
Title: Administrative Remedies—Closing Agreements.
Abstract: This is a written agreement between TTB and regulated taxpayers used to finalize and resolve certain tax-related issues. Once an agreement is approved, it will not be reopened unless fraud or misrepresentation of material facts is proven.
Affected Public: Private sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 1.

OMB Number: 1513–NEW.
Type of Review: New collection.
Title: Continuing Export Bond for Distilled Spirits and Wine.
Form: 5100.25.
Abstract: A specific bond on TTB F 5100.25 must be filed by the exporter, as provided in § 28.61, if a specific lot of distilled spirits or wine is to be withdrawn without payment of tax, as authorized in § 28.91(a)(1), (2), (3), (5), or § 28.121(a), (b), (c), or (d), by a person other than the proprietor of the bonded premises.
Affected Public: Private sector: Businesses or other for-profits.
Estimated Annual Burden Hours: 2.

Dawn D. Wolfgang,
Treasury PRA Clearance Officer.

[FR Doc. 2014–22810 Filed 9–24–14; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0004]

Proposed Information Collection (Application for Dependency and Indemnity Compensation; Death Pension and Accrued Benefits by a Surviving Spouse or Child; Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child-In-Service Death Application for DIC, Death Pension, and or, Accrued Benefits) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to determine entitlement to dependency and indemnity compensation (DIC), death pension and accrued benefits, and dependency and indemnity compensation by a surviving spouse or child-in-service death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 24, 2014.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0004'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Dependency and Indemnity Compensation, Death Pension and Accrued Benefits by a Surviving Spouse or Child (Including Death Compensation if Applicable), VA Form 21P–534.

b. Application for Dependency and Indemnity Compensation by a Surviving Spouse or Child—In-service Death Only, VA Form 21P–543a.

c. Application for DIC, Death Pension, and or, Accrued Benefits, VA Form 21P–534EZ.

OMB Control Number: 2900–0004.

Type of Review: Revision of a currently approved collection.

Abstract:

a. VA Form 21–534 is used to determine surviving spouse and/or children of veterans entitlement to dependency and indemnity compensation (DIC), death benefits, (including death compensation is applicable), and any accrued benefits not paid to the veteran prior to death.

b. Military Casualty Assistance Officers complete VA Form 21–534a to assist surviving spouse and/or children of veterans who died on active duty in processing claims for dependency and indemnity compensation benefits. Accrued benefits and death compensation are not payable in claims for DIC.

c. The VA Form 21P–534EZ is used for the Fully Developed Claims (FDC) program for pension claims.

Affected Public: Individuals or households.

Estimated Annual Burden:

Estimated Average Burden per Respondent: 62,571.

Frequency of Response: One time.

Estimated Number of Respondents: 98,796.

a. VA Form 21P–534—58,918 hours.

b. VA Form 21P–534a—1,426 hours.

c. VA Form 21P–534EZ—38,452 hours.

Dated: September 19, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–22731 Filed 9–24–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Thursday,

No. 186 September 25, 2014

Part II

Department of Veteran Affairs

38 CFR Parts 3, 19, and 20

Standard Claims and Appeals Forms; Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3, 19, and 20

RIN 2900–AO81

Standard Claims and Appeals Forms

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its adjudication regulations and the appeals regulations and rules of practice of the Board of Veterans' Appeals (Board) to require that all claims governed by VA's adjudication regulations be filed on standard forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises. This rulemaking also eliminates the constructive receipt of VA reports of hospitalization or examination and other medical records as informal claims for increase or to reopen while retaining the retroactive effective date assignment for awards for claims for increase which are filed on a standard form within 1 year of such hospitalization, examination, or treatment. This final rule also implements the concept of an intent to file a claim for benefits, which operates similarly to the current informal claim process, but requires that the submission establishing a claimant's effective date of benefits must be received in one of three specified formats. Finally, these amendments will provide that VA will accept an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction(AOJ) as a Notice of Disagreement (NOD) only if it is submitted on a standardized form provided by VA for the purpose of appealing the decision, in cases where such a form is provided. Although a standardized NOD form will only initially be provided in connection with decisions on compensation claims, VA may require a standard NOD form for any type of claim for VA benefits if, in the future, it develops and provides a standardized NOD form for a particular benefit. The purpose of these amendments is to improve the quality and timeliness of the processing of veterans' claims for benefits by standardizing the claims and appeals processes through the use of forms.

DATES: *Effective Date:* This final rule is effective March 24, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Final Rule

The Department of Veterans Affairs (VA) amends its adjudication regulations and its appeals regulations and rules of practice of the Board of Veterans' Appeals (Board) for the purpose of improving the quality and timeliness of the processing of veterans' claims for benefits and appeals. Under 38 U.S.C. 501(a), VA is authorized to make these regulatory changes as it is granted broad authority to ''prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by [VA] and are consistent with those laws,'' including specifically authority to prescribe ''the forms of application by claimants under such laws.'' Congress has characterized a request for Board review as an ''[a]pplication for review on appeal.'' 38 U.S.C. 7106, 7107, 7108. Additionally, 38 U.S.C. 5101 explicitly provides that claimants must file ''a specific claim in the form prescribed by the Secretary'' in order for VA to pay benefits.

II. Summary of Major Provisions

The major provisions of this final rule include the following: VA will standardize the claims and appeals processes through the use of specific mandatory forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises. These amendments will apply to all benefits within the scope of 38 CFR part 3, namely pension, compensation, dependency and indemnity compensation, and monetary burial benefits. These changes to VA's adjudication regulations not only will drive modernization of the claims and appeals processes, but will also provide veterans, claimants, and authorized representatives with a clearer and easier way to initiate and file claims.

These final regulations also eliminate the provisions of 38 CFR 3.157 which allowed various documents other than claims forms to constitute claims, specifically, VA reports of hospitalization or examination and other medical records which could be regarded as informal claims for increase or to reopen a previously denied claim. Nonetheless, this rule retains the current retroactive effective date assigned for awards for claims for increased evaluation as long as they are filed on a standard form within 1 year of such hospitalization, examination, or treatment.

This final rule further implements a procedure to replace the non-standard informal claim process in 38 CFR 3.155 by employing a standard form on which a claimant or his or her representative can file an ''intent to file'' a claim for benefits.

Finally, this final rule provides that VA will accept an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction (AOJ) as a Notice of Disagreement (NOD) only if it is submitted on a standardized form provided by VA for the purpose of appealing the decision. This requirement only applies in cases where VA provides such a form with the Notice of Appeal Rights sent with the notice of a decision on a claim. In these cases, this rule replaces the current provision in 38 CFR 20.201 which permitted an appellant to begin the appeal process by filing in any format a statement that can be ''reasonably construed'' as seeking appellate review. This procedure made the identification of an appeal a time-intensive and inefficient interpretive exercise, complicated by the fact that an NOD could be embedded within correspondence addressing a variety of other matters, often contributing to delay in VA recognizing that an appellant sought to initiate an appeal.

VA also adds two new sections to part 19 in this final rule. For NODs filed on a form provided by the AOJ, new 38 CFR 19.24 will govern. This provision sets forth the procedures governing the treatment of incomplete forms, the criteria of a complete form, the timeframe to cure an incomplete form, the failure to respond to request to cure, action when a complete form is filed, and clarification of issues which are not enumerated on the form for appellate review. For NODs filed where no form is provided by the AOJ, new 38 CFR 19.23 which clarifies whether the requirements of current 38 CFR 19.26, 19.27, and 19.28, or newly adopted § 19.24 would apply to a particular case, will govern. Although a standardized NOD form will only initially be provided in connection with decisions on compensation claims, VA may require a standard NOD form for any type of claim for VA benefits if, in the future, it develops and provides a standardized NOD form for a particular benefit.

III. Costs and Benefits

This rulemaking will not affect veterans' eligibility for benefits, but rather prescribe that they must use a

standard application form to formally apply for benefits. It also specifies that medical records themselves no longer constitute claims in the absence of a claim submitted formally. However, the retroactive effective date treatment for hospitalization, treatment, or examination under current regulation will apply if a claimant files an intent to file a claim or a complete claim within one year of such medical care. Likewise, this rulemaking amends VA's appeals regulations and rules of practice of the Board of Veterans' Appeals (Board) to provide that VA will only accept an expression of dissatisfaction or disagreement with an adjudicative determination by the AOJ as a Notice of Disagreement (NOD) if it is submitted on a standardized form provided by VA for the purpose of appealing the decision, in cases where such a form is provided. This rulemaking seeks to change the format in which claimants initiate a claim, file a claim, and initiate an appeal through the use of VA-prescribed forms but does not alter claimants' entitlement to benefits or the amounts of awards granted.

While there are no substantial monetary burdens on the claimant, the cost to claimants in submitting complete claims or initiating an appeal on a prescribed form or submitting expressions of intent to file in a specified format can be calculated in terms of a claimant's time to fill out VA forms. Claimants and/or authorized representatives may need to learn and acclimate themselves to the new intent to file a claim process, which functions similarly to the current informal claim process. However, those claimants who are familiar with VA's claims process may recognize the operation of the intent to file process as functioning similar to the current informal claim process. The difference is that the intent to file a claim form serves as the effective date placeholder like the informal claim itself but must be submitted in specified standard formats and will only trigger VA's duty to furnish the claimant the appropriate form.

While VA recognizes this time cost to claimants in completing a prescribed claim or appeal form, it concludes that this up-front time burden to claimants is equivalent to (or even lesser than the unquantifiable time it takes for approximately half of claimants to compose non-standard submissions and the time VA spends identifying and clarifying the communication received in non-standard submissions, all of which add to delays in processing and adjudicating claims and appeals and the overall timeliness of delivering benefits to claimants. Therefore, we have determined that the time required by claimants to fill out forms is less than or equal to the current time burdens on claimants submitting non-standard submissions along with the time it takes for VA to identify, clarify, and develop these non-submissions. This also applies to claimants opting to submit an intent to file a claim and a complete claim.

By requiring data to be formatted in a standard way through the use of forms, VA will be able to cut processing time in identifying and developing claims, which will result in faster delivery of benefits to all veterans. While approximately half of the claimant population files non-standard submissions, the other half continues to file claims on a prescribed form. For the claimant population filing on prescribed forms, there is no additional burden as a result of this rulemaking.

As previously stated, this rulemaking does not affect the amount of monies paid to a claimant or entitlement to benefits except in the case where a claimant who is not familiar with the intent to file a claim process submits an informal claim which VA will deem as a request for an application for benefits, resulting in the claimant submitting an intent to file a claim form or complete claim at a later date. VA intends to mitigate this situation by delaying the effective date of this rule by 180 days from publication in order to perform robust outreach to inform and educate claimants and authorized representatives of this new standardized procedure of the claims and appeals processes.

This rulemaking will allow VA to decrease the processing time in identifying, clarifying, and processing non-standard submissions as claims or appeals since VA will be able to easily target and identify these claims or initiations of appeals based on the submitted form. This means increased quality in processing claims as VA would be able to more accurately identify claims and to correctly assign effective dates of awards for claims submitted on prescribed forms. Thus, standardizing the claims and appeals processes through the use of forms translates to faster delivery of benefits to claimants. In addition, standardizing submissions on prescribed forms is an essential component to VA's current and developing electronic business programs which are designed to facilitate the efficient and accurate processing and adjudication of claims and appeals. In order to utilize the efficiency of such programs, data inputs require a standard format which would be achieved through the use of prescribed forms.

In sum, we are only making procedural changes to the claims process by mandating the submission of standard forms to initiate a claim or to file a claim and to the appellate process by mandating the submission of standard forms where such a form is provided. We have determined that the costs associated with this rulemaking are mostly in terms of the burden of time required by claimants and/or their authorized representatives but such time burdens are equivalent to the current time burdens in our current claims and appeals processing. Moreover, the use of standardized forms will result in realtime savings to VA in identifying, clarifying, and processing claims and appeals. Thus, there is an overall benefit to the public as a result of this rulemaking. On October 31, 2013, VA published in the **Federal Register** (78 FR 65490) a proposed rule to amend its adjudication regulations and the appeals regulations and rules of practice of the Board of Veterans' Appeals (Board). There were several major components of these proposed changes. The first was to require that all claims be filed on standard forms prescribed by the Secretary, regardless of the type of claim or posture in which the claim arises. The second component proposed was to eliminate the constructive receipt of VA reports of hospitalization or examination and other medical records as informal claims for increase or to reopen (see current 38 CFR 3.157) while retaining the beneficial retroactive effective date that may be assigned for grants for increase filed on a standard form within 1 year of such hospitalization, examination, or treatment. The third component proposed that VA would accept an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction (AOJ) as a Notice of Disagreement (NOD) only if it is submitted on a standard form provided by VA for the purpose of appealing the decision. VA proposed that this requirement would apply only in cases where VA provides the standard form with the Notice of Appeal Rights sent to the claimant with the notice of a decision on a claim.

VA provided a 60-day public comment period, which ended on December 30, 2013, and received 53 public comments, 4 of which were received after the comment period expired. Although VA is not legally required to consider late-filed comments, it has reviewed, considered, and addressed all comments received in

the interest of maximizing public dialogue to further serve veterans, claimants, and authorized representatives. VA received comments from various organizations and individuals, including The Center for Elder Veterans Rights; the County Veteran Service Officer Association of Wisconsin; Veteran Warriors; New York State Division of Veterans' Affairs; Wounded Warrior Project; Disabled American Veterans; National Veterans Legal Services Program and the Military Order of the Purple Heart (jointly submitted); American Legion; Veterans for Common Sense; Veterans Justice Group, LLC; Veterans of Foreign Wars of the United States; Military Officers Association of America; Vietnam Veterans of America; VetsFirst; National Organization of Veterans Advocates; Paralyzed Veterans of America; State of Illinois Department of Veterans' Affairs; the law firms of Bergmann and Moore; and Chisholm Chisholm and Kilpatrick; and other interested persons. We responded to all commenters as follows.

All of the issues raised by the commenters that concerned at least one portion of the rule can be grouped together by similar topic, and we have organized our discussion of the comments accordingly. For the reasons set forth in the proposed rule and below, we are adopting the proposed rule as final, with changes, explained below, to proposed 38 CFR 3.1, 3.154, 3.155, 3.160, 3.400, 3.812, 19.24, and 20.201. To ensure consistency with these changes, we have also implemented changes to 38 CFR 3.108, 3.109, 3.403, 3.660, 3.665, 3.666, and 3.701.

I. Changes to Initial Claims Process Based on Public Comments

A. Definition of ''Claim''

In proposed § 3.1(p), VA defined ''Claim'' to mean ''a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs.'' VA proposed to replace the current term, ''Claim—Application'' which is defined as ''a formal or informal communication in writing requesting a determination of entitlement or evidencing a belief in entitlement, to a benefit'' in current paragraph (p). This definition was confusing and did not make clear the difference between a ''claim'' and an ''application.'' Therefore, VA proposed to clarify the current definition by eliminating the words ''Application,'' ''formal,'' and ''informal'' in the proposed definition in order to conform with the amendments to the adjudication regulations.

One commenter stated that the proposed definition of a ''claim'' was inconsistent with proposed § 3.155, which provides that a standard form which VA determines does not contain all requested information would not be considered a claim if that document is not submitted via electronic means. We agree with this comment. In order to clarify the regulatory definition as proposed, VA has revised this definition to add that the written communication must be ''submitted on an application form prescribed by the Secretary.'' This change requires that the communication be on a VA form in order to be considered a claim and maintains the essence of the ''formal communication'' in the current definition of a ''claim'' in § 3.1(p). Therefore, any written communication requesting a determination of entitlement to a specific benefit received on or after the effective date of this rulemaking will be defined as one that has been submitted on a VA-prescribed form.

B. Claims for Benefits Under 38 U.S.C. 1151

Currently, VA does not require that claims for entitlement to compensation under 38 U.S.C. 1151, which provides disability compensation and death benefits for a qualifying disability or death of a veteran from VA treatment, examination, or vocational rehabilitation, be submitted or filed on a standard form or application. 38 U.S.C. 1151; 38 CFR 3.150(c), 3.154, 3.361. Because VA is adopting as a final rule the amendment to its adjudication regulations to require that all claims be filed on standard forms prescribed by the Secretary, VA is revising current § 3.150 by removing paragraph (c), which provides that when disability or death is due to VA hospital treatment, training, medical or surgical treatment, or examination, a specific application for benefits will not be initiated.

VA also revises § 3.154, which currently provides that ''VA may accept as a claim for benefits under 38 U.S.C. 1151 . . . any communication in writing indicating an intent to file a claim for disability compensation or dependency and indemnity compensation,'' to require claimants to file or submit a complete paper or electronic claim in order to apply for benefits under 38 U.S.C. 1151 and § 3.361, the regulation governing the criteria of entitlement to 38 U.S.C. 1151 benefits. 38 U.S.C. 1151; 38 CFR 3.150 and 3.154.

Commenters stated that requiring claimants to file a complete claim for this benefit is an unreasonable burden to place on veterans who allegedly became disabled by VA. One commenter stated that requiring an application for this benefit would delay an effective date of any award to the detriment of the claimant.

VA makes no change based on this comment. VA's intent is to modernize the claims processing system by standardizing the format in which all disability claims are received. In order for AOJ personnel to readily identify claims and process them efficiently, it is imperative that all claims appear in easily identifiable formats using a standardized form. Similar to VA's current informal claims, VA does not require that claims for benefits under 38 U.S.C. 1151 be filed on any particular form. *See* 38 CFR 3.154. Since these claims are received in a non-standard format, VA has to determine whether any statements can be construed as a claim for benefits under 38 U.S.C. 1151. Reviewing and clarifying these non-standard submissions is extremely time consuming and can also result in claims being overlooked. VA believes that using a standard form is a minimal burden to place on claimants, even those who may be due compensation as a result of VA's own errors in providing medical treatment. Additionally, as discussed at length in section I.E. below, the requirements of a complete claim are minimal and simple. Accordingly, VA will require that even claims based on disability or death due to VA hospital care, medical or surgical treatment, examination, training and rehabilitation services or compensated work therapy program be initiated by completing and filing a standard form. Moreover, the effective date of any award granted for this benefit is governed by current § 3.400(i) which provides that an effective date for an award granted would be ''date injury or aggravation was suffered if claim is received within 1 year after that date; otherwise, date of receipt of claim.'' Therefore, this final rule will not have any detrimental effect on the effective date of any payment that may be awarded for this type of claim.

However, VA makes minor revisions to § 3.154 as proposed, in order to ensure consistency with the intent to file process, discussed more fully in section I. C. Specifically, we have removed any reference to ''paper or electronic'' forms and instead made clear that claimants must file a complete claim on the appropriate ''application form prescribed by the Secretary'' to apply for section 1151 benefits. We have

also added a reference to § 3.155(b), which establishes the ''intent to file'' process in order to make clear that the liberalizing features of this process are available for section 1151 benefits. This process essentially provides that a claim will be deemed received on the date a claimant submitted an intent to file a claim, provided the application form is received within 1 year from the date the intent to file is submitted. Therefore, claimants will have up to 1 year from the date injury or aggravation was suffered due to hospitalization, treatment, or examination, pursuant to operation of § 3.400(i), to submit their intent to file, and up to 1 additional year to perfect the intent to file with an application form prescribed by the Secretary by operation of § 3.155(b).

C. Standardizing the Informal Claim Process With Intent To File a Claim Form

VA's procedures for informal claims, currently governed by § 3.155, provide that an informal claim is any communication or action, i.e., in a non-standard format, indicating a claimant's intent to apply for benefits from a claimant, an authorized representative, a Member of Congress, or a person acting as next friend of a claimant who is not of full capacity or age, which identifies the benefit sought. If an application has not been previously filed, VA would forward one to the claimant and if filed within 1 year of submission of the informal claim, the application would be considered filed as of the date of receipt of the informal claim. 38 CFR 3.155(a). Generally, when a compensation claim is granted, VA pays a monthly benefit according to the severity of the veteran's disability beginning from the claim's effective date, which is usually the date the claim was filed. 38 U.S.C. 5110. Therefore, § 3.155 allowed claimants to secure a potential earlier effective date for an award by submitting an informal claim that was subsequently ratified by a formal application or for which an application was already of record.

Although current § 3.155 provided claimants with a favorable effective date in the filing of informal claims, it allowed informal claims to be submitted in a non-standard format that not only could be difficult to distinguish from other routine correspondence but could also be incomplete for adjudication. In particular, as we explained in the proposed rule, § 3.155(c) allowed informal requests for increase or reopening to constitute claims without any need for formal ratification or filing on a standard form of any kind. *See* 78 FR at 65491–92. While the informal claims process was meant to make the process of initiating a claim as informal as possible, it also unintentionally incentivized the submission of claims in non-standard formats that frustrate timely, accurate, and orderly claims processing.

Therefore, VA proposed to eliminate the concept of an ''informal'' claim in § 3.155 by replacing ''informal claim'' with ''incomplete'' and ''complete'' claims, and by differentiating between non-electronic and electronic claims in order to incentivize the submission of claims in a format, whether filed in paper or electronically, that would be more amenable to efficient processing. VA proposed that claims filed through an online claims submission tool within a VA Web-based electronic claims application system would be considered filed as of the date of the ''incomplete claim''—i.e., the date the claim was electronically saved in VA's electronic claims application system but not electronically submitted to VA—if the claim is ultimately completed and submitted within 1 year. As stated in the proposed rule, filing a claim through this electronic process would allow claimants to preserve an effective date while affording the claimant the opportunity to gather the necessary evidence to substantiate the claim. In other words, VA maintained the favorable effective date treatment of the informal claim process for incomplete electronic claims whereas incomplete non-electronic claims did not receive such treatment. VA proposed that non-electronic claims be considered filed as of the date VA received a complete claim.

The purpose of the distinction between electronic and non-electronic claim submission with regard to effective date treatment was to incentivize claimants to file electronic claims, which are processed by VA more efficiently and result in more expeditious delivery of benefits to claimants. VA believed that the advantages of its Web-based paperless claims systems offered claimants and/or their authorized representatives, as well as VA personnel, a faster, more convenient way of processing and adjudicating claims. VA's Web-based paperless claims systems, such as eBenefits and the Stakeholder Enterprise Portal, guide claimants and/or their authorized representatives in an interview-style process where responses are auto-populated into a VA form and can be submitted electronically with a press of a button. VA will receive the electronic claim within 1 hour as opposed to the receipt of paper claims which can take several days. Claimants and/or their authorized representatives are also able to upload evidence electronically for consideration with their electronic claim. This electronic process ensures more accurate responses from the claimant or representative as well as a more consistently completed form. The nature and format of the interview in eBenefits prompts claimants to answer all pertinent questions in order to obtain information necessary to substantiate the claim, checks for errors and missing information, and readdresses any unanswered questions, all of which ensure more accurate claims processing and adjudication. However, claimants who file on paper do not have these types of checks to ensure accuracy or sufficiency of responses provided on a form. Thus, there is an increased likelihood that these applications or forms on paper may be incomplete, incorrect, or insufficient for processing. Moreover, the advantages of VA's Web-based paperless claims system offer VA personnel a way to process and adjudicate electronic claims more efficiently and more accurately through the Veterans Benefits Management System (VBMS), an internal VA business application that facilitates the evidence-gathering phase of the claims process and employs evaluation and rules-based decision-support tools to increase the speed and accuracy of rating decisions. For electronic claims files in VBMS, robust optical character recognition capabilities make it possible to search thousands of pages of evidence in a fraction of the time required to search paper files. Paper submissions must be manually scanned into VBMS, adding an extra time-intensive step for paper submissions. A piece of mail must be identified, sorted, sent to a scanning facility, and meta-data must be entered. This delay does not exist for submissions that are initially received in an electronic format.

VA received many comments regarding the elimination of the informal claim under current § 3.155. The majority of the commenters expressed concern that eliminating the current informal claim process would be burdensome to claimants since the favorable effective date treatment of the current informal claim process would not exist for claimants who file paper claims. One commenter stated that ''eliminating informal claims with a process of incentivizing submissions of claims in a format more amenable to efficient processing makes the claims process more formalized to the detriment of claimants.'' Commenters further stated that the informal claim

was a way for veterans to establish a date of claim while they are being assisted in filing the proper forms and in gathering evidence in support of their claims by veterans service organizations and other authorized representatives. Another commenter expressed that the informal claim process provided claimants of different educational backgrounds a way of filing for benefits because VA's current claims process is difficult to understand. The major concern regarding the elimination of informal claims was the loss of potential benefits due to a claimant's inability to preserve an earlier effective date for an award granted.

Numerous commenters advanced the position that the current informal claim process, with its attendant effective date rules, is required by statute, specifically by 38 U.S.C. 5102(c). That subsection reads in pertinent part: ''Time limitation . . . If information that a claimant and the claimant's representative, if any, are notified under subsection (b) is necessary to complete an application is not received by the Secretary within one year from the date such notice is sent, no benefit may be paid or furnished by reason of the claimant's application.'' Subsection (b), in turn, requires the Secretary to notify claimants of the information necessary to complete an incomplete application for benefits.

VA does not agree with these comments to the extent they view the informal claim process as unambiguously required by statute. VA does not interpret 38 U.S.C. 5102(c) to require the informal claims process, or to require effective date consequences of any kind for incomplete applications. There are several reasons for this conclusion.

First and foremost, the informal claims process and the effective date rules that it entails did not originate in 38 U.S.C. 5102(c). Rather, the current informal claim process is a longstanding feature of VA's regulations, grounded in VA's authority to administer the veterans benefits claim system in a pro-claimant way. The concept behind informal claims originated in the internal memoranda of one of VA's predecessor entities, the Bureau of War Risk Insurance, in the course of implementing the War Risk Insurance Act, Public Law 63–193, 38 Stat. 712 (1914), as amended by Act of June 12, 1917, ch. 26, § 5, 40 Stat. 102, 103–104. The Office of General Counsel of the Bureau of War Risk Insurance held that a veteran who was so disabled as to be precluded from filling out a form 526 prior to his death, but expressed an intent to file a compensation claim while being treated by the U.S. Public Health Service, was considered to have filed a valid claim during his lifetime. The informal claims rule in substantially its current form was ultimately included in the publication of part 3 of Title 38, CFR 26 FR 1561, 1570 (Feb. 24, 1961). By contrast, 38 U.S.C. 5102(c) was added in 2003. Veterans Benefits Act of 2003, Sec. 701(a), Public Law 108–183, 117 Stat. 2651, 2670 (Dec. 16, 2003).

