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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0256; Directorate Identifier 2007-SW-01-AD; Amendment 39-18046; AD 2008-14-02 R1]

RIN 2120-AA64

Airworthiness Directives; Agusta S.p.A. (Agusta) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are revising Airworthiness Directive (AD) 2008-14-02 for Agusta Model AB139 and AW139 helicopters. AD 2008-14-02 required inspecting the fuselage frame to detect fatigue cracks which could lead to structural failure and subsequent loss of control of the helicopter. Since we issued AD 2008-14-02, Agusta developed a frame reinforcement modification, which supports extending the interval for inspecting the fuselage frame for a fatigue crack. This new AD requires inspecting the fuselage frame for a crack and reduces the applicability from AD 2008-14-02 to exclude helicopters with the frame reinforcement modification. The actions of this AD are intended to detect a fatigue crack that could result in failure of the fuselage frame and subsequent loss of control of the helicopter.

DATES: This AD is effective January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 14, 2008 (73 FR 39572, July 10, 2008).

ADDRESSES: For service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015

Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39-0331-664757; fax 39-0331-664680; or at <http://www.agustawestland.com/technical-bulletins>. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800-647-5527) is U.S. Department of Transportation, Docket Operations Office, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222-5110; email sharon.y.miles@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to revise AD 2008-14-02, Amendment 39-15597 (73 FR 39572, July 10, 2008) (AD 2008-14-02), for Agusta Model AB 139 and AW 139 helicopters. The NPRM published in the **Federal Register** on July 8, 2013 (78 FR 40640). The NPRM proposed to retain all requirements of AD 2008-14-02 but remove from the applicability section any helicopter modified by installing structural reinforcement skins in accordance with Agusta Bollettino Tecnico No. 139-089, dated February 19, 2010 (BT 139-089). The NPRM proposed to continue to require initially inspecting the fuselage frame 5700 middle section within 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, for a crack. The NPRM also

proposed to continue to require repeating this inspection at intervals not exceeding 100 hours TIS, and, if there is a crack, before further flight, repairing the crack in accordance with FAA-approved procedures.

The NPRM was prompted by AD No. 2006-0357R1, dated April 22, 2010, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Agusta Model AB 139 and AW 139 helicopters. EASA advised that tests have shown that the Agusta AB/AW 139's fuselage frame 5700 middle section is prone to fatigue damage. EASA issued AD No. 2006-0357R1