The plain language of section 5102(c), similarly suggests that section 5102 does not require the informal claim process, or for incomplete applications to hold a claimant's effective date. The statutory language creates a ''limitation'' on what benefits ''may'' be paid by reason of an incomplete application in the event it is not perfected within one year. By specifying that ''no benefit may be paid'' for incomplete applications that are not properly completed and formalized within one year, the statute allows VA to maintain a rule treating the incomplete application as a basis for an effective date in the event benefits are ultimately granted, but does not require VA to do so. The statute affirmatively prevents any effective date consequences for an incomplete application not formalized within one year.

The statutory structure strongly favors the same conclusion. Section 5102 appears in Chapter 51 of Title 38, United States Code. The Chapter is entitled ''Claims, Effective Dates, Payments.'' Section 5102 appears in Subchapter I, dealing with ''Claims.'' ''Effective Dates'' are the subject of an entirely separate Subchapter II. 38 U.S.C. 5110. Further, Congress explicitly created numerous statutory bases for effective date retroactivity, using the construction ''the effective date of an award . . . shall be'' each time. 38 U.S.C. 5110(b)(1)–(4), (c), (d). No such language appears in section 5102(c). Consistent with this reasoning, the legislative history of section 5102(c) does not suggest that Congress understood itself to be providing a rule of effective date retroactivity when it added this subsection to the United States Code.

Finally, we note section 5102(c) applies only to responses to notifications from the Secretary, required by section 5102(b), that a claimant has submitted an incomplete application. Therefore, even to the extent section 5102(c) is construed to require that a claimant's submissions establish an effective date, it applies only to incomplete applications under section 5102(b), not to all informal claimant submissions.

Because the informal claims rule is a liberalizing feature of VA's regulations and is not clearly required by statute, it may be adjusted by regulation in order to meet contemporaneous needs in administering the claims workload. This is a reasonable exercise of the authority granted to VA by statute. VA will continue to pursue and implement technological solutions as a major part of its drive to eliminate the backlog of claims. VA will strive for a claims process that is paperless to the extent feasible both as relates to VA's own work, and claimant inputs.

Nevertheless, VA recognizes that a transition of such magnitude takes time. Numerous commenters objected strenuously to two features of the proposed rule: that non-standard submissions would no longer preserve a claimant's effective date for paper original claims, and that electronic claims would be treated more favorably, continuing to receive the effect of this liberalizing feature of VA's regulations. VA has carefully considered the input it has received from commenters and determined that changes to the rule as originally proposed are appropriate. Modernization and standardization must accommodate the interests and preferences of the veterans and other stakeholders for whose benefit we seek to modernize the process, and the comments make clear that many veterans and stakeholders continue to prefer more informal processes than VA originally proposed. Accordingly, necessity may dictate more continued reliance on non-electronic submissions than was originally proposed.

Therefore, in order to strike a balance between standardizing, modernizing, and streamlining the claims process and providing veterans, claimants, and their survivors with a process that remains veteran-friendly and informal, VA has revised proposed § 3.155 to replace the concept of an ''informal'' claim with the concept of an ''intent to file a claim for benefits.'' The ''intent to file'' process will share similarities with the current informal claim process. However, one major difference is that it requires the submission holding a claimant's effective date to be in a standard format in order for claimants to preserve the date of a claim for a complete claim that is filed within 1 year of receipt of such intent to file a claim. To implement this provision, VA introduces a new form to be used in conjunction with revised § 3.155, VA Form 21–0966, *Intent to File a Claim for Compensation and/or Pension Benefits,* (hereinafter ''VAF 21–0966'') which is described in more detail in the Paperwork Reduction Act section of this rulemaking. The intent to

file a claim process is a standardized method of filing an informal claim which would be submitted in a format more amenable to efficient processing, while still allowing veterans to receive favorable effective date treatment similar to that available under the current ''informal claim'' rule. It also achieves the standardization of the claims process by requiring that all claims or initiation of claims be filed on a VA-prescribed form.

VA considers the process put in place by this rule a logical outgrowth of the original proposal, particularly in light of the comments received. The original proposal would have required all claims to originate on standard forms regardless of format or posture in which the claim arose, but with effective date placeholder treatment similar to the current informal claims rule available in order to incentivize electronic submissions. VA considers this change responsive to comments urging VA to maintain a way for all veterans to secure an effective date placeholder while the formal application form is completed, and responsive to comments urging that paper and electronic claims receive identical treatment for effective date purposes. Additionally, one commenter explicitly suggested that VA adopt a ''standardized Informal Claim form.'' Another commenter suggested ''maintaining informal claims in the context of standardized forms.''

While VA requires submission of the intent to file a claim in a designated form, the substantive information required to preserve an effective date through the intent to file a claim process is less than the requirements for claimants to preserve an effective date for a claim through the informal claim process under current § 3.155. Currently, an informal claim is defined as any communication or action, indicating an intent to apply for one or more benefits from certain persons that must identify the benefit sought. See 38 CFR 3.155(a).

In this final rule, VA revises § 3.155(b) to provide that a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of claimant who is not of full age or capacity, may indicate a claimant's desire to file a claim for benefits by submitting an intent to file a claim to VA. The intent to file a claim must be submitted on a VA-prescribed form or other specified format designated for the purpose of indicating the claimant's intent to file a claim. An intent to file a claim must provide sufficient identifiable or biographical information to identify the claimant. This requirement is necessary because if VA cannot identify the claimant to whom an intent to file pertains, the intent to file cannot serve its intended function as an effective date placeholder for that claimant. VA has chosen the flexible, functional standard of a claimant being identifiable based on the information provided, rather than enumerating specific pieces of necessary information in order to establish an intent to file. This is because different claimants will have different pieces of identifying information close at hand, and VA wants the placeholder to be easy for claimants to establish. The prescribed paper intent to file form accordingly solicits several pieces of information to identify the claimant, such as name, Social Security Number, address, telephone number(s), email address(es), and VA file number, if applicable. Claimants and authorized representatives will no longer be required to identify the specific benefit sought in order to preserve a potential earlier effective date as required by current § 3.155, but the designated form or other specified format must be used.

An intent to file a claim therefore differs in two crucial respects from the current informal claim process. It must be submitted in a designated format rather than in a non-standard communication, and the claimant must be identifiable, but it requires less substantive specificity than would be required to establish an informal claim under current regulations. In particular, an intent to file a claim need not identify the particular medical issues, symptoms, or conditions on which the claim will ultimately be based in order to establish an effective date. The current regulation requires the claimant to ''identify the benefit sought.'' 38 CFR 3.155(a). Case law is clear that this means the claimant must describe the nature of the disability for which he is seeking benefits, such as by describing a body part or symptom of the disability. *Brokowski* v. *Shinseki*, 23 Vet. App. 79, 86–87 (2009). An intent to file a claim need not contain this level of specificity.

This substantive liberalization of the information necessary to establish an effective date will align claimant incentives with the interests of efficient and accurate claims processing. Under the current process, veterans filing an initial claim are incentivized to file multiple informal claims in piecemeal fashion as soon as they become aware of potential entitlement to benefits for each condition. This leads to confusion and potentially duplicative administrative action by VA. Under the intent to file a claim process, claimants will have up to a year to gather evidence, potentially facilitating the process of establishing entitlement for any additional conditions without fear that they will lose benefits by not claiming each individual condition with specificity as quickly as possible, before presenting a comprehensive package to VA for processing.

We accomplish this substantive liberalization of the information necessary to establish an effective date by providing in § 3.155(b)(2) that an intent to file a claim ''need not identify the specific benefit claimed or any medical condition(s) on which the claim is based.'' In the rest of § 3.155(b)(2), however, we make clear that if a claimant provides extraneous information beyond what is needed to establish an intent to file a claim, such as information that VAF 21–0966 does not solicit, this extraneous information does not alter the status of the intent to file a claim, and in particular does not convert it into a complete claim or a substantially complete application. For example, if a claimant provides, in white space on a paper VAF 21–0966, information suggesting the particular disability on which the claim will be based, this extraneous information is of no force and effect other than that it is added to the file as evidence for adjudicative purposes. Such extraneous statements or information may be used as evidence in support of a claim that is filed to perfect VAF 21–0966. If a veteran or claimant submits information such as a description of symptoms or complaints of a medical condition on VAF 21–0966 and identifies the same description of symptoms or complaints of a medical condition in a complete claim filed within 1 year, VA may consider such information as evidence to substantiate the claim. Similarly, we also make clear at the end of § 3.155(b)(2) that extraneous information provided in an oral communication meant to establish an intent to file under § 3.155(b)(1)(iii) is of no effect and generally will not be recorded in the record of the claimant's intent to file. This limitation is necessary to ensure that the intent to file process does not degenerate into case-by-case determinations as to whether a claimant has unintentionally provided sufficient information to elevate an intent to file to a complete claim, which would displace the statutory requirement to ultimately file an application form prescribed by the Secretary. Because the purpose of an intent to file is to establish a placeholder for any and all issues ultimately raised in the complete claim, this limitation does not limit the

substantive scope of the claimant's intent to file, and only operates to prevent an intent to file a claim from constituting a substantially complete application.

In response to comments received, this final rule provides that there are three ways to submit an intent to file a claim for benefits, which we enumerate in this final rule at § 3.155(b)(1). First, in § 3.155(b)(1)(i), we provide that a claimant or authorized representative may submit an intent to file a claim electronically by saving an application in a claims-submission tool within a VA Web-based electronic claims application system prior to submitting the electronic claim for processing. Currently, the claim submission tool within VA's Web-based electronic claims application system prompts the claimant and/or authorized representative to enter biographical or identifiable information upon entering the electronic claims application process and records the date a claimant or authorized representative saves the online application prior to submission for processing. The electronic claims application system also notifies the claimant and/or authorized representative that the date the electronic application was saved will serve as an effective date for an award granted if a complete application is submitted within 1 year; otherwise, the date VA electronically receives the complete electronic claim will serve as the date of claim. The claimant and/or authorized representative must acknowledge this notice by checking a box.

VA considers the following actions in VA's current electronic claims process together to constitute an electronic intent to file a claim: (1) The act of a claimant or authorized representative entering into and commencing the online application process indicates an intent to apply for benefits, i.e., disability compensation benefits; (2) entering in biographical or identifiable information in electronic application for benefits in the claims submission tool within a VA Web-based electronic claims application system; (3) without providing the specific benefit sought or the symptoms or medical condition(s) for which the benefit is sought. Therefore, an electronic version of VAF 21–0966 for the purpose of submitting an electronic intent to file a claim for benefits is not necessary as the claims submission tool within VA's Web-based electronic claims application system achieves the intent to file a claim requirements through the act of entering and saving an electronic application in the claims submission tool within VA's Web-based electronic claims application system.

As we explained in the proposed rule, the limitation that the communication must take place within an online benefits account is necessary to prevent open-ended narrative format submissions, such as unsolicited emails, from constituting an intent to file a claim. The further limitation that the intent to file must be submitted through a claims submission tool within VA's Web-based electronic application system is to ensure that non-standard communications, such as emails within the current eBenefits system, do not constitute an intent to file a claim merely because they took place within eBenefits. VA must be careful to define an intent to file a claim in a way that channels claimant submissions through a predictable, standardized process.

Second, § 3.155(b)(1)(ii) provides that claimants and/or authorized representatives may submit an intent to file a claim using the new proposed form, VAF 21–0966. Specifically, the submission to an agency of original jurisdiction, such as a VA regional office, of a signed and dated intent to file, on the form prescribed by the Secretary for that purpose, will be accepted as an intent to file. This form has three components: (1) a checkbox for a claimant to indicate his or her intent to file for compensation, pension, survivors' benefits, and/or other benefits governed by 38 CFR part 3 (this information is used to furnish the appropriate application form(s) to the claimant); (2) claimant identification such as name, Social Security Number, date of birth, gender, VA file number, if applicable, mailing and/or forwarding address, telephone number(s), and email address(es); and (3) signature and date block for claimant's declaration of intent to apply for one or more benefits and acknowledgement that a complete application for each type of benefit selected must be received by VA within 1 year of receipt of VAF 21–0966 to be considered filed as of the date of receipt of such form. VA intends to make this form available online as well as in the paper format to claimants who request one.

Third, § 3.155(b)(1)(iii) provides that a claimant or authorized representative may submit an oral intent to file a claim by contacting certain designated VA personnel, typically in one of VA's call centers. However, claimants may express an intent to apply for benefits to VA personnel either in person or by telephone. The oral intent to file will be captured on a paper VAF 21–0966 generated from transaction in person or over the phone call which will then be uploaded into claimant's electronic file. In order for VA to take action based on oral statements, the VA employee must adhere to the requirements under 38 CFR 3.217(b) which provides that the VA employee must: identify himself or herself as a VA employee who is authorized to receive the information or statement; verify the identity of the provider as either the beneficiary or his or her fiduciary by obtaining specific information about the beneficiary that can be verified from the beneficiary's VA records, such as Social Security Number, date of birth, branch of military service, dates of military service, or other information; inform the provider that the information or statement will be used for the purpose of calculating benefit amounts; and must document in the beneficiary's VA record the specific information or statement provided, the date such information or statement was provided, the identity of the provider, and the steps taken to verify the identity of the provider. This contact provides VA with an opportunity to educate veterans, claimants, and their families on the process of filing a complete claim in conjunction with the intent to file a claim, the benefits of VA's Fully Developed Claim program, obtaining electronic access to our Web-based electronic claims submission tool such as eBenefits, and the benefits of receiving assistance from accredited veterans service organizations.

In the event a dispute arises over whether an oral intent to file was received on a particular date, the presence or absence of a record of the intent to file in VA's records will govern, absent a specific basis to conclude that designated VA personnel received an oral intent to file but did not contemporaneously document the communication as required. This is consistent with the general principle, often referred to as the ''presumption of regularity,'' that government officials are presumed to ''have properly discharged their official duties'' unless there is clear evidence otherwise. *Miley* v. *Principi,* 366 F.3d 1343, 1347 (Fed. Cir. 2004); see also *Butler* v. *Principi,* 244 F.3d 1337, 1339–41 (Fed. Cir. 2001) (presumption of regularity applies to the administration of veterans benefits). This limitation is necessary to ensure that the possibility of establishing an effective date of benefits payments through oral communications with VA personnel does not become a way to claim entitlement to an earlier effective date with no basis other than the bare assertion that a particular undocumented conversation took place.

We emphasize that allowing oral communications with certain designated personnel to constitute intents to file a claim is an extremely liberal approach to allowing claimants and their representatives to establish an effective date. We also note that the presumption of regularity, like all presumptions, is rebuttable. Finally, to the extent a claimant or representative wishes to guard against the possibility that the designated VA personnel who receive the communication will erroneously fail to contemporaneously document it, he or she can submit an intent to file in one of the other two formats.

When VA receives VAF 21–0966 or an oral intent to file a claim, VA will notify the claimant and/or the authorized representative of any information necessary to complete the formal application form, such as a VAF 21–526EZ and, as statutorily required pursuant to 38 U.S.C. 5102, VA will furnish the claimant with the appropriate application form(s) as claimant indicates on the 21–0966 or orally to VA personnel.

Non-standard narrative communications not falling within these three enumerated scenarios will not be considered an intent to file a claim received on the designated form, and accordingly will not establish an effective date placeholder.

Finally, notwithstanding our conclusion that 38 U.S.C. 5102(c) does not require that an incomplete application hold a claimant's effective date, we have provided via regulation, in § 3.155(c), that an incomplete application form will hold the claimant's date of application for up to 1 year.

As discussed in more detail below, revised § 3.155 of the final rule also provides that only one complete claim for a given benefit (e.g., compensation, pension) may be associated with each intent to file a claim for the same benefit for purposes of the effective date placeholder mechanism. In other words, if a claimant submits a VAF 21–0966 for compensation, and then files two or more successive complete compensation claims within 1 year, only the issues contained in the first complete compensation claim would relate back to the VAF 21–0966 for effective date purposes.

Similarly, we address the possibility a claimant may file both an intent to file and an incomplete application relating to the same claim in § 3.155(d). We make clear that, in the event the application is ultimately perfected, VA will consider it filed as of the date of receipt of whichever was filed first, the incomplete application or the intent to file. However, we also make clear the complete claim will not be considered filed more than one year prior to the date of receipt of the complete claim, absent a separate basis for additional retroactivity. *See e.g.,* 38 U.S.C. 5110(b)(3).

VA believes that the revisions to proposed § 3.155 serve as an optimal solution to the concerns expressed by the commenters by providing veterans, claimants, and their families a way to preserve a potential favorable effective date while giving them 1 year from the date of submission to file a complete claim as currently provided in the informal claim process as well as help VA streamline the claims process through the standardization of inputs.

The intent to file a claim process also serves to modernize VA's claims process by keeping non-standard submissions from constituting claims. By requiring an intent to file a claim be submitted on a designated standard form, VA personnel will spend less time determining whether a claimant wishes to file a claim, when a claim has been filed, and what type of benefit the claimant is seeking. VA believes the intent to file a claim process ensures more efficient processing that does not unduly erode the longstanding informal, non-adversarial, pro-claimant nature of the VA system. *See Walters* v. *Nat'l Ass'n of Radiation Survivors,* 473 U.S. 305, 323–24 (1985). In order to implement the standardization of the informal claim process with the intent to file a claim process, VA has reorganized proposed § 3.155 by eliminating the distinction between non-electronic and electronic claims as published in the proposed rule and designated this section of the final rule as a description of how claimants can file a claim. VA has consolidated the types of requests for application for benefits as published in proposed subparagraphs (c)(1) and (c)(3) of § 3.155 of the proposed rule in paragraph (a) of this final rule.

One commenter noted that the person acting as next friend of claimant must be of full age and capacity and that the term ''full age'' is not defined and that the term ''capacity'' is broad and susceptible to challenge in the future. VA has mirrored the language in current § 3.155 to describe persons submitting the informal claim and replaced the term ''*sui juris*'' with its definition, ''of full age or capacity.'' See Black's Law Dictionary, 1662 (10th ed. 2014). While use of the word-for-word legal definition ''of full age and capacity'' in this context would not imply that the claimant in question must be both under 18 and not of full capacity, given the resulting sentence as a whole, we have opted to use the disjunctive ''or'' in order to make clear that claimants who are not of full capacity need not also be under 18 in order to be within the ''next friend'' provision of this paragraph. Accordingly, there is no substantive change in the definition. Rather, VA is merely continuing to provide a way for claimants who cannot engage in a legal contract due to age or disability to be represented by someone (or next friend) who can do so on their behalf. Therefore, VA makes no change to the proposed rule based on this comment.

One commenter stated that email requests for benefits should trigger the duty to provide claimants with the information necessary to complete the application. VA agrees with this comment and has provided in § 3.155(a) of this final rule that upon receipt of any request for an application, to include email transmissions, VA will provide the appropriate form or application pursuant to current § 3.150 and will provide claimants with the information necessary to complete it. We note, however, that an email requesting benefits, without more, is a non-standard narrative submission. While such a submission clearly triggers VA's obligation to send the correct form, it does not on its own serve as an effective date placeholder.

Further, VA has redesignated proposed subparagraph (c)(2) of § 3.155 of the proposed rule which provides that an application form prescribed by the Secretary that does not meet the standard of a complete claim is a request for an application for benefits. VA believes that an incomplete application form prescribed by the Secretary is not equivalent to a non-standard submission. Therefore, VA has redesignated this as paragraph (c) in the final rule to distinguish an incomplete application form from a non-standard submission request, which is an application for benefits and governed by paragraph (a) of the final rule. Regarding incomplete application forms, VA has added the statement that it will notify the claimant and his or her representative, if any, of the information necessary to complete the application form prescribed by the Secretary and that if a complete claim is received within one year of submission of the incomplete application or form, VA will calculate an effective date of any award granted as of the date the incomplete application form was received.

VA received comments noting that the proposed rule did not provide for when VA would notify claimants and/or authorized representatives of the

information necessary to complete a claim for benefits if VA receives an application form that is not complete pursuant to the proposed § 3.160(a). In response, VA has provided the 1-year timeframe as described above in revised § 3.155(c) of this final rule. In current § 3.109, VA provides a 1-year filing period for claimants to submit evidence necessary to complete an application. VA believes that a 1-year timeframe to cure an incomplete application provides claimants with sufficient time and remains consistent with other current existing adjudication regulations.

VA has also eliminated the categorization of ''non-electronic claims'' and ''electronic claims'' in proposed paragraphs (a) and (b) of the proposed rule and replaced these distinctions with the concept of the ''intent to file a claim'' to standardize the current informal claim process in paragraph (b) of § 3.155 of this final rule. VA clarifies that this process would apply to all claims governed by part 3 of title 38 in the Code of Federal Regulations.

One commenter requested an explanation of the effects of the changes implemented by this final rule on authorized representatives and inquired about the type of interaction VA envisions for authorized representatives if electronic mail communication through eBenefits is delivered directly to the claimant. In the proposed rule, filing an electronic claim was the only way to secure an effective date placeholder. As we explain above, the structure of this final rule no longer attaches unique effective date consequences to a claim being submitted in electronic versus non-electronic format. In § 3.155(b)(5), we make clear that the only requirement specifically directed toward representatives is that a power of attorney must have been executed at the time the intent to file is written. This is substantively identical to requirements pertaining to representatives for the informal claim process. 38 CFR 3.155(b) (2013). To the extent this comment asks a broader question, separate from the structure governing what inputs may and may not constitute a claim, it is beyond the scope of the rule as now revised. VA will take this comment and all other stakeholder input under advisement in continuing to address the scope of representative access to electronic communications between VA personnel and claimants.

In new subparagraphs (b)(1) through (b)(2) of § 3.155 of this final rule, VA outlines the criteria for an intent to file a claim, namely, that it must be in a prescribed form (whether on paper, electronic, or oral), must identify the general benefit to be claimed, but it need not identify the specific benefit sought or symptom(s) or medical condition(s) on which the claim is based. In new subparagraph (b)(3), VA provides the action it will take upon receipt of an intent to file a claim. In addition to furnishing the appropriate application form prescribed by the Secretary in association with the intent to file a claim, VA will notify the claimant and claimant's representative, if any, of the information necessary to complete the appropriate application form prescribed by the Secretary. We note that in the context of intents to file submitted as incomplete eBenefits applications pursuant to § 3.155(b)(1)(i), this requirement is satisfied by automated system prompts.

In new subparagraph (b)(4) of § 3.155 of the final rule, VA provides that if an intent to file a claim is not submitted in the appropriate form as outlined in subparagraph (b)(1) and (b)(2) or is not ratified by a complete claim within 1 year of submission of the intent to file a claim, VA will not take further action unless a new claim or a new intent to file a claim is received. In new subparagraph (b)(5), VA provides that any service organization, attorney or agent indicating a represented claimant's intent to file a claim must have executed a power of attorney at the time the communication was written. This mirrors what is currently provided in the informal claim regulation in § 3.155(b).

The ''intent to file a claim'' process does not interfere with VA's other initiatives to eliminate the backlog of claims. In particular, the Fully Developed Claim (FDC) program allows VA to provide faster decisions and delivery of benefits to claimants through the use of the standard forms created specifically for FDCs that contain the notice to claimants of the information and evidence necessary to substantiate the claim (hereinafter ''section 5103 notice'') and claimant's certification that all evidence has been submitted with the FDC. Claimants receive the section 5103 notice at the time they file a claim and not after they submit the claim to VA. While VA continues to be responsible for obtaining relevant Federal records and provides a medical examination when necessary to decide the claim pursuant to 38 U.S.C. 5103A, VA is able to adjudicate the claim more expeditiously because additional time is not taken to request and obtain other evidence that a claimant identifies but does not have in his or her possession. We note that one commenter suggested that delays in the claims processing system are because VA spends ''too much time and paper on a 'duty to assist' letter.'' Much of the value in standard forms is they allow VA to discharge the very legal and procedural obligations to which this commenter refers more efficiently, so that a greater share of VA personnel's time may be devoted to engaging the substance of the claim.

The intent to file a claim process complements and does not conflict with the FDC process. The effective date placeholder provided by the intent to file a claim process allows claimants to ''protect'' their effective date while they gather all information and evidence they have to submit with their complete claim. If a claimant is able to gather and submit all evidence he or she wishes to submit within this one year period, there will often be no reason why the claimant cannot file the claim as an FDC. This, in turn, may lead to an even more favorable effective date if the claim is an original FDC, because Congress has provided for up to one year of special effective date retroactivity for ''an original claim that is fully-developed'' if filed before August 6, 2015. 38 U.S.C. 5110(b)(2)(A). In the event the claim is not amenable to filing as an FDC, the claimant nevertheless will receive the benefit of the effective date placeholder established by the intent to file a claim.

We note that, similar to the effective date treatment given to original FDCs, it is possible for specific statutory effective date provisions in 38 U.S.C. 5110 to apply in cases where an intent to file a claim has also been filed. For example, section 5110(b)(1) allows the effective date for an award of disability compensation to be the day following the date of the veteran's discharge from service if an application is received within a year of such date. Similarly, up to a year of retroactivity is available for claims for increased disability compensation. *See* 38 U.S.C. 5110(b)(3) (''[t]he effective date of an award of increased compensation shall be the earliest date as of which it is ascertainable that an increase in disability had occurred, if application is received within one year from such date.''). This rule does not, and indeed could not, operate to displace these special statutory effective dates enumerated in section 5110. These statutory effective dates are generally tied to the date of receipt of the application. This rule provides that VA will deem the ''application'' to have been received as of the date of the intent to file a claim, which is the mechanism by which a claimant puts VA on notice that he or she intends to ultimately

submit an application for benefits. Accordingly, the special statutory retroactive effective dates operate independently of, and in addition to, VA's decision to provide claimants up to a year to perfect and complete their application from the date they initially put VA on notice that they intend to file a claim.

We further note that, to the extent the intent to file process and these special statutory effective dates intersect, the amount of retroactive benefits is always limited by the facts found—a claimant can never receive disability benefits for a period in which he or she was not, as a factual matter, disabled, or at a degree of disability higher than supported by the contemporaneous facts. This caveat is current, established law, unaltered by this rule. Basic entitlement to compensation is always dependent on the existence of a current or contemporaneous ''disability,'' and its accompanying severity as determined by the rating for that disability. 38 U.S.C. 1110, 1114, 1131; 38 CFR part 4. Additionally, all effective dates are generally ''fixed in accordance with the facts found.'' 38 U.S.C. 5110(a). The special retroactive effective date provisions in section 5110 generally contain similar restrictions. In particular, the statutory provision that increased disability compensation may be effective for up to a year prior to the date of application is limited by ''the earliest date as of which it is ascertainable that an increase in disability had occurred.'' 38 U.S.C. 5110(b)(3).

The following examples illustrate this implementing principle.

If a hypothetical claimant files an intent to file a claim on April 1, 2019, and files a complete claim for increase on September 1, 2019, and evidence of record establishes the disability worsened on January 1, 2019, the effective date will be January 1, 2019. This is the ''earliest date as of which it is ascertainable an increase in disability occurred'' and it is within one year of the date the application was deemed received (April 1, 2019). Section 5110(b)(3), as applied to the claim process defined in this rule, permits an effective date corresponding to the date the disability worsened in this factual scenario.

Similarly, if a hypothetical claimant files an intent to file a claim on April 1, 2019, and files a complete claim on March 1, 2020, and evidence of record establishes that the disability worsened on January 1, 2019, the effective date will be January 1, 2019. The application was received within 1 year of the ''earliest date as of which it is ascertainable an increase in disability occurred'' and was itself perfected within 1 year.

In the event the intent to file is received more than a year following the increase in disability, section 5110(b)(3) is inapplicable. *See Gaston* v. *Shinseki,* 605 F.3d 979, 983–84 (Fed. Cir. 2010) (special effective dates in section 5110 apply to claims filed within one year of the triggering event specified in statute). Therefore, if a hypothetical claimant files an intent to file a claim on April 1, 2029, and files a complete claim on September 1, 2029, and evidence of record establishes that the disability worsened on January 1, 2019, the effective date will be April 1, 2029.

In new § 3.155(b)(6), we provide that VA will not recognize more than one intent to file concurrently for the same benefit (e.g., compensation, pension). If an intent to file has not been followed by a complete claim, a subsequent intent to file regarding the same benefit received within one year of the prior intent to file will have no effect. There are two alternatives to this rule, neither of which VA believes are sound policy. The first would be simply to allow claimants to file an unlimited number of intents to file for the same benefit, and relate back to the earliest filed that is within one year of the complete claim. This rule would allow, and even encourage, multiple unnecessary filings, with attendant wasted administrative action and confusion. The second alternative would be to allow claimants to file multiple intents to file, but make clear that each intent to file ''updates'' or ''cancels'' any other pending intents to file for the same benefit. While this structure would allow a claimant to protect an interim effective date in the event it becomes clear he or she will be unable to complete a claim within the year provided, this structure would also imply that the claimant has abandoned the earlier, more favorable date. Since it should be extremely rare for claimants to be unable to file a complete claim within the full year provided, VA is concerned that allowing claimants to ''update'' pending intents to file in order to accommodate this scenario could lead to many claimants inadvertently harming their interests by canceling earlier and more favorable dates through unnecessary filings. Accordingly, only one intent to file may be recognized at a time for a given benefit.

D. Treatment of Complete Claims

In new paragraph (d) of § 3.155 of the final rule, VA provides that all claims, regardless of type, must be complete claims, and the effective date for benefits is generally the date VA receives a complete claim (subject to the intent to file process). This requirement in the first sentence of § 3.155(d) is to make clear that complete claims are not a distinguishable entity from the other types of claims enumerated in § 3.160—in other words, the standards of a complete claim must be met for all types of claims, including claims to reopen and claims for increase. Furthermore, VA has reiterated the effective date treatment of the intent to file a claim process by stating that an intent to file a claim that meets the requirements as provided in new paragraph (b) of § 3.155 of this final rule will serve to establish an effective date if a complete claim is received within 1 year. This reiteration makes clear that the intent to file process applies to all claims governed by 38 CFR part 3. VA also makes clear that only one complete claim for a particular benefit may be associated with each intent to file a claim for that same benefit for purposes of this special effective date rule. In other words, if a claimant files one intent to file a claim for compensation, and then files two or more successive complete claims for compensation within 1 year, only issues contained within the first complete claim would relate back to the intent to file a claim for effective date purposes. There is no limit on the number of issues or conditions in each complete claim. Accordingly, it is in claimants' best interests to claim all potential issues under a particular benefit in one comprehensive package.

VA believes this final rule is less apt to cause confusion than the alternative, which would allow claimants to submit several claims under the same benefit over the course of a year while still relating back to the earliest effective date. This would encourage fragmented presentation of claims which further complicates and delays the development and disposition of already pending claims by causing duplicative VA processing actions or creating confusion regarding the development actions that must be taken for each claim. Although claimants may submit new claims at any time, it is far more efficient to submit all issues under the same benefit in a single unified claim.

As discussed above, VA will recognize multiple intents to file at a time provided each intent to file identifies a different benefit sought (e.g., compensation, pension). VA does not intend to limit a claimant to identifying only one benefit sought in an intent to file. For example, an intent to file may indicate that a claimant intends to file complete claims for both compensation and pension. However, if a claimant submits an intent to file for only one

benefit (e.g., compensation), VA will not recognize another intent to file for compensation benefits until a complete claim for compensation has been submitted or 1 year has expired, whichever occurs first.

VA's decision to recognize multiple intents to file stems directly from the fact that § 3.155(d) of the final rule provides that only one complete claim for a particular benefit may be associated with each intent to file a claim for that benefit. VA seeks to encourage claimants to utilize its electronic claims submission tools to promote accuracy and efficiency of claims processing. Currently, however, claimants are able to submit an electronic application only for compensation benefits. Thus, if VA were to require a claimant to submit only one complete claim for all benefits (e.g., compensation and pension) at the same time, it would be impossible to utilize VA's electronic claims submission tools to apply for compensation benefits. Allowing claimants to submit multiple intents to file, provided that each is for a different benefit, enables veterans to submit a claim for compensation electronically while still preserving an effective date for other benefits through the paper or oral intent to file process.

For example, if a veteran submits a VAF 21–0966 for pension on January 1, 2018, saves an online application for compensation on February 28, 2018, and VA receives a complete claim for pension on August 1, 2018 and a complete claim for compensation on September 1, 2018, VA will treat the pension claim as having been received on January 1, 2018, and the compensation claim as having been received on February 28, 2018, for effective date purposes. In addition, if a veteran submits a VAF 21–0966 for compensation and pension on March 1, 2020, and VA receives a complete claim for compensation via VA's electronic claims submission tool on November 1, 2020, and a complete claim for pension on paper on January 1, 2021, VA will treat both the compensation and pension claims as having been received on March 1, 2020.

One commenter noted that in the proposed rule VA allowed only one complete claim to be associated with an incomplete claim and inquired whether disabilities that are service connected as secondary to a claimed or named issue would be afforded the effective date of the claimed or named issue being adjudicated. If a benefit is granted for the primary claim or issue for which an intent to file a claim has been submitted and a benefit is granted on a secondary basis to the primary claim or issue associated with an intent to file a claim, the effective date would be the same as for the primary claim because it was an entitlement established by the evidence of record and within the scope of the issue or condition enumerated in the complete claim giving rise to the primary claim. For example, if VA awards compensation benefits for the primary condition of diabetes and evidence of record shows other conditions are caused by or related to the diabetes, VA would assign an effective date for the secondary conditions as of the date VA awarded the primary condition. The result would be different if the claim for secondary service connection arose in the course of a later, separate claim from the one in which the primary condition was determined to be service connected, either because of changed facts (such as changed status of disability), or because entitlement was not granted in the original claim and VA's decision became final. For example, suppose a hypothetical claimant in receipt of compensation benefits for a lower back disability and diabetes files a claim for increase only for the diabetes and the evidence of record shows that claimant has a right knee disability secondary to the service-connected lower back disability. In this case, VA would adjudicate the claim for increase for the diabetes and solicit a claim for an increase in the lower back disability and secondary condition of the right knee. The result in both cases flows from the plain terms of §§ 3.155(b) and 3.400, and from VA's obligation to consider entitlements reasonably within the scope of complete claims filed on a standard form (see Section I. E. below).

E. Types of Claims

In response to comments, VA has revised proposed § 3.160 to define certain types of claims in a way that is meant to complement the structure created in revised § 3.155. In proposed § 3.160, VA defined a complete claim as ''[a] submission on a paper or electronic form prescribed by the Secretary that is fully filled out and provides all the requested information. This includes, but is not limited to, meeting the following requirements: (1) . . . must be signed by the claimant or a person legally authorized to sign for the claimant[;] (2) . . . identify the benefit sought[;] and (3) . . . [provide] a description of any symptom(s) or medical condition(s) on which the benefit is based . . . [; and] (4) [for pension or survivor benefits, provide] a statement of income . . .''.

Some commenters stated that a ''[v]eteran who submits a paper claim and inadvertently fails to check a single box on the VA form may lose thousands of dollars in disability benefits, particularly in the case where VA renders the application 'incomplete'.'' The proposed rule made clear that it was not VA's intent to reject forms for minor ministerial or formalistic deficiencies. *See* 78 FR at 65496. Nevertheless, we agree that a less amorphous standard for completeness is appropriate. In response to the concerns expressed in the public comments regarding the term ''fully filled out'' to describe a complete claim and the proposed language that the requirements for a complete claim would ''not [be] limited to'' those proposed requirements listed in proposed § 3.160, VA has deleted the open-ended requirement that a form be ''fully filled out,'' and the qualifier that the requirements of a complete claim are not limited to those specifically enumerated in the rule. To address the concern that forms would be rejected for minor ministerial deficiencies, such as failure to check a box, this final rule provides a clear and consistent standard for what constitutes a complete claim. Accordingly, VA has defined a complete claim as a submission of an application form prescribed by the Secretary, whether paper or electronic, that contains the following express information requirements: (1) The name of the claimant; the relationship to the veteran, if applicable; and sufficient service information for VA to verify the claimed service, if applicable; (2) a complete claim must be signed by the claimant or a person legally authorized to sign for the claimant; (3) A complete claim must identify the benefit sought; (4) A description of any symptom(s) or medical conditions on which the benefit is based must be provided to the extent the form prescribed by the Secretary so requires; and (5) for a nonservice-connected disability or death pension and parents dependency and indemnity compensation claims, a statement of income must be provided to the extent the form prescribed by the Secretary so requires.

These revised requirements of a complete claim are similar to the criteria for which VA considers an application to be ''substantially complete'' under current 38 CFR 3.159 in order to trigger VA's duty to assist under 38 U.S.C. 5103A. Current § 3.159, the regulation governing VA's assistance in developing claims, provides that a ''substantially complete application'' means ''an application containing the claimant's

name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for non-service connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.'' Therefore, claimants who submit an intent to file a claim will have 1 year from the date of such submission to file a complete claim that is similar to the current standards of a substantially complete application.

One commenter inquired whether the ''paper'' on which a claimant is seeking benefits must be ''prescribed by the Secretary'' as described in proposed § 3.160(a), or if an advocate's letterhead used to file a claim on a claimant's behalf constitutes a submission on paper for the purpose of a complete claim. One commenter stated that requiring a form prescribed by the Secretary for submission of claims would interfere with an advocate's ability to provide representation to the fullest extent possible since such a requirement would curtail the advocate's ability to provide rationale to support a claimant's entitlement to a particular benefit. The proposed rule made clear that a complete claim must be submitted on a ''paper or electronic form prescribed by the Secretary.'' In response to this comment, VA has revised the relevant portion of the final rule in § 3.160(a), to clarify that a complete claim must be submitted in the form prescribed by the Secretary, whether paper or electronic. In order to achieve standardization of the claims and appeals processes, it is necessary that submissions to initiate a claim or to file a claim be in a standard format that is easily digitalized and processed in conjunction with VA's transition to the technological solutions implemented such as several Web-based paperless claims systems.

However, we make no changes in response to the concern in these comments that requiring claims to be filed on standard forms would somehow impair claimants' ability to submit evidence in support of their claims, or would impair representatives' ability to represent their clients. Similarly, some commenters expressed the view that the proposed rule attempted to require claimants to file an FDC, which requires claimants to certify that they have submitted all evidence they intend to submit, in order to file a claim at all. This rule does not alter the scope of evidence submission in the VA system. The fact that a claim must be initiated on a standard form does not in any way imply that a claimant cannot submit evidence in favor of that claim while the claim is pending. We note that neither the proposed rule, nor this final rule, alter 38 CFR 3.103(d), which governs submission of evidence and provides that ''[a]ny evidence . . . offered by the claimant in support of a claim . . . [is] to be included in the records.'' The proposed rule did not contain any provision requiring that all evidence in favor of a claim accompany its initial submission. We do note, however, that claimants who protect their effective date by filing an intent to file a claim, gather all possible evidence, and submit all evidence along with their claims will frequently be able to participate in the FDC program. VA disagrees that mandating the use of VA-prescribed forms interferes with an advocate's ability to provide claimants with representation to the fullest extent possible. Mandating the use of standard forms does not preclude advocates from filing claims on behalf of a claimant or from submitting statements of rationale in support of a represented claimant's entitlement to a particular benefit.

Additionally, some commenters noted that while submitting a complete claim may seem easy, some claimants or representatives filing on a claimant's behalf may not have the necessary information readily available, resulting in delays in submitting a complete claim which would result in establishing a later date of claim. VA believes the intent to file a claim process addresses this concern.

In paragraph (a)(4), VA further clarifies that for compensation claims, a description of symptoms and specific medical conditions on which the benefit is to be based must be provided to whatever extent the form prescribed by the Secretary so requires, or else the form may not be considered complete. Similarly, in paragraph (a)(5), VA clarifies that a statement of income must be provided for nonservice-connected disability or death pension and parents' dependency and indemnity compensation claims to the extent the form prescribed by the Secretary so requires in order for the claim to be considered complete.

VA received several comments stating that its requirement that claimants identify the benefit sought, particularly, to specifically identify the medical condition(s) on which the benefit is based in order to be considered a complete claim is onerous, especially for the elderly, homeless, and those with limited education or mental and/or physical disabilities, because it forces the claimant to diagnose a specific medical condition for which they are not competent to do and subjects claimants to a strict pleading standard. The commenters expressed concern that requiring claimants to identify a diagnosis as part of meeting the criteria for a ''complete claim'' would undo the process of VA reasonably raising claims through a sympathetic reading of the evidence. The commenters stated that requiring claimants to provide the benefit sought and, particularly, the requirement of a description of the symptom(s) or medical condition(s) on which the benefit is based contradicted existing caselaw. Many of the commenters quoted case law providing that ''[a]lthough an appellant who has no special medical expertise may testify as to the symptoms he can observe, he generally is not competent to provide a diagnosis that requires the application of medical expertise to the facts presented.'' *See Clemons* v. *Shinseki,* 23 Vet. App. 1, 4–5 (2009). Furthermore, commenters also referenced *Ingram* v. *Nicholson,* 21 Vet. App. 232, 255–56 (2007), which holds that unsophisticated claimants cannot be presumed to know the law and plead claims based on legal elements and that the Secretary must look at the conditions stated and the causes averred in a pro se pleading to determine whether they reasonably suggest the possibility of a claim for a benefit under title 38, regardless of whether the appellant demonstrates an understanding that such a benefit exists or of the technical elements of such a claim.

VA understands the concerns raised in the public comments regarding the specificity required in order for a claim to be considered complete. However, the regulatory language of § 3.160(a)(4) clearly states that for compensation claims, VA requires ''a description of any symptom(s) or medical condition(s) on which the benefit is based'' as one of the criteria for a claim to be considered complete. VA is aware that claimants are generally not competent to diagnose a medical disability and are generally only competent to identify and explain the symptoms observed and experienced. The regulatory requirement in § 3.160(a)(4) is consistent with this caselaw because it only requests a description of ''symptom(s) or medical condition(s) on which the benefit is based'' which claimants are competent to describe to VA. The regulatory language, both as proposed and as here revised, is clear that VA is not requiring claimants to provide a medical diagnosis. Rather, VA intends to continue its current

longstanding practice of accepting claimants' description of observable symptom(s) or experiences or reference to a part of the anatomy such as ''right knee'' in order to meet the criteria of identifying the benefit sought for a ''complete claim.'' For example, a claim for the ''right knee'' can be sympathetically read, based on the evidence of record, to encompass claims for arthritis, ankylosis of the knee, knee ''locking,'' etc. We note also that claimants whose conditions have been diagnosed by a treating physician are competent to report those diagnoses. *See Jandreau* v. *Nicholson,* 492 F.3d 1372, 1377 (Fed. Cir. 2007). However, in order to accommodate different circumstances, the regulation is drafted broadly to require only a description of the condition or its symptoms.

One commenter asked that we clarify how VA would proceed when a claimant specifies a particular disability on the claim form, but the disability is ultimately determined to be a different disability from the one listed, such as when development of a claim for post-traumatic stress disorder (PTSD) leads to a diagnosis of depression or another psychiatric disorder other than PTSD. Consistent with our reasoning above and the fact that the rule requires only that claimants identify ''symptom(s) or medical condition(s) on which the benefit is based,'' VA would continue to develop and ultimately adjudicate this claim as appropriate without requiring the claimant to ''re-file'' a new form specifically identifying the new diagnosis. The result would be different if the claim were not reasonably within the scope of the same ''symptom(s) or medical condition(s)'' on which the original claim was based.

Similarly, the requirements of § 3.160 clearly do not equate to a legal pleading or require specific medical knowledge and are not overly technical. It is VA's intent to maintain the current practice of accepting the claimant's account of symptoms and lay statements of experiences in identifying a medical condition for which he or she is seeking benefits. While VA has revised one of the requirements of a ''complete claim'' to request claimants provide identifiable information, it has made no change to the regulatory language in the requirement of identifying the benefit sought in compensation claims to mean ''symptom(s) or medical condition(s)'' based on these comments. The regulation language requires only that the claimant identify the ''symptoms or medical conditions'' on which the claim of entitlement to compensation is based, in order to facilitate the orderly development of the claim.

In addition, VA received several comments expressing concern that it would no longer grant benefits based on inferred claims or claims reasonably raised by the evidence of record due to the requirements of a ''complete claim'' which specifies that a claimant must identify the benefit sought, to include symptom(s) or medical condition(s) on which the benefit is based. Many commenters stated that the proposed regulation assumes that the veteran possesses a complete understanding of the entire spectrum of benefits available to them which they do not. Commenters were concerned that, in order to qualify as a complete claim, the claimant must list particular benefits with specificity on their application forms, or else risk having the claim denied.

We agree that it is necessary to provide a more detailed explanation of how we will reconcile the pro-claimant practice of VA identifying and adjudicating claims raised by the evidence of record but not specifically raised by the claimant with the requirement that all claims be submitted on a standard form. It has been VA's longstanding practice to infer or identify and award certain benefits that a claimant has not expressly requested but that are related to a claimed condition and there is evidence of record indicating entitlement. The practice of identifying these ''reasonably raised claims'' is not mandated or defined by any statute or regulation. We note, however, that the ''[s]tatement of policy'' in 38 CFR 3.103(a) provides that, in developing and deciding the ''claim'' filed by a claimant, ''it is the obligation of VA . . . to render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.'' Relatedly, a number of court decisions have noted that, in the legislative history of the Veterans Judicial Review Act, Public Law 100–687, the House Committee on Veterans' Affairs stated that VA should ''fully and sympathetically develop the veteran's claim to its optimum before deciding it on the merits.'' H.R. Rep. No. 100–963 at 13 (1988); *reprinted in* 1988 U.S.C.C.A.N. 5782, 5794–95; *see Roberson* v. *Principi,* 251 F.3d 1378, 1384 (Fed. Cir. 2001); *Norris* v. *West,* 12 Vet. App. 413, 420 (1999). Consistent with these policies, VA employs the practice of identifying and adjudicating reasonably raised claims as an administrative tool to provide for consideration of issues and benefits that have not been expressly claimed but that logically are placed at issue upon a sympathetic reading of the claim(s) presented to VA and the record developed with respect to such claim(s).

This rule does not alter VA's general practice of identifying and adjudicating issues and claims that logically relate to and arise in connection with a claim pending before VA. Although the rule requires claimants to specify the symptoms or conditions on which their claims are based and the benefits they seek, it generally would not preclude VA from identifying, addressing, and adjudicating related matters that are reasonably raised by the evidence of record which the claimant may not have anticipated or claimed, but which logically should be addressed in relation to the claim filed. Rather, such matters generally may be viewed as being within the scope of the claim filed, as sympathetically interpreted in light of the record. This rulemaking does not alter or delete the requirement in 38 CFR 3.103(a) for VA to ''render a decision which grants every benefit that can be supported in law while protecting the interests of the Government.'' This policy recognizes that many ancillary benefits that many veterans are not aware of may continue to be adjudicated and awarded as part of VA's disposition of the issues a claimant has specifically raised.

However, entirely separate conditions never identified on a standard claim form generally will not be the subject of claims that are reasonably raised by the evidence of record. As an initial matter, we do not construe 38 CFR 3.103(a) or other governing authorities to establish a legal duty to identify and adjudicate claims that are unrelated to the particular claims raised by the claimant. Section 3.103(a) specifies that claimants are entitled to written notice of the decision made ''on his or her claim'' and that VA will assist in developing ''the facts pertinent to the claim'' and will render a decision which grants every benefit that can be supported in law while protecting the interests of the Government. Those provisions thus relate to matters that are reasonably within the scope of the claim filed by the claimant. They do not, however, create a duty to adjudicate matters unrelated to the claim filed. In this way, § 3.103(a) reflects the principle of sympathetic construction of claims, while adhering to the general statutory framework that requires a specific claim in order to support a benefit award, 38 U.S.C. 5101(a), and to establish the date on which entitlement to an award may be effective, 38 U.S.C. 5110(a). Similarly, insofar as judicial decisions have referenced a duty of sympathetic development deriving from congressional intent expressed in H.R.

Rep. No. 100–963, that report similarly refers to a duty to fully and sympathetically develop the claimant's ''claim'' to its optimum before deciding such claim. We do not construe that statement as requiring VA to identify and adjudicate issues and claims that are unrelated to the claim(s) presented to VA.

Further, establishing a duty on VA's part to identify claims reasonably raised by the evidence of record which are unrelated to the claim(s) presented would be incompatible with the requirement in § 3.160(a)(4), as prescribed in this final rule, that a complete claim enumerate the conditions or symptoms on which the claim is to be based. If claims that are reasonably raised by the evidence of record for totally new conditions were permissible, it would be possible to identify only one condition on the standard application form, but submit evidence relating to multiple conditions on the expectation VA will identify and adjudicate those unidentified claims. This would inevitably lead to exactly the time-intensive clarifications and interpretations we seek to avoid remaining necessary in a large volume of cases.

The permissible scope of claims that are reasonably raised by the evidence of record in light of the requirement in § 3.160(a)(4) overlaps somewhat with the scope of the implicit denial rule. The basic idea of that rule is that claims pending but not explicitly denied in a decision addressing other claims can be deemed ''implicitly denied'' in certain circumstances. In *Ingram* v. *Nicholson,* 23 Vet. App. 232, 248 (2007), the Court of Appeals for Veterans Claims (hereinafter ''Veterans Court'') said the implicit denial rule cannot cover claims that are very different from one another in content. For instance, the denial of nonservice-connected pension claims did not put Mr. Ingram on notice that his claims under 38 U.S.C. 1151 had been denied. *Ingram,* 23 Vet. App. at 243. However, the United States Court of Appeals for the Federal Circuit (hereinafter ''Federal Circuit'') later held that a claim for endocarditis was implicitly denied when the AOJ denied a claim for rheumatic heart disease. *Adams* v. *Shinseki,* 568 F.3d 956, 963 (Fed. Cir. 2009).

Applying a similar scope to these claims that are reasonably raised by the evidence of record but not specifically claimed by the claimant will allow VA to continue this pro-claimant practice largely undisturbed while still requiring claims to originate on standard forms. VA's grant or denial of a pending claim necessarily implies that VA has considered all potential theories of entitlement reasonably inferable from the evidence of record and reasonably within the scope of that claim. This is consistent with the requirement in § 3.160(a)(4) that the completed application form enumerate ''symptom(s) or condition(s)'' but not ''diagnoses'' or some other more discrete requirement. For example, if a claimant lists ''heart condition'' on a standard form, VA would consider entitlement theories based on both endocarditis and rheumatic heart disease, to the extent justified by the evidence of record. This means VA would continue to award benefits reasonably raised by the evidence of record based on secondary service connection or service connection based on aggravation due to an already service-connected disability, entitlement to total disability based on individual unemployability, benefits such as housing or automobile allowance, or special monthly compensation benefits if the evidence is clear that the claimant meets the eligibility or requirements for such benefits and VA can adjudicate these claims. This provision has been outlined in new paragraph (d) of § 3.155. In new § 3.155(d)(2), we have provided that VA will continue to identify and adjudicate claims reasonably raised by the evidence of record that are related to or are reasonably within the scope of the claimed issues in the complete claim. As explained above, § 3.103(a) currently provides the predicate for full and sympathetic development of claims, to include consideration of matters reasonably related to and raised in connection with a claim before VA, whether or not raised expressly by the claimant. We have provided that VA will put at issue for adjudication any ancillary benefit(s) or other claims not expressly raised by the claimant that are related and arise as a result of the adjudication of a claimed issue. Such issues, other than ancillary benefits, which have not been claimed by the claimant but have resulted as complications of claimed service-connected conditions will continue to be identified and adjudicated as also indicated by part 4 of the CFR, VA Schedule for Rating Disabilities.

We note that the existence of the discretionary, pro-claimant practice of identifying claims reasonably raised by the evidence of record does not imply that claims potentially remain pending indefinitely, awaiting the suggestion that contemporaneous evidence may have supported inferring a claim that was not actually filed. As the implicit denial rule itself suggests, VA's grant or denial of a pending claim necessarily implies that VA has determined that no other claims are reasonably raised by the claims specifically identified by the claimant and the accompanying evidence of record. The correct way to contest this determination is on direct appeal, or in a claim for clear and unmistakable error. *See Deshotel* v. *Nicholson,* 457 F.3d 1258, 1261–62 (Fed. Cir. 2006). VA also notes that ''where there can be found no intent to apply for VA benefits, a claim for entitlement to such benefits has not been reasonably raised.'' *Criswell* v. *Nicholson,* 20 Vet.App. 501, 504 (2006). Accordingly, in the next to last sentence of § 3.155(d)(2), we clarify that VA's decision addressing some, but not all, of the issues raised in a complete claim does not imply that the reminder of the enumerated issues (and issues reasonably within their scope in light of the evidence of record) have been denied, since VA must still decide the remaining enumerated issues. However, in the final sentence of § 3.155(d)(2) we make clear that VA's decision on a claim necessarily implies that VA has determined the evidence of record does not support a grant of benefits for any other issue reasonably within the scope of the issues enumerated in the complete claim. This rule text makes clear that VA's duty to broadly construe the evidence of record does not vitiate the finality of otherwise final VA decisions.

We further note that identifying and adjudicating claims reasonably raised by the evidence of record are a pro-claimant practice meant to resolve claims without the need for unnecessary administrative action when VA is already actively developing and adjudicating a claim. It should not be construed as creating a rule or practice that the filing of evidence, without a claim for increase for a condition already service connected executed on a completed application, constitutes a claim for increase. Such a practice would form a boundless exception to the requirement to file a complete claim for increase made explicit in § 3.155(d), and would be inconsistent with our explicit elimination of current § 3.157.

Some commenters specifically questioned how claims for Total Disability based on Individual Unemployability (TDIU) would operate under a system requiring standard forms. Generally, TDIU is not a ''claim,'' but a rating that is provided in light of the impact of an individual's disabilities. *Rice* v. *Shinseki,* 22 Vet. App. 447, 452–54 (2009). This implies that VA must consider potential

entitlement to TDIU when the necessary substantive thresholds are met, and whenever evidence of record potentially establishes unemployability, whether in the context of an original claim or a claim for increase. As we said in the proposed rule, ''[i]t is VA's intent that a request for an increase accompanied by evidence of unemployability continue to constitute a claim for TDIU, but the claim for increase itself must be filed on a standard form.'' 78 FR at 65497. However, it also implies that the requirements to initiate an original claim or a claim for increase, such as initiating an application with an intent to file a claim and perfecting it with a completed application form, apply, as they would to efforts to seek any other rating.

Other commenters asserted that it has been VA's longstanding practice to assist veterans at the beginning of the claims process and that requiring claimants to provide a complete claim is comparable to the ''well-grounded claim'' elements which Congress ordered abandoned by the Veterans Claims Assistance Act of 2000. One commenter stated that ''the idea of not considering a claim to have been properly filed, and therefore not eligible for an effective date until it is 'complete' sounds remarkably similar to the universally rejected requirement of filing a 'well-grounded' claim.'' Another commenter stated that electronic applications that fall short of the standards of a complete claim would not constitute a claim of any kind, complete or otherwise, and that the proposed rule was incompatible with the duty to assist as mandated by 38 U.S.C. 5103A. Other commenters seemed to be under the impression that, under the proposed rule, a veteran would be required to complete all development on a claim before it would be considered complete and accepted, and some accused VA of attempting to shift legal burdens onto the veteran, though not all commenters characterized this as requiring a ''well-grounded'' claim.

Historically, section 5107 of title 38, United States Code provided that a person who submitted a claim for benefits had the burden of submitting evidence sufficient to justify a belief by a fair and impartial individual that the claim was well grounded. 38 U.S.C. 5107(a) (1994). This seemingly subjective determination ultimately came to be defined with some particularity, and the elements of a ''well grounded claim'' eventually bore resemblance to the elements of ultimate entitlement to disability compensation. *Compare Epps* v. *Gober,* 126 F.3d 1464, 1468 (Fed. Cir. 1997) with *Holton* v. *Shinseki,* 557 F.3d 1362, 1366 (Fed. Cir. 2009). The Veterans Court even suggested that VA was legally precluded from providing assistance to claimants who had yet to submit evidence sufficient to establish well-groundedness. *See Grivois* v. *Brown,* 6 Vet. App. 136, 140 (1994). Congress recognized the illogic of requiring claimants to all but establish entitlement to benefits in order to be eligible for receiving VA assistance in gathering the evidence needed to establish entitlement in enacting the Veterans Claims Assistance Act of 2000. *See* H.R. Rep. 106–781 at *6–*9 (July 24, 2000).

We disagree with the assertion that the proposed rule would have resurrected the well-grounded claim requirement, or that this rule as now revised resurrects that requirement. The proposed rule would not have required claimants to submit evidence establishing ultimate entitlement to benefits in order for the claim to be recognized as a complete claim, and neither does this final rule.

The determination that a ''complete claim'' has been submitted is based on objective standards that are explicitly outlined in § 3.160(a). The criteria of a ''complete claim'' correspond directly to the current standards for a ''substantially complete application'' in § 3.159 which governs VA's statutory duty to assist claimants in developing claims. Therefore, once VA receives a complete claim, the statutory duty to assist claimants in obtaining evidence to substantiate the claim is triggered. While a form must contain the elements of information explicitly required by § 3.160(a) in order to be considered complete, there is no requirement to submit medical or other evidence in support of the claim in order for the application form to be considered complete. In other words, requiring that a claim be complete in order for VA to begin adjudicative activity is not at all the same thing as requiring ultimate entitlement to be demonstrated before VA will begin adjudicative activity. Therefore, VA has made no change to the proposed rule based on this comment.

Similarly, another commenter asserted that claimants should not be responsible for developing their claims and that VA has a duty to assist veterans. The requirement that claimants submit a complete claim does not entail shifting the burden on the claimant to develop his or her claim. The submission of a complete claim as set forth in § 3.160(a) of this final rule allows for efficient, fair, and orderly processing and adjudication of a claim because the information necessary to develop and adjudicate the claim has been provided. VA's statutory duty to notify claimants of information and evidence necessary to substantiate the claim and duty to assist claimants in obtaining evidence necessary to substantiate the claim remain unchanged. VA will continue to develop claims that are considered complete.

VA eliminates the definition of ''incomplete claim'' that had appeared at paragraph (b) as proposed, and replaces it with the definition of an ''original claim'' as originally proposed at paragraph (c), with the minor change of deleting ''or form'' from the phrase, ''application form or form prescribed by the Secretary''. This change is to make clear that an application form is the form prescribed by the Secretary rather than some distinct administrative tool. In paragraph (c), VA adopts as final the definition of a ''pending claim'' which was proposed at paragraph (e). This change updates the existing definition of ''pending claim,'' which is currently defined as ''an application, formal or informal, which has not been finally adjudicated'' by replacing the phrase ''an application, formal or informal'' with the word ''claim.''

In paragraph (d), VA adopts as final the definition of ''finally adjudicated claim,'' as originally proposed at paragraph (f). This action primarily replaces the phrase ''an application, formal or informal'' in the current definition with the word ''claim.'' Since VA is eliminating the term ''informal claim,'' it removes references to the phrase or words, ''informal'' and ''formal'' for consistency in the existing definitions. These changes are not meant to alter the law of finality in the VA benefits system. *See Cook* v. *Principi,* 318 F.3d 1334, 1339–41 (Fed. Cir. 2002) (*en banc*).

Furthermore, VA has withdrawn the definitions of ''new or supplemental claim'' in proposed paragraph (d) of the proposed rule and the revised definition of ''claim for increase'' in proposed paragraph (h) of the proposed rule. The definition of a claim for increase in current § 3.160(f) accordingly remains unchanged by this final rule. While the new proposed definitions were intended to provide clarification, the statements of commenters demonstrated a misunderstanding and confusion about the usage and application of these terms. Because no substantive change to the scope of what constitutes a claim for increase was intended, and the more particular definition in the proposed rule is not necessary to achieve consistency with the intent to file

process, VA has withdrawn these proposed definitions in this final rule. However, in revised paragraph (e) of this final rule, VA continues the definition of ''reopened claim'' that appears in current § 3.160(e) with slight modifications to insert ''new and material evidence'' as clarification of VA's existing criteria for reopening a previously denied claim.

F. Elimination of Report of Examination or Hospitalization as Claim for Increase or To Reopen

Through this final rule, VA removes current § 3.157, which had provided that reports of examination or hospitalization can constitute informal claims to increase or reopen. In implementing one consistent standard for the claims process, VA has eliminated informal claims for increase or to reopen based on receipt of VA treatment, examination, or hospitalization reports, private physician medical reports, or state, county, municipal, or other government medical facilities to establish a retroactive effective date as provided in current §§ 3.155(c) and 3.157. The idea that certain records or statements themselves constitute constructive claims is inconsistent with the standardization and efficiency VA intends to accomplish with this final rule.

Therefore, in place of current §§ 3.155 (c) and 3.157, VA adopts the amendments to § 3.400(o)(2) as proposed, with two changes necessary to respond to concerns raised by commenters and to implement the intent to file process we have adopted in order to respond to the broadest concerns in the comments. The first change is to add the words ''or intent to file a claim'' after ''a complete claim'' in both the first and second sentences of the rule as proposed. The rule now states that a retroactive effective date may be granted, when warranted by the facts found, based on date of treatment, examination, or hospitalization from any medical facility, if the claimant files a complete claim for increase or an intent to file such a claim within 1 year of such medical care. This amendment preserves the favorable substantive features of the current treatment of reports of examination or hospitalization under § 3.157, but requires claimants to file a complete claim for increase, or an intent to file that is later perfected by a complete claim, within 1 year after medical care was received.

The other change is to insert the words ''based on all evidence of record'' in the first sentence of the regulation, so the language describing the relevant effective date now reads, ''[e]arliest date as of which it is factually ascertainable based on all evidence of record that an increase in disability had occurred''. This addition is to respond to a comment expressing concern that § 3.400(o)(2) as proposed would ''restrict[] the evidence needed to establish an earlier effective date to only medical evidence.'' The language in the second sentence of § 3.400(o)(2) as proposed specific to the treatment of medical records was intended to specifically address, in regulatory text, the situations in which medical records may establish an effective date. This language was intended to make clear, in governing regulation text separate from the elimination of current § 3.157, that medical records are evidence used to establish contemporaneous state of disability once a claim has been filed, and do not themselves constitute claims. By adding ''based on all evidence of record'' to the first sentence, we are making clear that the date as of which it is factually ascertainable that an increase in disability occurred may be based on any kind of evidence to the extent that evidence is credible and probative. Placing this clarification in the first sentence of the regulation avoids confusing matters by discussing types of evidence other than medical records in the second sentence, which is meant to provide clarification in light of the elimination of § 3.157.

Some commenters asserted that eliminating § 3.157 would shift the burden of filing a claim to the claimant, who may be more focused on undergoing treatment than in considering the existence of a potential monetary benefit. VA fully appreciates that while a veteran is hospitalized or receiving crucial medical treatment, a veteran may be more focused on his or her health than on pursuing a claim for compensation. VA has no desire to preclude veterans from receiving benefits for periods of hospitalization or medical treatment—VA only wishes to receive inputs in a standard format in order to serve veterans as efficiently as possible. Therefore, VA has provided a 1-year window within which a claimant can submit an intent to file a claim as outlined in § 3.155(b) of this final rule or file a complete claim for increase. As we discuss in section I.C of this final rule notice, the filing of an intent to file within this one year period provides up to a year to perfect the application by filing a complete claim. Under this final rule, all a veteran must do to preserve the earliest possible effective date of benefits is take the minimal step of filing an intent to file within 1 year from the date as of which it is ascertainable that an increase in disability has occurred, in any of the permissible formats discussed in § 3.155(b). 38 U.S.C. 5110(b)(3). Filing the intent to file placeholder then provides the claimant up to another year to perfect the application by filing a complete claim. VA believes this process provides a significant amount of time for veterans undergoing medical treatment or hospitalization to perform these minimal steps without losing any benefits. VA strongly believes that any *de minimis* burden associated with filling out a form, whether an intent to file a claim form or a complete claim, rather than having a medical record itself constitute a claim for increase is clearly outweighed by the efficiencies that will be realized as claims become easier to identify and process.

Several commenters stated that revised § 3.400(o)(2), the effective date provision for claims for increase, limits retroactive payments to no more than 1 year and that, currently, veterans may be eligible for many years of retroactive payments based on facts found in the medical evidence. Other commenters stated that the rule eliminates the present right of a veteran to use the date of treatment in a VA medical facility for a non-service-connected disability if a claim is submitted within 1 year and VA determines that service connection should be granted or when a claim specifying the benefit sought is received within 1 year from the date of such examination, treatment, or hospital admission.

The plain language of the statute governing effective dates for an award of increased compensation based on an increase in disability allows an effective date based on when it is factually ascertainable that an increase in disability had occurred, ''if application is received within one year from such date.'' 38 U.S.C. 5110(b)(3). Accordingly, it is clear that the effective date of a claim for increase can never be more than one year prior to the date of application. With this rule, VA is ending the practice that certain records themselves constitute claims, but is not disturbing the potential period during which a veteran may receive an award of increased compensation, provided the factual basis for such an award exists, and provided the veteran files a complete claim for increased compensation or an intent to file that is ultimately perfected by a complete claim for increased compensation within one year.

The situation identified by the commenters does not arise because VA

grants effective dates more than a year in advance of when the application is received—VA is flatly prohibited by statute from doing so. Rather, it arises when a veteran files a claim for increase, and VA becomes aware of a document, such as record of admission to a VA or uniform services hospital, potentially more than one year old, that itself constitutes a claim pursuant to current § 3.157, but has not been recognized as a claim or obtained by Veterans Benefits Administration (VBA) adjudicators until the instant claim for increase has been filed. In this scenario, benefits are not being paid more than one year prior to the date of application, but are being paid pursuant to a ''claim'' which was only recently found to have been pending. In other words, in this scenario the veteran is being paid a ''retroactive'' award because a claim was not properly identified and processed, and remained pending potentially for years. This is exactly the type of situation that VA seeks to prevent by insisting that claims must be on standard forms amenable to easy identification and processing. This rule does not preclude a veteran from receiving increased compensation for any period for which he is so entitled, provided he files a claim on a standard form or an intent to file within one year of when the increase in disability occurs. This rule does not ''take away'' potential avenues for a veteran to receive years of retroactive benefits, but rather prevents the situations that make retroactive payments necessary in the first place, provided the veteran takes the minimal step of filing a claim on a standard form. VA strongly believes it is preferable for veterans to be in current receipt of benefits to which they are entitled, rather than go without those benefits due to agency error for years before receiving retroactive payments. Additionally, we note that, to the extent a record that itself constitutes a claim is in existence as of the date this rule becomes effective and has not been identified and acted upon, this rule cannot extinguish that record's status as a claim under the law that was in effect as of the time that record was created, to the extent it is ever identified as claim. This rule cannot and does not preclude benefits that might be due for any unidentified and unadjudicated claims now pending.

Likewise, § 3.400(o)(2) does not alter the current procedures and laws governing the assignment of effective date(s) for an award granted for the first time based on treatment, hospitalization, or examination.

G. Special Allowance Payable Under Section 156 of Public Law 97–377

Finally, VA adopts minor amendments to proposed § 3.812 which govern a special allowance under Public Law 97–377. VA replaces the terminology ''formal'' and ''informal'' claims with ''complete claim'' and ''intent to file a claim,'' as appropriate, to ensure consistency with the rest of the final rule.

One commenter stated that mandating the filing of a complete form for this particular benefit prior to VA recognizing it as a claim flew in the face of a half century or more of veteran-friendly regulations. However, because VA has replaced the concept of informal claim with the concept of intent to file a claim in § 3.155(b) of this final rule, claimants applying for this benefit in § 3.812 can preserve an earlier effective date by submitting an intent to file a claim that is later ratified by a complete claim if filed within one year of receipt of the intent to file a claim. Therefore, claimants and/or beneficiaries would not lose out on possible benefits due to the requirement of a complete claim being filed for this particular benefit.

H. Other Comments Regarding Initial Claims

VA received many comments asserting that VA's mandate of the use of forms in the VA claims process is burdensome to claimants by making it more difficult for claimants to file a claim and by overcomplicating the claims process, particularly for those with disability limitations or limited access to VA forms. The commenters expressed that such mandate of the use of forms creates an adversarial relationship between claimants and VA. Some commenters stated that VA is acting only in its own best interest in reducing the statistics on the claim backlog and not in veterans' interests.

VA has responded to these concerns by adopting the intent to file process, which is meant to reconcile the need for standard inputs with the claimant's need to preserve an effective date while complying with the procedural requirement of filling out an application form. VA is sensitive to the concern that, in some cases, the very disability for which a veteran is seeking compensation may make it difficult to fill out a form. This final rule strikes an appropriate balance between providing claimants with a more efficient process that does not erode the longstanding informal, non-adversarial, pro-claimant nature of the VA system with the ongoing workload challenges relative to VA's operating resources. VA considers increasing the role of standard forms a key component to streamlining, standardizing and modernizing the claims process. The current informal claim process allows non-standard submissions to constitute claims, which involves increased time spent determining whether a claim has been filed, identifying the benefit claimed, sending letters to the claimant and awaiting a response, and requesting and awaiting receipt of evidence. These steps all significantly delay the adjudication and delivery of benefits to veterans and their families. Requiring the use of standard forms imposes minimal, if any, burden on claimants. Further, by making it possible for all claimants to preserve an effective date by utilizing the ''intent to file'' process, VA believes the benefits of these changes outweigh any such burden. Even those claimants who, due to their disabilities, may have trouble filling out an application form, can utilize one of the three acceptable formats for an intent to file, including oral communications with certain designated VA personnel, and take up to a year to perfect the application form without losing benefits.

Moreover, current standard forms such as VA Forms 21–526EZ, 21–527EZ, and 21–534EZ (hereinafter ''EZ forms'') contain the statutorily required notice to claimants of the information and evidence necessary to substantiate a claim at the onset of filing a claim. *See* 38 U.S.C. 5103. This means claimants do not have to wait for VA to send notices to claimants of VA's duty to assist in developing a claim. Claimants will be informed of what information and evidence is necessary in substantiating their claims prior to or at the time they file a claim.

In addition, the EZ forms used for filing disability compensation, pension, and survivor benefits as well as the NOD form are shorter in length, making them less burdensome and time-consuming for claimants to complete. Additionally, EZ forms contain pre-printed lists of potentially available benefits to help guide claimants through the claim process. VA believes that the standard format of VA's forms that provide pre-printed selections from which claimants can choose poses less of a burden on claimants because claimants spend less time describing their intent to file a claim, identifying and describing symptoms or medical conditions, or expressions of disagreement to a VA decision in a narrative format of non-standard submissions.

Some commenters asserted that there would be a constituency of claimants

who would not have access to VA's standard forms. The forms necessary to file claims for benefits are widely available, both online and in VA regional offices. Additionally, VA will continue to provide claimants with the correct forms upon request. 38 U.S.C. 5102. Furthermore, with the regulatory changes to § 3.155 standardizing the informal claim process through the concept of an intent to file a claim, claimants or their authorized representatives can contact designated VA personnel directly to establish an intent to file a claim and preserve a potential earlier effective date of their claim, and VA will furnish claimants with the appropriate claim application form(s) necessary for claimants to submit a complete claim. Many veterans service organizations also have access to VA forms.

One commenter objected to our discussion in the proposed rule pointing out that electronic claims could more easily be separated by issue and routed around the country for consideration by specialists, often referred to as the ''centers of excellence'' concept. The proposed rule would not have implemented or mandated the ''centers of excellence'' concept. It would have incentivized electronic claim submission, which removes many of the manual steps necessary to convert claims to electronic format. VA will only move toward electronic issue-by-issue brokering of workload when it is confident that this step adds both accuracy and efficiency to the claims process.

One commenter stated that the proposed rule would have created multiple definitions of ''receipt'' which 38 U.S.C. 5110, the statute governing effective dates of awards, does not authorize, and that particularly for electronic claims VA would not receive the identical form sent to VA via mail or other means and that the effective date of an electronic claim is outside the meaning of the statute. This final rule no longer attaches effective date distinctions to whether a claim is received in paper or electronic format. VA notes that statutes neither expressly permit nor prohibit VA's current longstanding practice of assigning an effective date based on receipt of an informal claim to establish an effective date when such informal claim is later ratified by a completed application form within 1 year. Through this final rule, VA is simply modifying the traditional informal claims process to make it more amenable to timely and efficient processing, while maintaining essentially the same longstanding liberalizing effective date rule that the informal claim process has entailed. To the extent this comment is read as raising the broader point that recurring terms in section 5110 such as ''date of receipt of application'' and ''date . . . application is received'' must be interpreted and implemented in a consistent way, VA has done so in this final rule. *See e.g.,* 38 U.S.C. 5110(a), (b)(2), (b)(3). As we explain in section I.C, a claimant must file an application form. However, for effective date purposes, VA will deem that application form to have been received as of the date VA was put on notice, through the submission of an intent to file, that a claimant intended to file a claim. Any specific statutory effective dates that are available (if justified by facts found) prior to the date that the application is deemed filed will operate independently.

Some commenters raised practical complaints with the eBenefits system. Some asserted that eBenefits is confusing to claimants, while others focused on technical barriers to eBenefits access. Similarly, some commenters pointed to past information security breaches, and the fact that the technology necessary to file an electronic claim may be expensive, as reasons why allowing an effective date placeholder solely for incomplete electronic claims would be a potential burden to claimants. Because this final rule no longer attaches potential effective date consequences to whether a claim is initiated electronically prior to its ultimate filing as a complete claim, we consider these comments addressed insofar as the structure of VA's claims rules is concerned. We will continue the operational work of improving online claim submission tools and conducting outreach to veterans on how to submit claims.

Some commenters pointed out that some veterans are illiterate, or are blind, or have brain injury, mental health problems, or other cognitive impairments, and might therefore have difficulty using technology or filling out VA forms. In this final rule, we have provided that claimants may establish an effective date placeholder via oral contact with designated VA personnel. We also note that 38 U.S.C. 5101(a)(2), as amended by Section 502 of Public Law 112–154, allows certain authorized signers to sign a form required by section 5101(a)(1) on behalf of an individual who ''has not attained the age of 18 years, is mentally incompetent, or is physically unable to sign a form''.

One commenter argued there is insufficient space on VA claims forms to identify disabilities with sufficient particularity, which will cause problems for veterans as well as processing problems at VA. The current form 21–526 contains space for seven conditions, as well as additional open space in which the veteran can indicate additional conditions if necessary. The form 21–526EZ already contains space to specifically list thirty conditions. More fundamentally, forms are capable of being revised based on experience and operational needs, provided VA complies with the necessary procedural requirements in doing so. An objection to the design of one particular form does not, therefore, imply that VA rules cannot or should not require claims to originate on standard forms. Finally, as we explain in section I.C, the commenter is mistaken as to the level of particularity required. The proposed rule would not have, and this final rule does not, require the veteran to identify a specific medical diagnosis in order to complete a claim. As § 3.160(a)(4) makes clear, all that is required is a ''description of any symptom(s) or medical condition(s),'' and this requirement can be satisfied by simply claiming ''right knee'' or ''shoulder,'' which will require VA to consider all possible right knee or shoulder disabilities established by the evidence of record.

Some commenters also suggested that VA's desire to increase the importance of standard forms in the claims process implies that VA cares more about the speed with which decisions are reached than the quality of those decisions. VA disagrees with these comments. Standard forms increase clarity and accuracy as well as efficiency, leading to lower error rates and higher quality in benefits processing. Additionally, VA strongly believes that unacceptable delays in the processing of veterans benefits claims, colloquially known as the ''backlog,'' also hurt veterans because benefits cannot be paid until a claim is decided. Many features of VA's current claims process also contribute to the backlog or, at a minimum, hamper VA's ability to address the backlog. Most inputs into the claims process, such as claimant submissions, are still received in paper format. Further, many submissions, including submissions requiring VA to take action, are not received in a standard format. This increases time spent determining whether a claim or a notice of disagreement to a decision has been filed, identifying the benefit or contention claimed or appealed, sending letters to the claimant and awaiting for a response, and requesting and awaiting receipt of evidence. These

steps all significantly delay the adjudication and delivery of benefits. By requiring the use of standardized forms for all claims and appeals, VA is able to more easily identify issues and contentions associated with claims or the initiation of an appeal that are filed, resulting in greater accuracy, efficiency, and speed in processing and adjudicating claims and appeals.

Some commenters suggested that VA should have standard forms, including for informal claims, but that use of those forms should be optional. VA has made no changes based on these comments. Making standard forms optional will not achieve the necessary standardization of the process because VA personnel would still be required to engage in time-intensive interpretive review of narrative submissions in order to determine whether a claim or appeal has been filed.

One commenter suggested that if the rule as proposed were confirmed as final, staff attorneys should be made available to all veterans who request one, free of charge, to navigate the ''adversarial'' process that would result. We disagree that requiring forms be filed at certain critical phases of the claims and appeals process amounts to an ''adversarial'' approach, particularly in light of the express authority conferred by Congress. Additionally, in this final rule, we have provided multiple avenues for a claimant to protect an effective date while taking up to a year to fill out the required form.

One commenter requested that VA ''clearly state and abide by [a] suspense/deadline for each claim processed.'' That is exactly what VA is trying to do. The Secretary has clearly stated that VA's operational goal is to process all claims with 98 percent accuracy within 125 days, has defined a claim pending longer than 125 days as part of the ''backlog,'' and pledged to eliminate the backlog in 2015. Given the volume and complexity of VA's workload, the use of standard forms are indispensable to reaching and maintaining this level of accurate production. This comment also suggested that the ''tens levels set forth by the VA'' are redundant. We construe this comment as an objection to VA's Schedule for Rating Disabilities, 38 CFR part 4, rather than to the rules and procedures governing the processing, development, and adjudication of claims, and as such this comment is beyond the scope of this rule. We also note that the 10 percent incremental evaluation applicable to the rating of disabilities is explicitly required by statute. *See* 38 U.S.C. 1114, 1155. This commenter also asserts that ''taking one to two years with no back dating to the start of a claim is unacceptable by any standard.'' VA agrees, and that is why our operational goal is 125 days. However, we note that once a claim is granted, it is paid as of that claim's effective date, which generally corresponds to the date of the receipt of application, and is not controlled by the date of decision.

Multiple commenters objected to the rule as proposed on constitutional grounds. These comments generally advanced two arguments. First, commenters argued that requiring veterans to fill out an application form deprives them of benefits without due process of law. Second, commenters advanced the related argument that attaching different effective date consequences to whether claims originate in paper or electronic format violates the equal protection component of Fifth Amendment due process.

VA disagrees with these comments, but believes an extended doctrinal discussion is unnecessary given the revisions to our original proposal that we adopt in this final rule. By adopting the intent to file process, VA has provided multiple standardized but claimant-friendly avenues for veterans to hold an effective date while they fill out a formal application form, including oral communications with designated VA personnel. The same amount of effective date protection is available for both paper and electronic inputs. Since this final rule provides that claimants can secure an effective date of benefits with only the minimal action necessary to constitute an intent to file, any constitutional concerns arising out of the rule as proposed are obviated.

One comment argues that VA is changing position from historical practice so suddenly that it renders VA's actions arbitrary and capricious. The argument that the proposed change was too sudden is belied by its very status as a proposal. This rule originated as a proposed rule, and received numerous comments as well as vigorous public scrutiny and debate. In response to the formal comments received, we have revised the proposal significantly in order to reconcile the competing interests as faithfully as possible.

Many comments advanced the position that VA should not consider rule changes when other avenues for improving the accuracy and efficiency of the claims system are available. The embedded premise of these comments is that so long as there is any room for improvements in training, staffing, management of AOJ personnel, and innumerable other areas of administrative responsibility, rule change is impermissible. VA disagrees for two reasons. First and foremost, many of the inherent difficulties in administering a system as large and complex as the VA benefits system are exacerbated by the prevalence of non-standard submissions. Second, as many commenters acknowledged, VA is actively engaged in improving all aspects of its operations. VA is not relying solely on regulatory change to achieve its goals, but does believe regulatory change is necessary and justified. In any event, these comments are beyond the scope of the rule.

One comment pointed out there would be inconsistencies between the legal structure of the claim system in this rule as proposed, and as reflected in the consolidated re-proposal of the Regulation Rewrite project. 78 FR 71042 (Nov. 27, 2013). The Regulation Rewrite project was not designed to formulate and implement changes to the substantive content of VA's regulations. The Regulation Rewrite project is a comprehensive multi-year effort to ''reorganize and rewrite'' VA's regulations governing claims currently governed by 38 CFR part 3. 78 FR at 71042. Substantive legal changes have been incorporated into the rewritten regulations throughout the project. *See e.g.,* 78 FR at 71065 (discussing changes to 38 CFR part 5 as proposed to accommodate provisions of Section 502 of Public Law 112–154 dealing with persons authorized to sign a claim on a veteran's behalf). Substantive changes at the regulatory level will be handled in similar fashion, with the content of any final publication of 38 CFR part 5 being revised to incorporate the current state of the law.

I. Other Regulations

VA has determined that revisions to current adjudication regulations which were not published in the proposed rule are necessary to ensure consistency with the changes in this final rule. Therefore, VA revises current 38 CFR 3.108, 3.109, 3.151, 3.403, 3.660, 3.665, and 3.666. and 3.701, which would not have been amended in the published proposed rule, by generally replacing the phrase ''informal claim'' with the phrase ''claim or intent to file a claim as set forth in § 3.155(b).'' Since VA is eliminating the term ''informal claim,'' it has removed references to the phrase ''informal claim'' and replaced it with the phrase ''claim or intent to file a claim'' for consistency in these adjudication regulations to reflect this change.

We have also made minor changes in phrasing to the affected regulations in order to execute this change. In particular, we have amended

§ 3.403(a)(3) by removing the phrase, ''notice of the expected or actual birth meeting the requirements of an informal claim'' and replaced it with ''a claim or intent to file a claim as set forth in § 3.155(b)''. This change preserves the generally beneficial nature of paragraph (a)(3) by providing a date-of-birth effective date whenever VA receives a claim or an intent to file a claim within 1 year of the veteran's death. The replacement of the term ''informal claim'' with ''intent to file a claim'' does not change the substance of these regulations.

In § 3.666(c), we have simply removed the phrase ''(which constitutes an informal claim)'' and have not replaced it with a reference to an intent to file a claim. This section governs resumption of payment of pension for incarcerated beneficiaries and fugitive felons upon release from incarceration. An intent to file a claim is simply inapposite to this situation, because VA does not require a claim for resumption of payment in this context. VA makes the necessary adjustments upon receipt of satisfactory notice. Simply replacing the language in the parenthetical with language designed for the intent to file process would have the bizarre effect of requiring an intent to file a claim, and therefore ultimately a claim, in a context where VA has no reason to require a separate claim. Accordingly, we have simply removed this parenthetical to make clear that pension will be resumed as of the day of release from incarceration if notice is received within one year following release.

We have changed the wording of § 3.701(b), which provides for elections between pension and compensation. Paragraph (b) now reads, ''[a]n election generally must be in writing and must specify the benefit the person wishes to receive.'' This is necessary because an intent to file a claim is a placeholder in VA's systems, and is not structured to be a substantive submission, such as one affecting the election of benefits.

II. Changes to Appeals Process Based on Public Comments

A. Commencement and Perfection of an Appeal

VA revises § 20.201 to incorporate the standardized NOD requirement substantially as proposed, with minor amendments and clarifications. In newly added paragraph (a), VA outlines the requirements for appeals relating to cases in which the AOJ provides a standard form for the purpose of initiating an appeal. In paragraph (a)(1), entitled ''Format,'' VA has provided that, for every case in which the AOJ provides, in connection with its decision, a form identified as being for the purpose of initiating an appeal, an NOD would consist of a completed and timely submitted copy of that form. In these cases, VA will not accept as an NOD any other submission expressing disagreement with an adjudicative determination by the AOJ. As we discuss in greater detail below, this means a completed form must be submitted within one year from the date of mailing of notice of the AOJ decision, or, if VA requests clarification of an incomplete form, within 60 days of the date the request was sent, or the remainder of the one year period from the date of mailing of notice of the AOJ decision, whichever is later.

One commenter suggested that VA's statutory authority in 38 U.S.C. 501(a)(2) to establish the ''forms of application'' does not extend to notices of disagreement. This commenter argued that the term ''[a]pplication for review on appeal'' in 38 U.S.C. 7106 is confined to the context of administrative appeals to the Board by VA officials and does not include notices of disagreement. We agree that section 7106, standing alone, potentially bears the reading that an ''[a]pplication for review on appeal'' refers only to an administrative appeal.

However, we make no changes based on this comment, for three reasons. First, while section 7106 permits the commenter's reading, it does not require it. The limitation in the first sentence of section 7106 that an application for review on appeal must be received within the one-year period described in 38 U.S.C. 7105 could be read simply to impose a time limit on administrative appeals, and does not imply that requests for Board review other than administrative appeals are something other than an ''[a]pplication for review on appeal.'' Second, 38 U.S.C. 7107(a)(1) discusses how ''each case received pursuant to an application for review on appeal'' will be docketed. This statutory section governs the docketing of all appeals before the Board, not just administrative appeals. Third, section 7108 also refers to an ''application for review on appeal,'' and requires that it be in conformity with the entirety of 38 U.S.C. Ch. 71. Nothing in the language or context of this statute implies that the term ''application for review on appeal'' is confined to administrative appeals, and the fact that all ''application[s] for review on appeal'' must comply with all requirements in 38 U.S.C. Ch. 71 implies that an ''application for review on appeal'' is any request for Board review. Chapter 71 includes 38 U.S.C. 7105, the statute governing requirements of, and treatment of, NODs.

Some commenters pointed out that the standardized NOD form addresses only compensation claims. As the proposed rule explained, this is necessary due to the legal structure of VA and the dynamics of VA's appellate workload. VA has chosen a flexible standard rather than identifying a particular form number or control number in the rule text in order to ensure the rule functions for all of VA's diverse operations. The standard for what constitutes an NOD applies to all VBA benefit lines, as well as the rest of VA. However, the current standard NOD form was designed only for compensation claims. One of the key features of the form's design is that it solicits particular pieces of information relevant to a compensation claim. Standard NOD forms for other types of benefits, such as loan guaranty and educational benefits, have not yet been created. Requiring appeals of other benefits, such as home loan guaranty or education benefits, to be submitted using this form in its current state would likely be confusing to veterans.

At the same time, the overwhelming majority of the VA appellate workload concerns appeals of AOJ decisions on claims for compensation. Board of Veterans' Appeals, Department of Veterans Affairs, *Report of the Chairman: Fiscal Year 2012,* at 22 (2013) (96.1 percent of Board dispositions in FY 2012 were for compensation claims). Therefore, VA is concerned that making the NOD form so generic as to accommodate appeals of all benefits VA-wide might dilute much of the efficiency gain VA expects from mandating the use of standardized forms. Nevertheless, VA will continue to seek ways to provide a standardized format for VA benefits lines to receive an appeal, whether on one all-purpose form or individual specialized forms.

To reflect these current realities, the standard reflected in amended § 20.201(a)(1) is designed to produce a single rule that can function flexibly VA-wide while allowing for the creation of forms that are functional for each VA benefits line. Additionally, § 20.201(b) provides a ''fallback'' standard for benefits where standardized appellate processing is not as pressing a need as it is with compensation claims. This approach allows for standard forms in VA benefits lines where the volume, complexity, and frequency of appeal call for standardization, without disrupting the administration of other benefits that are infrequently appealed. In § 20.201(b), if VA does not provide a standard appeal form for a particular

type of claim, the claim is governed by the current standard for what constitutes an NOD as provided in current § 19.26 and regulatory text of § 19.23(b) and § 20.201(b). As of the publication of this final rule, VA only expects regularly to provide a standard appeal form for compensation claims and similar monetary benefits claims. However, VA may choose to provide standard forms with AOJ decisions for other benefits lines as the volume and dynamics of VA's workload continue to evolve. Additionally, if VA fails to provide a standard appeal form to the claimant due to a case-specific error, the claimant would be able to initiate an appeal under the current standard for an NOD where a written communication expressing dissatisfaction or disagreement and a desire to contest the result will constitute an NOD. See § 20.201(b).

The second sentence makes clear that if the AOJ provides a standard form with its decision, triggering the applicability of § 20.201(a), VA will not accept a document or communication in any other format as an NOD. VA believes this rule is necessary to make use of the standard form mandatory and maximize improvement and efficiency in the appellate process. Additionally, VA clarifies in this final rule that submitting a different VA form does not meet the standard for an NOD in cases governed by § 20.201(a). Many VA forms, such as VA Form 21–4138, *Statement in Support of Claim,* are so generic that they would not yield the clarity and standardization this rule change is designed to achieve.

In the future, different standard forms may be developed for different benefit lines. Under this final rule, the particular version provided with the AOJ decision must be used. For example, if a claimant received an AOJ decision relating to a compensation claim and received a compensation-focused form (such as VA Form 21–0958, *Notice of Disagreement*) from the AOJ, the claimant could not initiate an appeal by returning a different form developed for the purpose of initiating appeals of AOJ decisions relating to a home loan guaranty.

In § 20.201(a)(2) of this final rule, VA has made clear that it may ''provide'' the form to the claimant electronically or in paper format. VA has provided that if a claimant has an online benefits account such as eBenefits, notifications within the system that provide a link to a standard appeal form would be considered sufficient for the AOJ to have ''provided'' the form to the claimant and trigger the applicability of § 20.201(a). Similarly, if a claimant has provided VA with an email address for the purpose of receiving communications from VA, emailing either a copy of the form itself or a hyperlink where that form may be accessed is sufficient. The email should identify that the hyperlink is to a required VA appeal form. Some comments could be read to suggest that VA should provide the form in both electronic and paper format to all claimants. To the extent this was the commenters' intent, VA rejects this suggestion. Sending paper forms to claimants who have established an online benefits account or otherwise indicated an intent to receive communications from VA in electronic format, such as by providing VA with an email address for that purpose, would be duplicative, wasteful, and inconsistent with VA's goals to modernize the claims and appeals process.

Finally, if a claimant has chosen to interact with VA using paper, VA will provide a paper version of the standard form in connection with its decision. The specific piece of paper that is sent to the claimant need not be returned in order to constitute an NOD, but the same form must be returned. In other words, if a claimant is sent a copy of a particular form, he or she must return a completed copy of that form, but not necessarily the same piece of paper that was mailed to the claimant.

Several commenters expressed concern about VA's procedure for furnishing the standard form to claimants and inquired as to the procedure VA would take in order to obtain the correct VA form from the claimant if an alternate communication is received by VA. As we explain above, the requirement for an NOD to appear on a standard form is only triggered when VA provides a form for the purpose of initiating an appeal in connection with its benefits decision. Accordingly, the requirement to use a standard form necessarily only applies to claimants who have already received that form, and an explanation of how to appeal VA's decision. *See* 38 U.S.C. 5104 (notice of Secretary's decision ''shall include an explanation of the procedure for obtaining review of the decision''). In the event VA receives an incomplete standard NOD form, it will follow the procedures set forth in § 19.24(b)(1). VA will furnish the appropriate form or the standard NOD form to claimants in paper format with the decision notification letter as well as providing a hyperlink to the standard form in the decision notification letter.

One comment suggested that § 20.201(a)(2) be revised to state that VA ''must'' provide the appeal form in the applicable format, rather than ''may.'' This same comment asserts the rule ''assume[s] VA will provide that form in its decision letter.'' This comment is predicated on a misunderstanding of the rule. Again, the requirement to use the standard form is not triggered unless VA provides the form in connection with its decision. Inserting the term ''must'' into § 20.201(a)(2) would broaden the scope of claims for which use of a form would be mandatory.

One comment suggested that § 20.201(a)(2) should be revised to require that the form be provided to the claimant's representative, if any, in addition to the claimant. We have considered this suggestion and agree. A claimant's representative generally must receive the same decision notice that is sent to the claimant. 38 U.S.C. 5104(a). While this statutory principle does not necessarily imply that any representative must receive the form in order to trigger the requirement that the form be used to initiate an appeal, ensuring representatives receive the necessary form adds minimal additional administrative burden.

However, we do not believe any revisions are necessary in order to make this clear. The rule as proposed and as here confirmed as final provided that the requirement to use a standard form arises when the AOJ provides the standard form, ''in connection with its decision.'' Because the same statute governing content of VA decisions specifies that representatives are to receive the same notice that is sent to the claimant, this implies that any representative should also receive the form. We note that this reasoning implies that the presumption established in § 20.201(a)(3) will apply to the question of whether the form was provided to the representative. Additionally, this rule does not alter the scope of evidence or argument submission within the VA system. Therefore, if a representative is unsure whether the form was provided, particularly in a compensation claim, we see no readily apparent substantive reason why the representative would not simply use the form, which is and will remain widely available, to keep the veteran's claim moving as quickly as possible. We see no reason why a trained, accredited representative who is aware of VA forms would spend an inordinate amount of time attempting to protect an option to submit an NOD in a non-standard narrative format, rather than simply filling out a form and submitting argument on a separate document if necessary. Finally, we note the fact that the representative must

receive the form in order to trigger the requirement that the form be used does not imply that the representative must receive the form in the same format as the claimant. In particular, a representative with access to VA's Stakeholder Enterprise Portal, or who otherwise interacts with VA electronically, does not have to receive the form in paper merely because he or she represents a claimant that prefers to interact with VA through paper.

In § 20.201(a)(3), VA has provided that any indication whatsoever in the claimant's claims file or benefits account of provision of a form would be sufficient to presume the form was provided, triggering the applicability of § 20.201(a) rather than § 20.201(b). Under this rule, an indication as minimal as a statement in a decision notification letter such as ''Attached: VA Form 21–0958'' would be sufficient to trigger the presumption that the form was provided and § 20.201(a) governs. *See Butler,* 244 F.3d at 1339–41 (presumption of regularity applies to the administration of veterans benefits).

In § 20.201(a)(4), VA provides that, if a standard VA form requires some degree of specificity from the claimant as to which issues the claimant seeks to appeal, the claimant must indeed provide the information the form requests in order for the submission to constitute an NOD. For example, the current form provides claimants with a selection of separate boxes allowing claimants to identify broad categories of disagreement. VA believes it would be helpful to the process to have this requirement in the governing regulation.

Several commenters objected to the requirement that an appeal be initiated on a standard form. Many commenters advanced the position that VA does not have authority to require that NODs be on standard forms designed for the purpose of initiating an appeal, and provided to the claimant with an explanation that the form must be used to initiate an appeal. In particular, some commenters argued that governing statutes did not allow VA to mandate the use of a form and that whether a document is an NOD is a question of law for the Veterans Court to determine *de novo* under 38 U.S.C. 7261(a). Commenters also stated that requiring an NOD form violates the Court's interpretation and plain language of 38 U.S.C. 7105.

VA has clear authority to require that a claimant submit an NOD on a particular form, and accordingly does not agree with these comments. The Federal Circuit has explicitly held that 38 U.S.C. 7105 ''does not express a complete and unambiguous meaning for the statutory term 'notice of disagreement,' '' and that VA's implementation of section 7105 accordingly must receive the significant deference due an agency's reasonable construction of a statute it administers. *Gallegos* v. *Principi,* 283 F.3d 1309, 1313 (Fed. Cir. 2002); see *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–45 (1984). Additionally, Congress has specifically delegated authority to VA to issue rules concerning ''the forms of application,'' 38 U.S.C. 501(a)(2), and has characterized a request for Board review as an ''[a]pplication for review on appeal.'' 38 U.S.C. 7106, 7107, 7108. These explicit delegations of authority, coupled with the significant benefits that consistent use of the standard NOD form will have in improving the timeliness and accuracy in processing of veterans' appeals, make clear that our construction of section 7105 is reasonable.

It is irrelevant that the Veterans Court might analyze whether a particular document qualifies as an NOD as a question of law as opposed to a question of fact. If anything, this highlights the essentially interpretive nature of the current standard for an NOD. The Veterans Court's authority to review VA's determinations regarding whether a particular veteran filed a timely NOD under the legal standard applicable to that veteran's case does not have any bearing whatsoever on VA's authority to define, by regulation, the legal standard for an NOD, so long as VA's definition is consistent with the governing statute, and a reasonable interpretation of any statutory ambiguity.

Part of the rationale for requiring standard VA forms, particularly for the appeals of compensation claims, is that they enable VA to identify the substance of an appeal as early as possible in the process. Additionally, inputs from the claimant in a standardized format are much more easily turned into data that can be used in evaluating and processing a claim or appeal.

VA strives to maintain the veteran-friendly, pro-claimant nature of the appeals process by providing a format in the standard form that allows claimants to choose from pre-printed selections as well as ample space on the form for statements or comments in a narrative format.

Some commenters expressed concern that mandating the use of a standard form means VA will not provide its statutory duty of assisting claimants with developing their claims or providing notice to claimants. Some maintained that the duty to assist precludes VA from requiring appeals be initiated on standard forms. The statutory duty to assist plainly does not require VA to accept NODs regardless of the format in which they are filed; rather, it governs what efforts VA must undertake to help a veteran secure evidence necessary to establish the elements of entitlement. 38 U.S.C. 5103A. That VA has a duty to gather evidence does not imply VA cannot issue reasonable regulations within its explicitly delegated statutory authority that are necessary to administer the claims process. Further, the Federal Circuit has held that what constitutes an NOD is ambiguous in 38 U.S.C. 7105, which, unlike 38 U.S.C. 5103A, applies specifically to the appellate process. VA's regulations implementing this statutory term accordingly receive *Chevron* deference. *Gallegos,* 283 F.3d at 1313.

VA disagrees with these comments, but offers one clarifying change. The plain language of § 19.24(a), both as proposed and as here confirmed as final, requires VA to identify and implement any necessary development or review action when a timely notice of disagreement is filed. As proposed, § 19.24(a) provided that the AOJ ''may'' reexamine the claim and determine what development or review action is warranted. The use of the term ''may'' in the proposed rule was consistent with the inherently discretionary nature of VA's development and review obligation specific to this phase of the process, and with the general scope of the duty to assist. *See* 38 U.S.C. 7105(d)(1) (AOJ must take ''such development or review action as it deems proper''); see also 38 U.S.C. 5103A(a), (d) (Secretary must make reasonable efforts to assist in obtaining evidence ''necessary'' to substantiate the claim, and must provide a medical examination when one is ''necessary to make a decision''). However, to make clear that the AOJ is required to review the claim in cases where a timely NOD is filed and make the threshold determination of whether any further development or review action is deemed necessary, we have changed ''may'' to ''will'' in this final rule. This rule does not alter VA's substantive duties in regard to the processing of NODs. VA is only requiring that claimants provide their expression of dissatisfaction or disagreement of an AOJ decision in a specified format, i.e., on a standard form. This does not alter the scope of VA's duty to take appropriate review and development action upon the filing of a notice of disagreement, or in any way affect VA's duty to assist claimants.

One commenter argued that AOJ personnel failing to recognize an NOD

under the current standard indicates a need for better training, not imposing a requirement on a veteran to complete a form. We disagree with the embedded premise of this comment that the current standard is the ''correct'' standard that must be maintained regardless of evidence and reasoning indicating that it harms veterans and VA's efforts to accurately and efficiently process appeals of benefits decisions. Furthermore, VA has rigorous training programs for AOJ personnel, and these will continue under the implementation of this rule. More fundamentally, the standard for what constitutes an NOD under the current rule is inherently subjective, meaning no amount of training can totally eliminate error in the identification of NODs. Even determinations that are not ''erroneous'' can be overturned by higher decisionmakers who simply take a different view of whether the subjective standard of what constitutes an NOD is met given the facts of the case.

Several commenters criticized the layout or content of the current standard NOD form. Some stated that the content of the current standard appeals form did not provide claimants with an option for claimants to select an AOJ's *de novo* appellate review. Other commenters expressed concern that the form is inadequate to appeal certain benefits. Other commenters suggested the form contains too many terms of art to be useful to veterans. Other commenters questioned the motive behind VA inquiring whether claimants would like direct communication with the AOJ regarding the appeal. Generally, VA is considering the comments regarding the content of the current standard appeals form and will update or revise the form based on these comments as necessary. Specifically, VA is considering whether the form should be revised to include an election of *de novo* AOJ review pursuant to 38 CFR 3.2600, as multiple commenters urged. One commenter expressed concern that the NOD form does not have any language or endorsement for the veteran to provide indicating that he or she desires to contest the result of the agency's decision. Similarly, another commenter even suggested that this omission could lead to VA determining its own form, even if completed, does not constitute an NOD, and disallow appeals due to deficiencies in a form it had mandated the use of. While VA can and will continue to revise forms based on experience in the administration of its programs, we note that the filing of the form itself provides the necessary indication that the veteran disagrees with the original decision and desires to contest the result.

It is true the form contains terms of art specific to compensation claims. We address this issue in section II.D. below. In particular, however, we note that we have revised § 19.24(b)(2) to enumerate the information required to complete a standard NOD form with greater particularity. As we explain more fully in section II.D., the form will continue to solicit more detailed information from the veteran because this is useful in orderly and efficient processing, but in § 19.24(b)(2)(iii) we clarify that the form is considered complete if it enumerates the issues or conditions for which appellate review is sought. Although no changes to the standard NOD form were made, we did amend the instructions to the NOD form to provide notice to claimants of what is minimally necessary to constitute a complete NOD as well as the action VA will take when an incomplete NOD is received.

To the extent commenters object to the current form's focus on issues specific to compensation claims, rather than other benefit lines, we address this issue above—the requirement to use a form is only triggered when VA provides the claimant a form for the purpose of initiating an appeal in connection with its initial decision. This will enable VA to tailor the content of standard NOD forms to suit the substantive needs of VA's diverse benefit lines and operations. To the extent commenters object to the lack of a dedicated space on the current form to identify a claimant's belief that VA wrongly denied entitlement to an ancillary benefit related to a compensation claim, such as special monthly compensation, aid and attendance, or total disability by reason of individual unemployability, there are at least two spaces on the current form where it would be appropriate to identify these issues, to the extent a claimant is able to provide this degree of specificity. One, such information could be included on the section of the form asking the claimant to identify disagreement as to the evaluation assigned. While each of these ancillary benefits have their own specific criteria, they are all fundamentally amounts of increased compensation that are owed to the claimant based upon the circumstances, including severity of disability, like any other rating and as, discussed above, fall within the scope of a complete claim when entitlement is shown by evidence of record and stems from one or more enumerated issues in a claim. *See* 38 CFR 3.350, 4.16. Two, such information could be included in the section on the form specifically designated for a narrative statement from the claimant. Additionally, though we view the election of AOJ de novo review as beyond the scope of a rulemaking requiring a standard form to initiate an appeal, we note that the claimant can also elect to utilize this procedure in this space on the current standard NOD form designed for a narrative statement. VA will consider whether the form should be revised to include a dedicated space for these types of information based on its ongoing experiences in administration of the standard NOD form process. The form includes a space to elect direct communication with the AOJ regarding the appeal because informal communications between AOJ personnel and veterans and their representatives are extremely valuable in clarifying and sometimes even resolving the issues in an appeal. Many claimants appreciate the availability of this direct and informal engagement from AOJ personnel. However, other claimants react negatively, and even feel that VA is harassing them if multiple attempts at phone contact are made. The election allows VA to target its limited AOJ personnel time to cases where it is likely to be useful.

In § 20.201(a)(5), VA states that the filing of an alternate form or other communication does not extend, toll, or otherwise delay the time limit for filing an NOD. In addition, VA clarifies that returning the incorrect VA form, including a form designed to appeal a different benefit, does not extend the deadline for filing an NOD. This policy is necessary to bring efficiency to appeals processing. Imposing a requirement that AOJ personnel, even in cases where a form pursuant to § 20.201(a)(5) was provided to the claimant, must scour non-standard claimant submissions in search of communications which might be reasonably construed as an expression of disagreement in order to make sure the claimant has not attempted to initiate an appeal in the incorrect format would require exactly the same time-intensive interpretive exercise that VA seeks to end by requiring use of a standard form. VA believes the one-year statutory period in which to file an NOD is ample time to fill out and return the standard NOD form. Some commenters requested that an alternate form or other communication toll the time limit for filing the correct form. For instance, one commenter urged the addition of new text in § 20.201(a)(5) essentially providing that if a communication that would qualify as an NOD under current

rules is received in a case governed by § 20.201(a), VA will provide another copy of the correct form and provide another 60 days (or the remainder of the one year statutory period in which to initiate an appeal, whichever is longer) for the claimant to return it. Other commenters suggested that the time limit not be tolled, but that VA still be required to identify statements indicating a claimant's disagreement not filed on the standard NOD form, notify the veteran of the deficiency, and re-send the NOD form.

VA makes no change based on these comments. The point of requiring appeals to be initiated on standard forms is to reduce the need for AOJ personnel to engage in the time-intensive interpretive review of non-standard narrative submissions. Requiring VA to identify that a particular submission can ''be construed as disagreement'' in a case otherwise governed by the requirement to use a standard form would destroy the predictability and efficiency that use of a form makes possible because it would require the same amount of ''by hand'' review as is required under the current system. Given that the requirement to use the correct form is only triggered when VA has provided the form to the claimant, we do not believe it is justified to create an exception requiring exactly the kind of interpretive review of narrative submissions, in such cases, that this rule seeks to end. However, we note that the fact we do not create an exception requiring AOJ personnel to engage in this type of review does not imply that this rule would prevent AOJ personnel from notifying a veteran who has clearly expressed disagreement in a narrative format that he or she must use the form. In many instances, AOJ personnel may even conclude that doing so serves the interest of both clarity and efficiency.

In § 20.201(c), VA clarifies that it does not require a standardized form for simultaneously contested claims, which are claims in which the award of benefits to one person may result in the disallowance or reduction of benefits to another person. 38 CFR 20.3(p). Such claims arise only rarely and, irrespective of the nature of the benefit sought, they commonly present unique issues involving marital or other relationships of different individuals claiming entitlement to the same or similar benefits based on their relationship to the same veteran. Further, in 38 U.S.C. 7105A, Congress has prescribed a 60-day time limit for filing NODs in simultaneously contested claims. In view of these claims' unique features, we do not alter those governing standards. Moreover, because simultaneously contested claims constitute a very small portion of VA's appellate caseload, excluding those claims from the requirement to use standardized forms will not significantly affect the objectives of this rule. VA, therefore, states in paragraph (c) of § 20.201 that the provisions of § 20.201(b) apply to simultaneously contested claims. However, claimants in simultaneously contested claims could use a standard VA form, when feasible, even though they would not be required to do so.

B. Procedures for NODs Received on Standard Form

This final rule creates two new sections in part 19. New § 19.23 generally clarifies which procedures apply to appeals governed by § 20.201(a), and which apply to appeals governed by § 20.201(b). New § 19.23(b) specifies that current procedures in §§ 19.26 through 19.28 would continue to apply to appeals of benefits decisions governed by § 20.201(b), and new § 19.23(a) provides that these procedures would apply only to those cases. In other words, the provisions of §§ 19.26 through 19.28 apply only to appeals of AOJ decisions relating to cases in which no standard form was provided by the AOJ for the purpose of initiating an appeal. New § 19.23(a) also clarifies that the procedures in new § 19.24 apply to appeals of AOJ decisions for cases in which the AOJ provides a form for the purpose of initiating an appeal, which are governed by § 20.201(a). With this new clarifying section, VA hopes to eliminate any confusion potentially caused by the fact that §§ 19.26 through 19.28 will no longer provide governing procedures for the overwhelming majority of VA's appellate caseload, but must be retained for processing NODs relating to other benefits for which no standardized NOD form is provided.

One commenter stated that the standard form for a NOD primarily addresses compensation claims and not other types of claims such as pension or survivor benefits. Currently, the compensation-focused form is VA's only standard NOD form. VA has not yet designed appeal forms that meet the specific needs of all other VA benefit lines.

In paragraph (a) of new § 19.24, VA provides that its practice of reexamining a claim whenever an NOD is received and determining if additional review or development is warranted are also applied to NODs submitted on standardized forms.

One comment suggested that 38 CFR 19.27 be changed to include reference to § 19.24 in addition to its current reference to § 19.26. Section 19.27 specifies the procedures for situations when VA does not believe a document filed by a claimant expresses disagreement and a desire to appeal with adequate clarity to constitute an NOD. VA views § 19.27 and related § 19.28 as being necessary primarily due to the current amorphous standard for what constitutes an NOD, and believes that adopting standard forms will obviate the need for these procedures in the vast majority of cases. In cases governed by § 20.201(a) and accordingly by § 19.24, there should be no need for appellate consideration of the ''adequacy'' of the NOD—the correct form either was, or was not, filed within the applicable timeframe. VA accordingly declines to make § 19.27 applicable to the procedures in § 19.24.

However, in considering this comment, VA has concluded it is necessary for this final rule to include some mechanism for claimants to challenge VA's determination that the correct form was not timely filed. Even if there should be no issue as to whether an NOD was ''adequate'' in a case governed by § 20.201(a) and § 19.24, there is the possibility for technical errors or errors by AOJ personnel. We have therefore revised § 19.24 as proposed to include a new paragraph (d), which makes clear that VA's determination that no NOD was filed may be appealed. However, this paragraph also makes clear that appellate consideration is limited to the question of whether the correct form was timely filed. This limitation is necessary in order to prevent this avenue for challenging VA's determination that no form was filed from creating an open-ended exception to the otherwise valid requirement that an NOD must be on a standard form in cases governed by §§ 20.201(a) and 19.24. In the event a competent appellate review authority determines that a valid NOD was in fact filed, the AOJ would be required to process the appeal, to include providing a statement of the case relating to the substance of the appeal. We note that, unlike § 19.27, new paragraph 19.24(d) does not utilize the procedures for administrative appeals in 38 CFR 19.50–19.53. Those procedures are designed to accommodate disagreements among agency personnel that admit of a degree of subjective difference of opinion, such as whether an ''adequate'' notice of disagreement under the traditional standard has been filed. Our purpose in

making VA's determination that no NOD governed by §§ 20.201(a) and 19.24 was filed appealable is to provide claimants a way to appeal any administrative or technical errors by VA personnel in the determination of whether the correct form was timely filed, not to resolve disagreements among AOJ personnel in the resolution of subjective questions such as whether an ''adequate'' NOD has been filed.

Related to this issue, another comment asks whether VA believes it has authority to limit the Veterans Court's jurisdiction by rejecting an NOD that satisfies the requirements of 38 U.S.C. 7105. We respond to the embedded premise of this comment, that requiring an NOD be on a standard form is inconsistent with section 7105(d), in section II.A. However, we have provided explicitly for appellate review of whether a valid NOD has been filed even in cases where the requirement to utilize a standard form attaches, in part to ensure claimants have a means of obtaining factual review of VA's determinations as to whether the correct form was filed in a timely way (short of the drastic step of filing a petition for a writ of mandamus). VA has clear authority to define what constitutes an NOD, but claimants have a right to review of VA factual and legal determinations under any standard VA promulgates.

But the further suggestion that VA cannot establish any requirements pertaining to what constitutes an NOD because those requirements form a ''barrier'' to the Veterans Courts' review of the merits of a claim cannot be correct. This would imply that VA is prohibited, by virtue of the Veterans Court's mere existence, from exercising authority explicitly delegated by statute. Further, we note that it is well established that ''[a] court's prior judicial construction of a statute trumps an agency construction otherwise entitled to *Chevron* deference only if the prior court decision holds that its construction follows from the unambiguous terms of the statute and thus leaves no room for agency discretion.'' *Nat'l Cable & Telecomm Ass'n* v. *Brand X Internet Services,* 545 U.S. 967, 982 (2005); *see also Eurodif S.A.* v. *U.S,* 423 F.3d 1275, 1276–77 (Fed. Cir. 2005).

C. Complete and Incomplete Appeals Forms

In response to comments, in paragraph (b) of new § 19.24, VA has revised the proposed rule to reorganize this section for clarification purposes by distinguishing between incomplete and complete appeal forms. VA has redesignated proposed paragraph (b) as ''Incomplete and Complete Appeal Forms'' and restructured this section to categorize ''incomplete appeal forms'' in subparagraph (b)(1) and ''complete appeal forms'' in subparagraph (b)(2). Section 19.24(b)(1) outlines the procedures for when a claimant submits the correct form timely but incomplete. VA believes that the authority to require a claimant to use a particular form necessarily implies the authority to require that the form be completed, to include identifying each specific issue on which review of the AOJ decision is desired. VA strongly believes that if veterans provide all information requested on the standardized VA form, this will lead to the fastest possible result for that individual veteran and the VA appellate system will work more efficiently for all veterans. Accordingly, if VA determines a form is incomplete, VA may require the claimant to timely file a completed version of the form.

D. Completeness of the NOD Form

In revised § 19.24(b)(2), VA describes the standard by which it would determine whether or not a form to initiate an appeal is complete, both in general and for compensation claims in particular. In general, a claimant must provide the information to identify the claimant, the claim to which the form pertains, any information necessary to identify the broad category of the disagreement, and the claimant's signature in order for that form to be considered complete. However, we did not specifically enumerate the type of information necessary to identify the claimant in the rule text in order to provide VA with some flexability to ascertain the identity of a claimant by using certain information or a combination of information which the claimant may provide. For example, there are many claimants with identical names to other claimants and a claimant's name alone may not necessarily identify a specific claimant with a particular claims file. If there is other information specific to a claimant such as a Social Security Number, then VA would be able to identify a claimant to his or her claims file even without the claimant's name. As opposed to allowing VA to use the information provided in a combination of ways to identify a claimant, we believe that enumerating the type of information required to identify a claimant with specificity would hinder both claimants and the VA processing NODs. If VA were to outline the exact requirements of what is necessary to identify claimants in its regulations, then a form which contained information that could identify a particular claimant but did not contain other non-essential information could render the form incomplete. This would result in VA rejecting these forms for minor ministerial or formalistic deficiencies, thereby delaying the processing and adjudication of a claimant's appeal. By allowing VA to determine in its discretion what information is necessary in identifying a claimant without specific particularity in the regulations, the regulation will enable VA to process these notices of disagreement without rejecting such forms as incomplete if certain information was not provided, thereby eliminating or preventing prolonged administrative delays and speeding up completion of an appeal. For compensation claims being appealed, a form is considered incomplete if it does not enumerate the issues or conditions for which appellate review is sought. With respect to the nature of disagreement, the form directs claimants to indicate, for each appealed condition, whether they disagree with the AOJ's decision on the question of service connection, disability evaluation, effective date, and/or any other question. This information enables VA to more efficiently process appeals and avoid expending time and other resources on matters the claimant does not contest.

It is not VA's intention to be overly technical in determining whether claimants have completed a form. The purpose of this final rule is the orderly and efficient processing of veterans' claims and appeals, not the exclusion of legitimate appeals, and VA's decision to conclude that a form is incomplete and request completion will be guided by this principle. *See Robinson* v. *Shinseki,* 557 F.3d 1355, 1361 (Fed. Cir. 2009) (''[i]n direct appeals, all filings must be read 'in a liberal manner' whether or not the veteran is represented''). As with the consideration of claims meeting the standard of a complete claim, VA stresses that it does not intend to consider a form used to initiate an appeal to be incomplete and to request further completion unless that is a reasonable course of action to facilitate orderly processing of the appeal.

Several commenters stated that the requirement of a complete standard form for an expression of disagreement ''converts a legal notice into a substantive pleading by installing requirements in an undefined form'' that violates 38 U.S.C. 7105(a) and that the form requires a level of knowledge beyond the average veteran, especially one who is not represented by a VA-accredited representative. VA considers the requirements of a complete NOD

minimally burdensome to claimants. VA disagrees that providing basic information sufficient to identify which claim or issue the claimant seeks to appeal, such as identifying that an appeal pertains to a claim for a knee disability as opposed to a shoulder disability, is equivalent to requiring a substantive pleading sufficient to initiate a civil action. In order to provide claimants with clear indication of what constitutes a complete form as provided in § 19.24(b)(2), we have amended the instructions to the NOD form to provide the criteria for a complete NOD but we have not changed or altered the NOD form itself.

As we have explained, VA has intentionally drafted this rule to make it possible for VA to respond to evolving needs in the appellate workload, to include the possibility that benefit lines other than compensation may need a standardized form to facilitate orderly processing. However, this does not mean this rule would allow VA to impose unlimited requirements into an undefined form. First of all, alteration to any existing form, and creation of any new form, is governed by the Paperwork Reduction Act (see below), which in many cases requires public notice and comment before new collections of information are legally valid. More fundamentally, however, any requirement that VA ''inserts'' into a standard NOD form must be a reasonable exercise of VA's statutory authority. If VA were to add to a standard NOD form a requirement totally unrelated to providing notice that the claimant disagrees with a VA decision and obtaining information necessary to facilitate the orderly administrative action such a notice triggers, that requirement would be beyond the scope of the statutes that confer authority on VA to require the form in the first place.

Section 19.24(b)(2) responds to commenters' concerns regarding the level of specificity required for a form to be considered complete by making clear that a form ''will,'' rather than ''may,'' be considered complete if it meets the following criteria: Information to identify the claimant; information to identify the claim to which the form pertains, and information necessary to identify the specific nature of the disagreement, to include for compensation claims, the issues or conditions for which appellate review is sought; and the claimant's signature. In particular, we note that § 19.24(b)(2)(iii) as revised provides that, for compensation claims, a form will be considered complete if it enumerates the issues or conditions for which appellate review is sought, or if it provides other more granular information required on the form to identify the nature of the disagreement (such as disagreement with disability rating, effective date or denial of service connection). This means that, at a minimum, VA would consider the identification of an issue, such as a ''shoulder disability,'' sufficient for purposes of meeting this criterion for a complete appeal form, even if the form on its face requires additional information. While the current standard appeals form for compensation claims instructs claimants to list each specific issue of disagreement, it also provides selections for more detailed description in association with each issue. For each issue of disagreement, claimants can select an area of disagreement, e.g., service connection, effective date of an award, evaluation of disability, or other and claimants can also provide a percentage of the evaluation sought if applicable. However, VA would consider this form complete if the claimant provides biographical information, the specific issue(s), and the claimant's signature. It would not be necessary for a claimant to describe the area of disagreement or percentage of the evaluation sought for each issue in order for VA to consider the form complete. Once VA receives the complete NOD, it will make the appropriate readjudication determinations necessary for those specific issues listed such as determining whether the correct evaluation percentage or effective date was assigned or if other benefits should have been granted based on the evidence. However, we believe it is valuable for the form to solicit information pertaining to the specific nature of the disagreement, even if claimants can complete the form by providing less information. We note that claimants will facilitate the timely consideration of their appeals if they provide VA with as much information as possible regarding the nature of their disagreement as early in the process as possible.

One commenter asked if a veteran indicates a particular effective date on a standard form, but the correct date is earlier, which date VA would grant. In the clean hypothetical situation posited by the commenter, the answer is that VA would grant the correct date. Again, the requirement to use a standard form to initiate the appeal, even a form that solicits particular information in order to facilitate accurate and efficient consideration of the claim, does not alter the scope of VA's ''development and review'' action required by 38 U.S.C. 7105(d).

E. Timeframe To Cure Incomplete NOD

In revised and redesignated § 19.24(b)(3), VA states that incomplete forms must be completed within 60 days from the date of VA's request for clarification, or the remainder of the period in which to initiate an appeal of the AOJ decision, whichever is later. VA provides this 60-day grace period in order to protect the claimant's rights in the event the statutory deadline has passed when VA determines the claimant has filed an incomplete form. Given that submission of the correct form would clearly identify to AOJ personnel that a claimant wishes to pursue an appeal, VA would accept the incomplete form for purposes of determining whether a claimant has met the statutory deadline. However, the claimant must complete the form within the 60-day timeframe. This time requirement would correspond to the current 60-day period provided in 38 CFR 19.26(c) for clarification of an ambiguous NOD filed under the traditional process.

In § 19.24(b)(4), VA states that if no completed form is received within the timeframe established in paragraph (b)(3), the decision of the AOJ shall become final.

Some commenters stated that incomplete NODs that are not cured within 60 days would mean the veteran would forfeit the right to appeal. As proposed § 19.24(b)(2) clearly stated, ''[i]f VA requests clarification of an incomplete form, a complete form must be received within 60 days from the date of the request, or the remainder of the period in which to initiate an appeal of the decision of the [AOJ], whichever is later.'' Accordingly, the veteran does not forfeit the right to appeal so long as a complete form is submitted within the statutory one-year period in which to submit an NOD, or within the 60-day ''grace'' period, whichever provides the veteran with more time to cure the deficiency. The regulatory language makes clear to provide that the issues or contentions enumerated in incomplete forms will become final if they are not cured within the 60-day period or within the statutory one-year period for submitting an NOD. In order to address commenters' concerns that VA will deem a form incomplete without providing any notice to the veteran, we have also revised § 19.24(b)(1) to make clear that the requirement to cure or correct the filing of an incomplete form by filing a completed version of the correct form does not arise unless VA informs the claimant or his or her

representative that the form is incomplete and requests clarification. VA will not spend its limited resources by undertaking this cycle of clarifying activity unless it is necessary to the orderly processing and adjudication of the appeal. We also note that § 19.24(b) as proposed referenced the ''verification'' of an incomplete form. We have replaced ''verification'' with ''clarification'' in the relevant portion of § 19.24(b)(1) as organized in this final rule.

In § 19.24(b)(5), VA provides that if the completed form arrives within the timeframe established in paragraph (b)(3), VA will treat the completed form as the NOD and will reexamine the claim to determine whether additional review or development is warranted. Furthermore, if no further review or development is required, VA will prepare a Statement of the Case pursuant to § 19.29 of this part unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

VA initially proposed in § 19.24(b)(5) that if a form is so incomplete that the claimant to whom it pertains is unidentifiable, VA would not take action on the basis of the submission of that form and the form would be discarded. Moreover, VA proposed that it would always attempt to identify the claimant to whom the form pertains based on any statements or other information provided before discarding the form. However, this proposed provision has been deleted as such instances are rare. Even though this scenario is so rare that VA does not view it as necessary to include in regulations, VA will always attempt to identify the claimant to whom any form pertains based on all available context and information.

In paragraph (c) of § 19.24 of this final rule, VA provides that if a form enumerates some, but not all, of the issues or conditions which were the subject of the AOJ decision, the form would be considered complete with respect to the issues on appeal. Furthermore, VA clarifies that any issues or medical conditions not enumerated would not be considered appealed on the basis of the filing of that form and that those unnamed issues would become final 1 year after the date of the mailing of the notice of the decision unless the claimant files a separate form addressing those issues or conditions within the timeframe set forth in paragraph (b)(3) of this section. This does not prevent the claimant from appealing those issues or contentions not named in the form or from filing a subsequent form initiating appeals of other issues within the AOJ decision. VA has added this clarification to the final rule in this paragraph (c) as the proposed rule did not specifically state that a claimant would retain the ability to appeal other unnamed issues or contentions within the timeframe allowed by current § 19.26(c).

F. Other Regulations

To ensure other regulatory sections that discuss NODs are consistent with these changes, VA also adopts the minor revisions in this final rule to a few other sections. Specifically, VA revises § 3.2600, which discusses optional *de novo* review procedures at the AOJ after an NOD is filed, to cross reference the format and timeliness requirements of § 20.201, and either § 20.302(a) or § 20.501(a), as applicable, in the first sentence of paragraph (a). VA also revises § 20.3(c), which currently defines an appellant as ''a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a Notice of Disagreement pursuant to the provisions of 38 U.S.C. 7105.'' Since 38 U.S.C. 7105 only requires that an NOD be submitted in writing, VA revises 38 CFR 20.3(c) to cross reference the format requirements in § 20.201, and the timeliness requirements of either § 20.302(a) or § 20.501(a), as applicable. VA believes this revision would ensure that there is no confusion regarding what requirements a claimant must follow to submit a valid NOD. Similarly, § 20.200 currently provides, in part, that an appeal includes ''a timely filed Notice of Disagreement in writing.'' VA revises § 20.200 to replace ''in writing'' with cross references to § 20.201, and either § 20.302(a) or § 20.501(a), as applicable.

Effective Date of Final Rule

In order to accommodate the changes to VA's claims and appeals processes, VA estimates that it will need 6 months, or approximately 180 days, to prepare for and implement this final rule. This 180-day period provides time for VA to conduct outreach efforts to inform and educate veterans, claimants, their family members, authorized representatives, and other stakeholders, to train and educate VA staff on the more standardized process, and to implement changes to VA's internal, operational business programs. As such, this final rule will apply only with respect to claims and appeals filed 180 days after the date this rule is published in the **Federal Register** as a final rule. Claims and appeals pending under the current regulations as of that date would continue to be governed by the current regulations.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement, unless it displays a currently valid Office of Management and Budget (OMB) control number. This final rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3521) that require approval by OMB.

I. Changes to the Scope of Currently Approved OMB Information Collections

As part of the proposed rule, RIN 2900–AO81, VA previously solicited comments on the collections of information contained in this section. As noted in the proposed rule, this final rule will impose amended information collection requirements in 38 CFR 3.154, 3.155, 3.812, and 20.201 which are described immediately following this paragraph, under their respective titles. As required by the Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507(d)), VA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Title: Standard Claims and Appeals Forms.

Summary of collection of information: The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. The amended collection of information in final 38 CFR 3.154, 3.155, 3.403, 3.660, 3.665, 3.666, 3.701, 3.812, and 20.201 would require claimants to submit VA prescribed applications in either paper or electronic submission of responses, where applicable, in order to initiate the claims or appeals process for all VA benefits, to include but not limited to: Entitlement under 38 U.S.C. 1151, which governs disability compensation and death benefits for a qualifying

disability or death of a veteran from VA treatment, examination or vocational rehabilitation; disability compensation; non-service connected pension; and dependency and indemnity compensation (DIC), death pension, and accrued benefits. In addition, under this rulemaking, we would require claimants to submit a standard form to initiate an appeal. Information is requested by this form under the authority of 38 U.S.C. 7105.

Description of need for information and proposed use of information: There is no substantive change in the need for information and proposed use of information collected for the following affected OMB-approved Control Numbers:

• 2900–0791 (VA Form 21–0958)—This form will be used by claimants to indicate a disagreement with a decision issued by a Regional Office to initiate an appeal.

• 2900–0001 (VA Form 21–526 and 21–526b)—These forms are used to gather the necessary information to determine a veteran's eligibility, dependency, and income, as applicable, for the compensation and/or pension benefit sought without which information would prevent a determination of entitlement;

• 2900–0743 (VA Form 21–526c)—This form is used to gather necessary information from service members filing claims under the Benefits Delivery at Discharge or Quick Start programs under Title 38 U.S.C. 5101(a) used in a joint effort between VA and Department of Defense (DoD) for the expeditious process of determining entitlement to compensation disability benefits;

• 2900–0002 (VA Form 21–527)—This form is used to gather the necessary information to determine a veteran's eligibility and dependency, as applicable, for disability pension sought without which information would prevent a determination of entitlement;

• 2900–0004 (VA Form 21–534)—This form is used to gather necessary information to determine the eligibility of surviving spouses and children for dependency and indemnity compensation (DIC), death pension, accrued benefits and death compensation;

• 2900–0004 (VA Form 21–534a)—This form is used to gather necessary information to determine the eligibility of surviving spouses and children of veterans who died while on active duty service for DIC, death pension, accrued benefits, and death compensation;

• 2900–0005 (VA Form 21–535)—This form is used to gather necessary information to determine a parent's eligibility, dependency and income, as applicable, for the death benefit sought; and

• 2900–0747 (VA Forms 21–526EZ, 21–527EZ, and 21–534EZ)—These forms are used to gather the necessary information to determine a veteran's eligibility, dependency, and income, as applicable, for the compensation and/or pension and disability pension and to determine the eligibility of surviving spouses, children and parents for dependency and indemnity compensation (DIC), death pension, accrued benefits and death compensation as well as other benefits.

• 2900–0572 (VA Form 21–0304)—This form is used to gather the necessary information to determine eligibility for the monetary allowance and the appropriate level of payment for a child with spina bifida who is the natural child of a veteran who served in the Republic of Vietnam during the Vietnam era and for a child with certain birth defects who is the natural child of a female veteran who served in the Republic of Vietnam during the Vietnam era.

• 2900–0721 (VA Form 21–2680)—This form is used to gather the necessary information to determine eligibility for the aid and attendance and/or household benefit.

• 2900–0067 (VA Form 21–4502)—This form is used to gather the necessary information to determine if a veteran or serviceperson is entitled to an automobile allowance and adaptive equipment.

• 2900–0390 (VA Form 21–8924)—This form is used to gather the necessary information to determine if the application meets the Restored Entitlement Program for Survivors (REPS) program which pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981.

• 2900–0404 (VA Form 21–8940)—This form is used to gather the necessary information to determine whether individual unemployability benefits may be paid to a veteran who has a service-connected disability(ies) which result in an inability to secure or follow substantially gainful occupation.

• 2900–0132 (VA Form 26–4555)—This form is used to gather the necessary information to determine the eligibility for the Specially Adapted Housing (SAH) or Special Housing Adaptations (SHA) benefits for disabled veterans or servicemembers.

Description of likely respondents: There is no substantive change in the description of likely respondents for the following affected OMB-approved Control Numbers:

• 2900–0791 (VA Form 21–0958)—Veterans or claimants who indicate disagreement with a decision issued by a Regional Office (RO) will use VA Form 21–0958 in order to initiate the appeals process. The veteran or claimant may or may not continue with an appeal to the Board of Veterans Appeals (BVA). If the veteran or claimant opts to continue to BVA for an appeal, this form will be included in the claim folder as evidence.

• 2900–0001 (VA Form 21–526 and 21–526b)—Veterans or claimants who express an intent to file for disability compensation and/or pension benefit may continue to use VA Form 21–526. Veterans or claimants who express an intent to file for disability compensation for an increased evaluation, service connection for a new disability, reopening of a previously denied disability, or for a disability secondary to an existing service connected disability or for other ancillary benefits such as aid and attendance, automobile allowance, spousal aid and attendance, or other benefit may continue to use VA Form 21–526b.

• 2900–0743 (VA Form 21–526c)—Service members filing claims under the Benefits Delivery at Discharge or Quick Start programs under Title 38 U.S.C. 5101(a) may continue to use VA Form 21–526c for disability compensation benefits.

• 2900–0002 (VA Form 21–527)—Veterans who are reapplying for VA pension benefits or previously applied for VA compensation benefits and are now applying for VA pension benefits may continue to use VA Form 21–527.

• 2900–0004 (VA Form 21–534 and 21–534a)—Claimants such as surviving spouses and children filing for dependency and indemnity compensation (DIC), death pension, accrued benefits, and death compensation claims may continue to use VA Form 21–534. Military Casualty Assistance Officers who are assisting surviving spouses and children in filing claims for death benefits may continue to use VA Form 21–534a.

• 2900–0005 (VA Form 21–535)—Claimants who are filing for benefits subsequent to the death of the veteran may continue to use VA Form 21–535.

• 2900–0747 (VA Forms 21–526EZ, 21–527EZ, and 21–534EZ)—Veterans or claimants who are filing for disability compensation, pension, dependency and indemnity compensation, death pension, accrued benefits and death compensation claims and other benefits such an ancillary benefit claims and entitlement to 38 U.S.C. 1151 benefits

that filed for processing in both the traditional claims system or in the expedited claims processing system known as the Fully Developed Claims program may continue to use VA Form 21–526EZ for disability compensation; VA Form 21–527EZ for non-service connected pension benefits; and VA Form 21–534EZ for dependency and indemnity compensation, death pension, and/or accrued benefits.

• 2900–0572 (VA Form 21–0304)—Claimants who are filing for the monetary allowance and payment for a child with spina bifida who is the natural child of a veteran who served in the Republic of Vietnam during the Vietnam era and for a child with certain birth defects who is the natural child of a female veteran who served in the Republic of Vietnam during the Vietnam era may continue to use VA Form 21–0304.

• 2900–0721 (VA Form 21–2680)—Claimants who are filing for eligibility for the aid and attendance and/or household benefit may continue to use VA Form 21–2680.

• 2900–0067 (VA Form 21–4502)—Veterans or servicepersons who are filing for entitlement to an automobile allowance and adaptive equipment may continue to use VA Form 21–4502.

• 2900–0390 (VA Form 21–8924)—Certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981 under the Restored Entitlement Program for Survivors (REPS) program may continue to use VA Form 21–8924.

• 2900–0404 (VA Form 21–8940)—Claimants who file for individual unemployability benefits for service-connected disability(ies) which result in an inability to secure or follow substantially gainful occupation may continue to use VA Form 21–8940.

• 2900–0132 (VA Form 26–4555)—Disabled veterans or servicemembers who file for Specially Adapted Housing (SAH) or Special Housing Adaptations (SHA) benefits may continue to use VA Form 26–4555.

Estimated frequency of responses:

• 2900–0791 (VA Form 21–0958)—One time for most claimants; however, the frequency of responses is also dependent on the number of appeals submitted on this form by the claimant as VA does not limit the number of appeals that a claimant can submit.

• 2900–0001 (VA Form 21–526 and 21–526b)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

• 2900–0743 (VA Form 21–526c)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

• 2900–0002 (VA Form 21–527)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

• 2900–0004 (VA Form 21–534 and 21–534a)—One time for most beneficiaries.

• 2900–0005 (VA Form 21–535)—One time for most beneficiaries.

• 2900–0747 (VA Forms 21–526EZ, 21–527EZ, and 21–534EZ)—One time for most beneficiaries; however, the frequency of responses is also dependent on the number of claims submitted on this form by the claimant as VA does not limit the number of claims that a claimant can submit.

• 2900–0572 (VA Form 21–0304)—One time for most beneficiaries.

• 2900–0721 (VA Form 21–2680)—One time for most beneficiaries.

• 2900–0067 (VA Form 21–4502)—One time for most beneficiaries.

• 2900–0390 (VA Form 21–8924)—One time for most beneficiaries.

• 2900–0404 (VA Form 21–8940)—One time for most beneficiaries.

• 2900–0132 (VA Form 26–4555)—One time for most beneficiaries.

Estimated average burden per response: There is no substantive change in the estimated average burden per response for the following affected OMB-approved Control Numbers:

• 2900–0791 (VA Form 21–0958)—30 minutes.

• 2900–0001 (VA Form 21–526 and 21–526b)—VA Form 21–526—1 hour; and VA Form 21–526b—15 minutes; and VA Form 21–4142—5 minutes.

• 2900–0743 (VA Form 21–526c)—15 minutes.

• 2900–0002 (VA Form 21–527)—1 hour.

• 2900–0004 (VA Form 21–534 and 21–534a)—VA Form 21–534—1 hour and 15 minutes and VA Form 534a—15 minutes.

• 2900–0005 (VA Form 21–535)—1 hour and 12 minutes.

• 2900–0747 (VA Forms 21–526EZ, 21–527EZ, and 21–534EZ)—VA Form 21–526EZ—25 minutes; VA Form 21–527EZ—25 minutes; and VA Form 21–534EZ—25 minutes.

• 2900–0572 (VA Form 21–0304)—10 minutes.

• 2900–0721 (VA Form 21–2680)—30 minutes.

• 2900–0067 (VA Form 21–4502)—15 minutes.

• 2900–0390 (VA Form 21–8924)—20 minutes.

• 2900–0404 (VA Form 21–8940)—45 minutes.

• 2900–0132 (VA Form 26–4555)—10 minutes.

Estimated number of respondents: VA anticipates the annual estimated numbers of respondents for each of the OMB-approved forms as follows:

• 2900–0791 (VA Form 21–0958)—144,000 per year as previously estimated in ICR Reference No. 201206–2900–001 and as published in the **Federal Register**, 77 FR 42556 on July 19, 2012 and 77 FR 60027 on October 1, 2012.

• 2900–0001 (VA Form 21–526 and 21–526b)—304,325 per year, based on 5-year estimated average of formal and informal initial compensation and pension claims received annually at 83,855 and formal and informal new or reopened compensation claims received annually at 217,178, in addition to the historically reported annual estimated number of responses for VA Form 21–4142 at 3,292.

• 2900–0743 (VA Form 21–526c)—161,000 per year as previously estimated in ICR Reference No. 201209–2900–010 and as published in the **Federal Register**, 77 FR 190, on October 1, 2012 and 77 FR 240 on December 13, 2012.

• 2900–0002 (VA Form 21–527)—17,111 per year, based on a 5-year estimated average of 12,253 reopened pension claims received on VA Form 21–527 in addition to an estimated number of 4,858 expected to be received for informal reopened pension claims.

• 2900–0004 (VA Form 21–534 and 21–534a)—33,864 per year, based on a 5-year estimated average of 32,438 formal and informal death benefits claims filed by surviving spouses/child in addition to a 5-year estimated number of 1,426 formal and informal death benefits claims filed by surviving spouses/child for in-service death.

• 2900–0005 (VA Form 21–535)—1,783 per year, based on a 5-year estimated average of 1,046 formal death benefits filed by parents in addition to an expected estimated number of informal death benefit claims at 737.

• 2900–0747 (VA Forms 21–526EZ, 21–527EZ, and 21–534EZ)—1,048,652 per year, based on: (a) An estimated number of both formal and informal—initial, new, reopened compensation claims at 835,910; plus (b) an estimated number of both formal and informal pension claims at 101,086; (c) an

estimated number of both formal and informal death benefit claims at 111,656, all of which total 1,048,652.

VA expanded a modified version of a pilot study, known as the Express Claim Program, for which VA Forms 21–526EZ and 21–527EZ were used. Therefore, the number of claimants expected to respond was estimated at 104,440. These EZ forms contain the section 5103 notification for disability, pension, and now death benefits in paper and electronic format. The electronic application uses the EZ form in its question prompts and generates this form upon completion of the interview process.

While this rule does not attach unique effective date consequences to utilizing the electronic claim process, as the proposed rule would have, VA still expects a substantial increase in the number of respondents for this particular Control Number. As one commenter pointed out, the fact that VA is able to decide a claim more quickly when the claimant files an electronic application form provides claimants an incentive to utilize the electronic process. Additionally, the intent to file a claim process that we establish in this final rule will greatly increase the role of standard application forms because VA will provide claimants with the required standard application form upon receiving an intent to file a claim. VA will typically provide EZ forms in this purpose. This intent to file a claim process will apply to types of claims for which no standard form of any kind is currently required, such as claims governed by current § 3.155(c).

- 2900–0572 (VA Form 21–0304)—430 per year.
- 2900–0721 (VA Form 21–2680)—14,000 per year.
- 2900–0067 (VA Form 21–4502)—1,552 per year.
- 2900–0390 (VA Form 21–8924)—1,800 per year.
- 2900–0404 (VA Form 21–8940)—24,000 per year.
- 2900–0132 (VA Form 26–4555)—4,158 per year.

OMB Control Numbers 2900–0572, 2900–0721, 2900–0067, 2900–0390, 2900–0404, and 2900–0132 are collections of information for particular benefits such as automobile allowance, housing adaptation, individual unemployability, etc., which are currently required by the VA in order for these claims to be processed and adjudicated. Since VA requires these forms to be submitted for filing of a particular benefit, VA does not expect an increase in the annual likely number of respondents. In addition, VA is not changing the substance of the collection of information on these OMB-approved collections of information nor is it increasing the respondent burden. We are including these collections of information in this rulemaking because it is relevant to the rulemaking but is not directly altered by it.

Estimated total annual reporting and recordkeeping burden:

- 2900–0791 (VA Form 21–0958)—Annual burden continues to be 72,000 hours. The total estimated cost to respondents continues to be $1,080,000 (72,000 hours x $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0001 (VA Form 21–526 and 21–526b)—For VA Form 21–526, the annual burden is 83,855 hours. The total estimated cost to respondents is $1,257,825 (83,855 hours × $15/hour). This submission does not involve any recordkeeping costs. For VA Form 21–526b, the annual burden is 54,295 hours. The total estimated cost to respondents is $81,443 (54,295 hours × $15/hour). This submission does not involve any recordkeeping costs. For VA Form 21–4142, the annual burden is 263 hours. The total estimated cost to respondents is $330 (263 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0743 (VA Form 21–526c)—Annual burden continues to be 40,250 hours. The total estimated cost to respondents continues to be $603,750 (40,250 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0002 (VA Form 21–527)—Annual burden is 17,111 hours. The total estimated cost to respondents is $256,665 (17,111 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0004 (VA Form 21–534 and 21–534a)—For VA Form 21–534, the annual burden is 40,548 hours. The total estimated cost to respondents is $608,220 (40,548 hours × $15/hour). This submission does not involve any recordkeeping costs. For VA Form 21–534a, the annual burden is 357 hours. The total estimated cost to respondents is $5,355 (3,57 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0005 (VA Form 21–535)—Annual burden is 2,140 hours. The total estimated cost to respondents is $32,100 (2,140 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0747 (VA Forms 21–526EZ, 21–527EZ, and 21–534EZ)—For VA Form 21–526EZ, the annual burden is 348,296 hours. The total estimated cost to respondents is $55,224,440 (348,296 hours × $15/hour). This submission does not involve any recordkeeping costs. For VA Form 21–527EZ, the annual burden is 42,119 hours. The total estimated cost to respondents is $631,785 (42,119 hours × $15/hour). This submission does not involve any recordkeeping costs. For VA Form 21–534EZ, the annual burden is 46,523 hours. The total estimated cost to respondents is $697,845 (46,523 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0572 (VA Form 21–0304)—Annual burden continues to be 72 hours. The total estimated cost to respondents continues to be $1,080 (72 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0721 (VA Form 21–2680)—Annual burden continues to be 7,000 hours. The total estimated cost to respondents continues to be $105,000 (7,000 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0067 (VA Form 21–4502)—Annual burden continues to be 388 hours. The total estimated cost to respondents continues to be $5,820 (388 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0390 (VA Form 21–8924)—Annual burden continues to be 600 hours. The total estimated cost to respondents to be $9,000 (600 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0404 (VA Form 21–8940)—Annual burden continues to be 18,000 hours. The total estimated cost to respondents continues to be $270,000 (18,000 hours × $15/hour). This submission does not involve any recordkeeping costs.
- 2900–0132 (VA Form 26–4555)—Annual burden continues to be 693 hours. The total estimated cost to respondents continues to be $10,395 (693 hours × $15/hour). This submission does not involve any recordkeeping costs.

This rulemaking is mandating the use of existing VA forms in the processing and adjudication of claims and appeals. These amendments to §§ 3.154, 3.155, 3.403, 3.660, 3.665, 3.666, 3.701, 3.812, and 20.201 affect the estimated annual number of respondents and consequently, the estimated total annual reporting and recordkeeping burden but do not otherwise affect the existing collections of information that have already been approved by the Office of Management and Budget (OMB). The use of information, description of likely respondents, estimated frequency of

responses, estimated average burden per response will remain unchanged for these forms. While there is no substantive change in the aforementioned collection of information for these amendments, VA foresees a change in the quantity of information collected and the total annual reporting for certain currently approved OMB control numbers on account of this rulemaking.

VA's Collection of Data:

Other than for original claims and certain ancillary benefits, VA historically and currently accepts claims for benefits in any format submitted, whether on a prescribed form or not. VA has never standardized the use of forms for claims or appeals processing [1]. VA maintains a record of the number of types of benefit claims received annually based on claim types such as original claims, claims for increase or to reopen a previously denied claim, claims for ancillary benefits, pension, and death benefits which have been submitted on the appropriate prescribed form. However, reliance on claim types based on the form submitted may not accurately capture the number of claims received. For instance, one claim type can be filed using more than one prescribed form and a claimant can file two types of claim such as a claim for increase and a claim to reopen on one prescribed VA form which will be categorized as one claim type received, i.e., recorded as either a claim for increase or a claim to reopen. For informal claims, VA has not quantified the number of informal claims received, but it quantifies the particular claim type filed in the informal claim such as original, increase, new, reopen, etc. As a result of this rulemaking requiring the use of prescribed forms for all claims for benefits, VA will be able to gather and collect the data quantifying the number of prescribed forms in the future which will provide VA with a more accurate account of how many respondents will respond on various VA prescribed forms.

Electronic Claims:

Due to the fact that there is no current data enumerating the total number of different types of VA forms received annually, we have projected the annual number of respondents for the forms based on the estimated number of types of claims received annually over a 5-year period. We have also approximated the number of electronic claims received for compensation, pension, and death claims. Currently, VA's electronic claims processing system, i.e., eBenefits and Veterans Online Applications (VONAPP), uses VA Form 21–526EZ for disability compensation claims submitted electronically. VA is also in the process of adding other VA forms to VONAPP such as VA Form 21–527EZ and 21–534EZ (hereinafter ''EZ forms'' will be used to refer to VA Forms 21–526EZ, 21–527EZ, and 21–534EZ, collectively). VA also provides these EZ forms to claimants who wish to submit their claims on paper because these forms expedite the claims process by: (a) Offering the claimant a choice for either the expedited process of ''Fully Developed Claims'' or the traditional claims process; (b) listing more detailed questions for a variety of benefits sought in order to capture thoroughly the specifics of a claim; and (c) providing claimants with the required notice of VA's duty to assist the claimant pursuant to 38 U.S.C. 5103, which is issued at the time the claimant files a claim instead of when the VA receives the claim. The use of these EZ forms ultimately speeds up the claims process and ensures faster delivery of benefits to claimants; therefore, VA has encouraged, directed, and provided these EZ forms to claimants who wish to file benefit claims.

With the ease and efficiency of completing and filing electronic claims through VA's Web-based electronic claims application system, VA expects the number of electronic claims to increase. Additionally, VA expects the number of EZ forms to increase even in cases where the claimant opts not to use the electronic process, because VA will typically provide an EZ form in response to an intent to file a claim. Because eBenefits and VONAPP uses (and will continue to use) the EZ forms, we anticipate that the total number of annual responses received on the EZ forms electronically for all benefits will increase by at least 29 percent while the total number of annual response received on VA Forms 21–526, 21–526b, 21–527, 21–534, 21–534a, and 21–535 (''traditional forms'') will decrease. Based on data from Fiscal Year (FY) October 2010 through September 2011, the number of compensation disability claims received electronically was 142,899 and the number of total compensation disability and dependency claims received electronically was 496,851. Thus, the percentage of compensation disability electronic claims received was 29 percent. With VA's outreach and efforts to promote the electronic claims processing system and with future implementation of pension, death, and appeals electronic claims processing, VA estimates an increase of the submission of electronic claims by at least 29 percent based upon the FY 2010 through 2011 data. Since the trend is to direct claimants to submit claims on EZ forms both electronically and on paper, we approximate that 70 percent of claims will be submitted on the EZ form while 30 percent will be submitted on the traditional forms.

Informal Claims:

The data used in formulating the estimated number of annual responses to the various affected prescribed forms was extrapolated from data recorded for the number of types of claims received annually for FY April 2009 through April 2013. This data is not sufficiently granular to provide the number of informal claims received given that the data only depicts the number of initial, new or reopened compensation and pension claims received and the number of initial death benefit claims received. Since informal claims may or may not be submitted on a prescribed form, there is no method for accurately recording or quantifying the total number of informal claims received or inferred annually. Therefore, we approximate that for compensation, pension, and death benefits, 50 percent of each of these benefits are informal claims. Thus, based on the data of an average of claims received over a 5-year period, we expect that the total number of informal claims for compensation, pension, and death benefits that will be submitted on a prescribed form will increase by at least 50 percent.

Notices of Disagreement:

Previously, VA estimated that the annual number of respondents submitting the currently approved collection instrument, VA Form 21–0958, *Notice of Disagreement,* (OMB Control Number 2900–0791) would be 144,000, based on VA historically receiving 12 Notices of Disagreement per 100 completed VBA decisions, with more than 1.2 million VBA decisions in FY 2012. According to data for FY 2009 to FY 2012, the average number of Notices of Disagreement received annually was 129,539. For FY 2013, it is projected that VA will receive 126,735 Notices of Disagreement. The estimate associated with the currently approved collection was based upon the

[1] Currently, VA accepts any claim filed subsequent to the original, initial compensation/pension claim that is submitted in any form, i.e., informal claim to initiate the claims process. For example, a claim for increase or reopen, which currently is not required to be submitted on a prescribed form, can be established using different VA forms such as VA Form 21–526 *Veteran's Application for Compensation and/or Pension;* VA Form 21–526EZ, *Application for Disability Compensation or Related Compensation;* VA Form 21–526b, *Veteran's Supplemental Claim for Compensation;* or VA Form 21–4138, *Statement in Support of Claim.*

assumption that all notices of disagreement would be submitted on this collection instrument, though that is not necessarily the case under current rules. As a result of this rulemaking, however, the overwhelming majority of notices of disagreement would in fact be submitted on this collection instrument, since this rulemaking is requiring that all notices of disagreement be submitted on VA Form 21–0958 in cases where that form is provided. Accordingly, while VA does expect to receive many more completed Forms 21–0958, there is no expected increase in the annual number of respondents nor an increased burden on respondents from that reflected in currently approved collections.

In addition, VA is amending the instructions which accompany VA Form 21–0958 to alter the current language from ''not mandatory'' to provide that VA Form 21–0958 will be required to initiate an appeal from a decision on compensation claims. We have also provided notification to claimants that only the issues listed on VA Form 21–0958 will be considered on appeal but that the claimant retains the right to appeal unnamed issues or contentions within 1 year from the date of the decision notification letter. Moreover, we have added a separate section in the instructions to provide claimants with the criteria for a complete NOD form which conforms with the final regulatory language in § 19.24(b)(2) which enumerates the requirements for a complete NOD, namely that the form must contain: information to identify the claimant; information to identify the specific nature of the disagreement; and claimant's signature. In order to further assist claimants in submitting a complete NOD, we have provided samples for clarification of what is minimally necessary to identify the specific nature of the disagreement. We note that one of the public commenters questioned VA's motive behind inquiring whether claimants would like direct communication with the AOJ regarding the appeal. In response, we have amended the instructions to provide that claimants would have the option of being contacted by telephone in order for VA to request clarification from claimants if there was any ambiguous information which may hinder expeditious processing of the NOD. While we have amended the instructions to VA Form 21–0958 to conform to the final rule and to give notice to claimants of the requirements of the amended appeals regulations, we did not change, amend, or alter VA Form 21–0958. Therefore, we do not foresee any additional burden to the claimant in completing this form.

Methodology for Estimated Annual Number of Respondents for Affected Forms:

We have formulated the estimated total of annual responses for compensation, pension, and death benefit claims by increasing the expected number of total claims submitted on paper by 50 percent from data extrapolated for claims received annually over a 5-year period. We project that 30 percent of compensation, pension, and death benefit claims will be submitted on traditional forms whereas 70 percent will be submitted on EZ forms. Accordingly, VA expects a decrease in the total estimated number of annual responses for VA Forms 21–526, 21–527, 21–534, 21–534a, and 21–535 whereas the total estimated number of annual responses for VA Forms 21–526EZ, 21–527EZ, and 21–534EZ have increased substantially. The projected numbers for each affected form are provided in further detail in the above section, ''Estimated number of respondents,'' according to each OMB Control Number.

II. New Information Collection

The information collection described in this section was not previously discussed in the proposed rule. Comments on the collection of information contained in this section should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 or emailed to *OIRA_Submission@omb.eop.gov,* with copies sent by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or submitted through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AO81—Standard Claims and Appeals Forms.'' Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

The Department considers comments by the public on proposed collections of information in:

- Evaluation whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This final rule will impose the following new information collection requirements in standardizing the current informal claim process in 38 CFR 3.155 by requiring a standard form to be used to establish a claimant's intention to file a claim for VA benefits. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), VA has submitted this information amendment to OMB for its review and for approval 180-days after the date this rule is published in the **Federal Register** as a final rule. On October 31, 2013, VA published in the **Federal Register** (78 FR 65490) a proposed rule to amend its adjudication regulations and rules of practice of the Board of Veterans' Appeals (Board) to standardize the claims and appeals process by requiring the use of VA forms to file a claim and to initiate an appeal. The proposed rule attempted to address the issue that current non-standard submissions from claimants including submission requiring VA to take action are not received in a standard format. Non-standard submissions from claimants meant increased time spent determining whether a claim has been filed, identifying the benefit claimed, sending letters to the claimant and awaiting a response, and requesting and awaiting a response, and requesting and awaiting receipt of evidence. These steps all significantly delay the adjudication and delivery of benefits to veterans and their families. By standardizing the claims process through the use of standard forms, VA would be able to more easily identify issues and contentions associated with claims that are filed, resulting in greater accuracy, efficiency, and speed in the processing and adjudication of claims. Therefore, the proposed rule proposed to amend VA's current adjudication regulations to standardize the claims process by eliminating the informal claim, i.e., the non-standard submission of a claimant's claim or intent to file a claim, by requiring claimants to submit a VA-prescribed form or application to apply for benefits.

While the current informal claim establishes a date of claim (in the case of an original claim, a complete application that is submitted on a standard form must be filed within 1 year of the filing of the informal claim), the proposed rule eliminated the informal claim process and established that a complete claim submitted in the standard paper form would establish the date of claim. However, for electronic claims, VA would establish the date of claim based on the date when the claimant saved an incomplete electronic application without submitting it for processing. Claimants would have 1 year to submit the completed electronic application in order to preserve the date claimant saved the application as the date of claim. The result of the proposed rule would have allowed a favorable effective date treatment for electronic claims only. The purpose of the distinction between electronic and non-electronic claim submission with regard to effective date treatment was to incentivize claimants to file electronic claims, which are processed by VA more efficiently and result in more expeditious delivery of benefits to claimants.

Based upon the concerns and issues raised by the public commenters on the proposed rule, particularly, regarding the dissimilar treatment of effective dates for electronic and non-electronic claims submissions and its impact on claimants, VA determined that modernization and standardization of the claims process could also be achieved by formalizing and standardizing the current informal claims process while retaining favorable effective date treatment for claimants filing in paper form. In response, VA revised the proposed regulation of § 3.155 in this final rule to replace the concept and term ''informal claim'' with the concept and term ''intent to file a claim for benefits.'' In revised final § 3.155, claimants can submit an intent to file a claim for benefits on the prescribed VA form designated for this purpose to establish a date of claim if the claimant files a complete claim within 1 year of submitting the intent to file a claim. VA considers the concept of the intent to file a claim for benefits in revised § 3.155 to be a logical outgrowth of VA's goal of standardizing the claims process through the use of forms as outlined in the published proposed rule. Moreover, this concept provides the most optimal solution to the concerns regarding the proposed rule that were raised by the commenters while still standardizing and modernizing the VA claims process.

In order to implement this intent to file a claim process, VA created a new form, VA Form 21–0966, *Intent to File a Claim for Compensation and/or Pension, Survivors Pension, or Other Benefits,* to be used for this purpose. This process is a reconciliation of VA's need for claims to originate on standard forms and commenters' desire for ways to establish an effective date while a complete claim on an application form is completed. Accordingly, it did not exist at the time of the publication of the proposed rule and as the new intent to file process is being codified in this final rule, VA is submitting this new collection of information specifically used for the intent to file process for OMB approval and for public comment in this final rule.

The new VA Form 21–0966 will be used to establish a date of claim if a complete claim is filed within 1 year of receipt of this form for all claims whether initial or supplemental. VA notes that a claimant can also submit an intent to file a claim for benefits by contacting VA personnel in field offices by telephone or in person. VA personnel will document the intent to file on VA Form 21–0966. A filled out form will be uploaded into VA's internal business and operational programs so that VA personnel will be able to refer to this document in order assign the appropriate effective date for any award granted. Therefore, this newly proposed VA Form 21–0966, will enable VA to document a claimant's intent to file a claim which will greatly enhance VA's standardization of the claims process through the use of VA-prescribed forms.

Claimants can also submit an intent to file a claim via electronically in VA's claims submission tool within its Web-based electronic claims application system by entering biographical data and saving the electronic application without submitting it for processing. Therefore, there is no separate electronic ''intent to file a claim'' form; the act of entering information and saving the electronic application will serve as the intent to file a claim for benefits.

Title: Intent to File a Claim

Summary of collection of information: The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for veterans, service personnel, and their dependents and/or beneficiaries. Title 38 U.S.C. 5101(a) provides that a specific claim in the form provided by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by the Secretary. The amended collection of information in the final rule 38 CFR 3.155 would require claimants and/or their authorized representatives to submit a VA-prescribed form in either paper or electronic submission, where applicable, to express a claimant's intent to file a claim for benefits in order to establish an effective date placeholder for any award granted if the claimant files a complete claim within 1 year of receipt of the intent to file a claim. VA proposes to create a new form, VA Form 21–0966, *Intent to File a Claim for Compensation and/or Pension, Survivors Pension, or Other Benefits.* Claimants and their representatives can submit their intent to file a claim in three ways: (1) On paper using VA's newly created, proposed VA Form 21–0966, *Intent to File a Claim for Compensation and/or Pension, Survivors Pension, or Other Benefits;* (2) electronically through a claims submission tool within a VA Web-based electronic claims application system; or, (3) by telephone contact with designated VA personnel who will record the intent to file a claim on the proposed VA Form 21–0966, *Intent to File a Claim for Compensation and/or Pension, Survivors Pension, or Other Benefits.*

Description of need for information and proposed use of information: This form will be used by claimants and/or their authorized representatives to indicate an intent to file a claim for compensation and/or disability benefits to establish an effective date for an award granted in association with a complete claim filed within 1 year of such form. This form collects biographical information of the claimant such as name; Social Security Number; service number, if applicable; date of birth; gender; VA claim number, if applicable; current mailing address; forwarding address; telephone number(s); email address(es); and signature. The collection of information also requests claimants to indicate what type of claim for benefits, i.e., compensation and/or pension, the claimant intends to file. VA will use this form to identify claimants in its internal business operational systems to record the date of receipt of this document for the purposes of establishing a date of claim for a complete claim that is filed within 1 year. VA also uses the information to furnish the claimant with the appropriate VA form or application for compensation and pension benefits.

Description of likely respondents: Veterans, claimants, and/or authorized representatives who indicate an intent

to file a claim for disability compensation and/or pension benefits.

Estimated frequency of responses: One time for most beneficiaries; however, the frequency of responses is also dependent on the number of intents to file a claim submitted by the claimant. VA does not limit the number of submissions of the intent to file a claim for benefits, except that VA will accept only one intent to file a claim per complete claim filed.

Estimated average burden per response: VA estimates an average of 15 minutes to gather information and complete the new, proposed VA Form 21–0966, *Intent to File a Claim for Compensation, and/or Pension, Survivors Pension, or Other Benefits.*

Estimated number of respondents: VA anticipates the annual estimated number of respondents to be 724,561 per year, the sum of which is based on 5-year estimated average of: 41,928 formal and informal initial compensation and pension claims received annually and 108,589 formal and informal new or reopened compensation claims received annually; 6,127 formal reopened pension claims received annually and 2,429 informal reopened pension claims expected to be received annually; 16,219 formal and informal death benefits claimed filed by surviving spouses/child received annually and 713 formal and informal death benefits claims filed by surviving spouses/child for in-service death received annually; 523 formal death benefits filed by parents received annually and 737 expected informal death benefits claims filed by parents received annually; 417,955 formal and informal, initial, new, reopened compensation claims received annually plus 50,543 formal and informal pension claims received annually plus 55,828 formal and informal death benefits claims received annually; 215 claims for monetary allowance and payment for a child with spina bifida who is a natural child of a veteran having served in the Republic of Vietnam during the Vietnam era; 7,000 claims for aid and attendance and/or household benefits; 776 claims for automobile and adaptive equipment allowance; 900 claims for benefits under the Restored Entitlement Program for Survivors program; 12,000 claims for individual unemployability benefits; and 2,079 claims for Specially Adapted Housing or Special Housing Adaptation benefits.

Estimated total annual reporting and recordkeeping burden: The annual burden is 181,140 hours. The total estimated cost to respondents is $2,717,100 (181,140 hours × $15/hour). This submission does not involve any recordkeeping costs.

Methodology for Estimated Annual Number of Respondents for Proposed Collection of Information on VA Form 21–0966, Intent to File a Claim for Compensation and/or Pension Benefits:

Using the data as reported in the proposed rule, we estimate that at least 50 percent of all claims, which would have been filed informally, will be filed in conjunction with the intent to file a claim form. Therefore, we have multiplied the expected number of total claims submitted on paper by 50 percent from data extrapolated for claims received annually over a 5-year period to calculate the estimated number of intent to claim form. An itemization of the projected numbers for an intent to file a claim form in association with each approved OMB form is provided in further detail in the above section, ''Estimated number of respondents.''

VA's Collection of Data:

Other than for original claims and certain ancillary benefits, VA historically and currently accepts claims for benefits in any format submitted, whether on a prescribed form or not. VA has never standardized the use of forms for claims or appeals processing [2]. VA maintains a record of the number of types of benefit claims received annually based on claim types such as original claims, claims for increase or to reopen a previously denied claim, claims for ancillary benefits, pension, and death benefits which have been submitted on the appropriate prescribed form. However, reliance on claim types based on the form submitted may not accurately capture the number of claims received. For instance, one claim type can be filed using more than one prescribed form and a claimant can file two types of claim such as a claim for increase and a claim to reopen on one prescribed VA form which will be categorized as one claim type received, i.e., recorded as either a claim for increase or a claim to reopen. For informal claims, VA has not quantified the number of informal claims received, but it quantifies the particular claim type filed in the informal claim such as original, increase, new, reopen, etc. As a result of this rulemaking requiring the use of prescribed forms for all claims for benefits, VA will be able to gather and collect the data quantifying the number of prescribed forms in the future which will provide VA with a more accurate account of how many respondents will respond on various VA prescribed forms.

VA is replacing ''informal claims'' with ''intent to file a claim'' and is requiring the submission of complete claim in revised § 3.155 as a placeholder for a potential earlier effective date. Since eBenefits and VONAPP uses (and will continue to use) the EZ forms, we anticipate that the total number of annual responses received on the EZ forms electronically for all benefits will increase by at least 29 percent while the total number of annual response received on VA Forms 21–526, 21–526b, 21–527, 21–534, 21–534a, and 21–535 (''traditional forms'') will decrease. Based on data from Fiscal Year (FY) October 2010 through September 2011, the number of compensation disability claims received electronically was 142,899 and the number of total compensation disability and dependency claims received electronically was 496,851. Thus, the percentage of compensation disability electronic claims received was 29 percent. With VA's outreach and efforts to promote the electronic claims processing system and with future implementation of pension, death, and appeals electronic claims processing, VA estimates an increase of the submission of electronic claims by at least 29 percent based upon the FY 2010 through 2011 data. Since the trend is to direct claimants to submit claims on EZ forms both electronically and on paper, we approximate that 70 percent of claims will be submitted on the EZ form while 30 percent will be submitted on the traditional forms.

The data used in formulating the estimated number of annual responses to the various affected prescribed forms was extrapolated from data recorded for the number of types of claims received annually for FY April 2009 through April 2013. This data is not sufficiently granular to provide the number of informal claims received given that the data only depicts the number of initial, new or reopened compensation and pension claims received and the number of initial death benefit claims received. Since informal claims may or may not be submitted on a prescribed form, there is no method for accurately recording or quantifying the total number of informal claims received or inferred annually.

[2] Currently, VA accepts any claim filed subsequent to the original, initial compensation/pension claim that is submitted in any form, i.e., informal claim to initiate the claims process. For example, a claim for increase or reopen, which currently is not required to be submitted on a prescribed form, can be established using different VA forms such as VA Form 21–526 *Veteran's Application for Compensation and/or Pension;* VA Form 21–526EZ, *Application for Disability Compensation or Related Compensation;* VA Form 21–526b, *Veteran's Supplemental Claim for Compensation;* or VA Form 21–4138, *Statement in Support of Claim.*

Therefore, we approximate that for compensation, pension, and death benefits, 50 percent of each of these benefits are informal claims. Thus, based on the data of an average of claims received over a 5-year period, we expect that the total number of informal claims for compensation, pension, and death benefits that will be submitted on a prescribed form will increase by at least 50 percent. This estimate is used to calculate the estimated expected number of intent to file a claim forms.

Regulatory Flexibility Act

The Secretary hereby certifies that these regulatory amendments would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. These amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www1.va.gov/orpm/,* by following the link for ''VA Regulations Published.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.103, Life Insurance for Veterans; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.114, Veterans Housing—Guaranteed and Insured Loans; 64.115, Veterans Information and Assistance; 64.116,Vocational Rehabilitation for Disabled Veterans; 64.117, Survivors and Dependents Educational Assistance; 64.118, Veterans Housing—Direct Loans for Certain Disabled Veterans; 64.119, Veterans Housing—Manufactured Home Loans; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance; 64.125, Vocational and Educational Counseling for Servicemembers and Veterans; 64.126, Native American Veteran Direct Loan Program; 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida; and 64.128, Vocational Training and Rehabilitation for Vietnam Veterans' Children with Spina Bifida or Other Covered Birth Defects.

Signing Authority

The Acting Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Sloan D. Gibson, Acting Secretary, Department of Veterans Affairs, approved this document on July 30, 2014, for publication.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

38 CFR Parts 19 and 20

Administrative practice and procedure, Claims, Veterans.

Dated: September 18, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, VA amends 38 CFR parts 3, 19, and 20 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Revise § 3.1(p) to read as follows:

§ 3.1 Definitions.

* * * * *

(p) *Claim* means a written communication requesting a determination of entitlement or evidencing a belief in entitlement, to a specific benefit under the laws administered by the Department of Veterans Affairs submitted on an application form prescribed by the Secretary.

* * * * *

§ 3.108 [Amended]

■ 3. Amend § 3.108 by removing ''formal or informal claim'' and adding in its place ''complete claim as set forth in § 3.160(a) or an intent to file a claim as set forth in § 3.155(b)''.

■ 4. Amend § 3.109, paragraph (a)(2) by revising the first sentence to read as follows:

§ 3.109 Time limit.

* * * * *

(a) * * *

(2) The provisions of this paragraph are applicable to original initial applications, to applications for increased benefits by reason of increased disability, age, or the existence of a dependent, and to applications for reopening or resumption of payments. * * *

* * * * *

§ 3.150 [Amended]

■ 5. Amend § 3.150 by removing paragraph (c).

§ 3.151 [Amended]

■ 6. Amend § 3.151, Cross Reference, by removing ''Informal claims.'' and adding in its place ''Intent to file a claim.''.

■ 7. Revise § 3.154 to read as follows:

§ 3.154 Injury due to hospital treatment, etc.

Claimants must file a complete claim on the appropriate application form prescribed by the Secretary when applying for benefits under 38 U.S.C. 1151 and 38 CFR 3.361. See §§ 3.151, 3.160(a), and 3.400(i) concerning effective dates of awards; see § 3.155(b) regarding intent to file the appropriate application form.

(Authority: 38 U.S.C. 501 and 1151.)

CROSS REFERENCE: Effective Dates. See § 3.400(i). Disability or death due to hospitalization, etc. See §§ 3.358, 3.361 and 3.800.

■ 8. Revise § 3.155 to read as follows:

§ 3.155 How to file a claim.

The following paragraphs describe the manner and methods in which a claim can be initiated and filed. The provisions of this section are applicable to all claims governed by part 3.

(a) *Request for an application for benefits.* A claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not of full age or capacity, who indicates a desire to file for benefits under the laws administered by VA, by a communication or action, to include an electronic mail that is transmitted through VA's electronic portal or otherwise, that does not meet the standards of a complete claim is considered a request for an application form for benefits under § 3.150(a). Upon receipt of such a communication or action, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form or form prescribed by the Secretary.

(b) *Intent to file a claim.* A claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of claimant who is not of full age or capacity may indicate a claimant's desire to file a claim for benefits by submitting an intent to file a claim to VA. An intent to file a claim must provide sufficient identifiable or biographical information to identify the claimant. Upon receipt of the intent to file a claim, VA will furnish the claimant with the appropriate application form prescribed by the Secretary. If VA receives a complete application form prescribed by the Secretary, as defined in paragraph (a) of § 3.160, appropriate to the benefit sought within 1 year of receipt of the intent to file a claim, VA will consider the complete claim filed as of the date the intent to file a claim was received.

(1) An intent to file a claim can be submitted in one of the following three ways:

(i) Saved electronic application. When an application otherwise meeting the requirements of this paragraph (b) is electronically initiated and saved in a claims-submission tool within a VA web-based electronic claims application system prior to filing of a complete claim, VA will consider that application to be an intent to file a claim.

(ii) Written intent on prescribed intent to file a claim form. The submission to an agency of original jurisdiction of a signed and dated intent to file a claim, on the form prescribed by the Secretary for that purpose, will be accepted as an intent to file a claim.

(iii) Oral intent communicated to designated VA personnel and recorded in writing. An oral statement of intent to file a claim will be accepted if it is directed to a VA employee designated to receive such a communication, the VA employee receiving this information follows the provisions set forth in § 3.217(b), and the VA employee documents the date VA received the claimant's intent to file a claim in the claimant's records.

(2) An intent to file a claim must identify the general benefit (e.g., compensation, pension), but need not identify the specific benefit claimed or any medical condition(s) on which the claim is based. To the extent a claimant provides this or other extraneous information on the designated form referenced in paragraph (b)(1)(ii) of this section that the form does not solicit, the provision of such information is of no effect other than that it is added to the file for appropriate consideration as evidence in support of a complete claim if filed. In particular, if a claimant identifies specific medical condition(s) on which the claim is based in an intent to file a claim, this extraneous information does not convert the intent to file a claim into a complete claim or a substantially complete application. Extraneous information provided in an oral communication under paragraph (b)(1)(iii) of this section is of no effect and generally will not be recorded in the record of the claimant's intent to file.

(3) Upon receipt of an intent to file a claim, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the appropriate application form prescribed by the Secretary.

(4) If an intent to file a claim is not submitted in the form required by paragraph (b)(1) of this section or a complete claim is not filed within 1 year of the receipt of the intent to file a claim, VA will not take further action unless a new claim or a new intent to file a claim is received.

(5) An intent to file a claim received from a service organization, an attorney, or agent indicating a represented claimant's intent to file a claim may not be accepted if a power of attorney was not executed at the time the communication was written. VA will only accept an oral intent to file from a service organization, an attorney, or agent if a power of attorney is of record at the time the oral communication is received by the designated VA employee.

(6) VA will not recognize more than one intent to file concurrently for the same benefit (e.g., compensation, pension). If an intent to file has not been followed by a complete claim, a subsequent intent to file regarding the same benefit received within 1 year of the prior intent to file will have no effect. If, however, VA receives an intent to file followed by a complete claim and later another intent to file for the same benefit is submitted within 1 year of the previous intent to file, VA will recognize the subsequent intent to file to establish an effective date for any award granted for the next complete claim, provided it is received within 1 year of the subsequent intent to file.

(c) *Incomplete application form.* Upon receipt of a communication indicating a belief in entitlement to benefits that is submitted on a paper application form prescribed by the Secretary that is not complete as defined in § 3.160(a) of this section, the Secretary shall notify the claimant and the claimant's representative, if any, of the information necessary to complete the application form prescribed by the Secretary. If a complete claim is submitted within 1 year of receipt of such incomplete application form prescribed by the Secretary, VA will consider it as filed as of the date VA received the incomplete application form prescribed by the Secretary that did not meet the standards of a complete claim. See § 3.160(a) for Complete Claim.

(d) *Claims.* (1) *Requirement for complete claim and date of claim.* A complete claim is required for all types of claims, and will generally be considered filed as of the date it was received by VA for an evaluation or award of benefits under the laws administered by the Department of Veterans Affairs. If VA receives a complete claim within 1 year of the filing of an intent to file a claim that meets the requirements of paragraph (b) of this section, it will be considered filed as of the date of receipt of the intent to file a claim. Only one complete claim for a benefit (e.g., compensation, pension) may be associated with each intent to file a claim for that benefit, though multiple issues may be contained within a complete claim. In the event multiple complete claims for a benefit are filed within 1 year of an intent to file a claim for that benefit, only the first claim filed will be associated with the intent to file a claim. In the event that VA receives both an intent to file a claim and an incomplete application form before the complete claim as defined in § 3.160(a) is filed, the complete claim will be considered filed as of the date of receipt of whichever was filed first provided it is perfected within the necessary timeframe, but in no event will the complete claim be considered filed more than one year prior to the date of receipt of the complete claim.

(2) *Scope of claim.* Once VA receives a complete claim, VA will adjudicate as part of the claim entitlement to any ancillary benefits that arise as a result of the adjudication decision (e.g., entitlement to 38 U.S.C. Chapter 35 Dependents' Educational Assistance benefits, entitlement to special monthly compensation under 38 CFR 3.350, entitlement to adaptive automobile allowance, etc.). The claimant may, but need not, assert entitlement to ancillary benefits at the time the complete claim is filed. VA will also consider all lay and medical evidence of record in order to adjudicate entitlement to benefits for the claimed condition as well as entitlement to any additional benefits for complications of the claimed condition, including those identified by the rating criteria for that condition in 38 CFR Part 4, VA Schedule for Rating Disabilities. VA's decision on an issue within a claim implies that VA has determined that evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues addressed in that decision. VA's decision that addresses all outstanding issues enumerated in the complete claim implies that VA has determined evidence of record does not support entitlement for any other issues that are reasonably within the scope of the issues enumerated in the complete claim.

CROSS REFERENCE: Complete claim. See § 3.160(a). Effective dates. See § 3.400.

§ 3.157 [Removed]

■ 9. Remove § 3.157.

■ 10. Amend § 3.160 by removing the introductory text and revising paragraphs (a) through (e) to read as follows:

§ 3.160 Types of claims.

(a) *Complete claim.* A submission of an application form prescribed by the Secretary, whether paper or electronic, that meets the following requirements:

(1) A complete claim must provide the name of the claimant; the relationship to the veteran, if applicable; and sufficient service information for VA to verify the claimed service, if applicable.

(2) A complete claim must be signed by the claimant or a person legally authorized to sign for the claimant.

(3) A complete claim must identify the benefit sought.

(4) A description of any symptom(s) or medical condition(s) on which the benefit is based must be provided to the extent the form prescribed by the Secretary so requires; and

(5) For nonservice-connected disability or death pension and parents' dependency and indemnity compensation claims, a statement of income must be provided to the extent the form prescribed by the Secretary so requires.

(b) *Original claim.* The initial complete claim for one or more benefits on an application form prescribed by the Secretary.

(c) *Pending claim.* A claim which has not been finally adjudicated.

(d) *Finally adjudicated claim.* A claim that is adjudicated by the Department of Veterans Affairs as either allowed or disallowed is considered finally adjudicated by whichever of the following occurs first:

(1) The expiration of the period in which to file a notice of disagreement, pursuant to the provisions of § 20.302(a) or § 20.501(a) of this chapter, as applicable; or,

(2) Disposition on appellate review.

(e) *Reopened claim.* An application for a benefit received after final disallowance of an earlier claim that is subject to readjudication on the merits based on receipt of new and material evidence related to the finally adjudicated claim, or any claim based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans' Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in § 20.1304(b)(1) of this chapter.

(Authority: 38 U.S.C. 501)

* * * * *

■ 11. Amend § 3.400 by:

■ a. Revising paragraph (o)(2); and

■ b. Adding an authority citation at the end of paragraph (o)(2).

The revision and addition to read as follows:

§ 3.400 General.

* * * * *

(o) * * *

(2) *Disability compensation.* Earliest date as of which it is factually ascertainable based on all evidence of record that an increase in disability had occurred if a complete claim or intent to file a claim is received within 1 year from such date, otherwise, date of receipt of claim. When medical records indicate an increase in a disability, receipt of such medical records may be used to establish effective date(s) for retroactive benefits based on facts found of an increase in a disability only if a complete claim or intent to file a claim for an increase is received within 1 year of the date of the report of examination, hospitalization, or medical treatment. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established.

(Authority: 38 U.S.C. 501, 5101)

* * * * *

§ 3.403 [Amended]

■ 12. Amend § 3.403 in paragraph (a)(3) by removing ''notice of the expected or actual birth meeting the requirements of an informal claim,'' and adding in its place ''a claim or an intent to file a claim as set forth in § 3.155(b),''.

§ 3.660 [Amended]

■ 13. Amend § 3.660 in paragraph (c) by removing ''notice constituting an informal claim'' and adding in its place ''a claim or an intent to file a claim as set forth in § 3.155(b)''.

§ 3.665 [Amended]

■ 14. Amend § 3.665 in paragraph (f) by:

■ a. Removing ''an informal claim'' and adding in its place ''a claim or intent to file a claim as set forth in § 3.155(b)''; and

■ b. Removing ''new informal claim.'' and adding in its place ''new claim or intent to file a claim as set forth in § 3.155(b).''.

§ 3.666 [Amended]

■ 15. Amend § 3.666 by:

■ a. In paragraph (a)(4), removing ''an informal claim'' and adding in its place ''a claim or intent to file a claim as set forth in § 3.155(b)'';

■ b. In paragraph (a)(4), removing ''new informal claim.'' and adding in its place ''new claim or intent to file a claim as set forth in § 3.155(b).'';

■ c. In paragraph (b)(3), removing ''an informal claim.'' and adding in its place ''a claim or intent to file a claim as set forth in § 3.155(b).''; and

■ d. In paragraph (c), removing ''(which constitutes an informal claim)''.

■ 16. Amend § 3.701 by revising paragraph (b) to read as follows:

§ 3.701 Elections of pension or compensation.

* * * * *

(b) *Form of election.* An election must be in writing and must specify the benefit the person wishes to receive.

* * * * *

■ 17. Amend § 3.812 by:

■ a. Revising paragraph (e).

■ b. Amending paragraph (f) in the second sentence by removing ''claim'' and adding in its place ''complete claim''.

The revision to read as follows:

§ 3.812 Special allowance payable under section 156 of Pub. L. 97–377.

* * * * *

(e) *Claims.* Claimants must file or submit a complete claim on a paper or electronic form prescribed by the Secretary in order for VA to pay this special allowance. When VA receives an intent to file a claim or inquiries as to eligibility, VA will follow the procedures outlined in § 3.155. Otherwise, the date of receipt of the complete claim will be accepted as the date of claim for this special allowance. See §§ 3.150, 3.151, 3.155, 3.400.

* * * * *

Subpart D—Universal Adjudication Rules That Apply to Benefit Claims Governed by Part 3 of This Title

■ 18. The authority citation for part 3, subpart D continues to read as follows:

(Authority: 38 U.S.C. 501(a), unless otherwise noted.)

■ 19. Amend § 3.2600(a) by revising the first sentence to read as follows:

§ 3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a Notice of Disagreement submitted in accordance with the provisions of § 20.201 of this chapter, and either § 20.302(a) or § 20.501(a) of this chapter, as applicable, with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. * * *

* * * * *

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

Subpart B—Appeals Processing by Agency of Original Jurisdiction

■ 20. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 21. Add new §§ 19.23 and 19.24 to subpart B to read as follows:

§ 19.23 Applicability of provisions concerning Notice of Disagreement.

(a) Appeals governed by § 20.201(a) of this chapter shall be processed in accordance with § 19.24. Sections 19.26, 19.27 and 19.28 shall not apply to appeals governed by § 20.201(a) of this chapter.

(b) Appeals governed by § 20.201(b) of this chapter shall be processed in accordance with §§ 19.26, 19.27, and 19.28.

§ 19.24 Action by agency of original jurisdiction on Notice of Disagreement required to be filed on a standardized form.

(a) *Initial action.* When a timely Notice of Disagreement in accordance with the requirements of § 20.201(a) of this chapter is filed, the agency of original jurisdiction will reexamine the claim and determine whether additional review or development is warranted.

(b) *Incomplete and complete appeal forms*—(1) *Incomplete appeal forms.* In cases governed by paragraph (a) of § 20.201 of this chapter, if VA determines a form filed by the claimant is incomplete and requests clarification, the claimant must timely file a completed version of the correct form in order to initiate an appeal. A claimant is not required to cure or correct the filing of an incomplete form by filing a completed version of the correct form unless VA informs the claimant or his or her representative that the form is incomplete and requests clarification.

(2) *Complete appeal forms.* In general, a form will be considered complete if the following information is provided:

(i) Information to identify the claimant;

(ii) The claim to which the form pertains;

(iii) Any information necessary to identify the specific nature of the disagreement if the form so requires. For compensation claims, this criterion will be met if the form enumerates the issues or conditions for which appellate review is sought, or if it provides other information required on the form to identify the claimant and the nature of the disagreement (such as disagreement with disability rating, effective date, or denial of service connection); and

(iv) The claimant's signature.

(3) *Timeframe to complete correct form.* In general, a claimant who wishes to initiate an appeal must provide a complete form within the timeframe established by § 20.302(a) of this chapter. When VA requests clarification of an incomplete form, the claimant must provide a complete form in response to VA's request for clarification within the later of the following dates:

(i) 60 days from the date of the request; or

(ii) 1 year from the date of mailing of the notice of the decision of the agency of original jurisdiction.

(4) *Failure to respond.* If the claimant fails to provide a completed form within the timeframe set forth in paragraph (b)(3) of this section, the decision of the agency of original jurisdiction will become final.

(5) *Form timely completed.* If a completed form is received within the timeframe set forth in paragraph (b)(3) of this section, VA will treat the completed form as the Notice of Disagreement and VA will reexamine the claim and determine whether additional review or development is warranted. If no further review or development is required, or after

necessary review or development is completed, VA will prepare a Statement of the Case pursuant to § 19.29 unless the disagreement is resolved by a grant of the benefit(s) sought on appeal or the NOD is withdrawn by the claimant.

(c) *Issues under appellate review.* If a form enumerates some but not all of the issues or conditions which were the subject of the decision of the agency of original jurisdiction, the form will be considered complete with respect to the issues for which appellate review is sought and identified by the claimant. Any issues or conditions not enumerated will not be considered appealed on the basis of the filing of that form and will become final unless the claimant timely files a separate form for those issues or conditions within the applicable timeframe set forth in paragraph (b)(3) of this section.

(d) *Disagreement concerning whether Notice of Disagreement has been filed.* Whether or not a claimant has timely filed a Notice of Disagreement is an appealable issue, but in such a case, appellate consideration shall be limited to the question of whether the correct form was timely filed.

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

■ 22. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart A—General

■ 23. Revise § 20.3(c) to read as follows:

§ 20.3 Rule 3. Definitions.

* * * * *

(c) *Appellant* means a claimant who has initiated an appeal to the Board of Veterans' Appeals by filing a timely Notice of Disagreement pursuant to the provisions of § 20.201, and either § 20.302(a) or § 20.501(a), as applicable.

* * * * *

Subpart C—Commencement and Perfection of Appeal

■ 24. Revise § 20.200 to read as follows:

§ 20.200 Rule 200. What constitutes an appeal.

An appeal consists of a timely filed Notice of Disagreement submitted in accordance with the provisions of § 20.201, and either § 20.302(a) or § 20.501(a), as applicable and, after a Statement of the Case has been furnished, a timely filed Substantive Appeal.

(Authority: 38 U.S.C. 7105)

■ 25. Revise § 20.201 to read as follows:

§ 20.201 Rule 201. Notice of Disagreement.

(a) Cases in which a form is provided by the agency of original jurisdiction for the purpose of initiating an appeal.

(1) *Format.* For every case in which the agency of original jurisdiction (AOJ) provides, in connection with its decision, a form for the purpose of initiating an appeal, a Notice of Disagreement consists of a completed and timely submitted copy of that form. VA will not accept as a notice of disagreement an expression of dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result that is submitted in any other format, including on a different VA form.

(2) *Provision of form to the claimant.* If a claimant has established an online benefits account with VA, or has designated an email address for the purpose of receiving communications from VA, VA may provide an appeal form pursuant to paragraph (a)(1) of this section electronically, whether by email, hyperlink, or other direction to the appropriate form within the claimant's online benefits account. VA may also provide a form pursuant to paragraph (a)(1) of this section in paper format.

(3) *Presumption form was provided.* This paragraph (a) applies if there is any indication whatsoever in the claimant's file or electronic account that a form was sent pursuant to paragraph (a)(1) of this section.

(4) *Specificity required by form.* If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified to the extent a form provided pursuant to paragraph (a)(1) of this section so requires. If the claimant wishes to appeal all of the issues decided by the agency of original jurisdiction, the form must clearly indicate that intent. Issues not identified on the form will not be considered appealed.

(5) *Alternate form or other communication.* The filing of an alternate form or other communication will not extend, toll, or otherwise delay the time limit for filing a Notice of Disagreement, as provided in § 20.302(a). In particular, returning the incorrect VA form, including a form designed to appeal a different benefit does not extend, toll, or otherwise delay the time limit for filing the correct form.

(b) *Cases in which no form is provided by the agency of original jurisdiction for purpose of initiating an appeal.* A written communication from a claimant or his or her representative expressing dissatisfaction or disagreement with an adjudicative determination by the agency of original jurisdiction and a desire to contest the result will constitute a Notice of Disagreement relating to a claim for benefits in any case in which the agency of original jurisdiction does not provide a form identified as being for the purpose of initiating an appeal. The Notice of Disagreement must be in terms which can be reasonably construed as disagreement with that determination and a desire for appellate review. If the agency of original jurisdiction gave notice that adjudicative determinations were made on several issues at the same time, the specific determinations with which the claimant disagrees must be identified.

(c) *Simultaneously contested claims.* The provisions of paragraph (b) of this section shall apply to appeals in simultaneously contested claims under §§ 20.500 and 20.501, regardless of whether a standardized form was provided with the decision of the agency of original jurisdiction.

(Authority: 38 U.S.C. 7105)

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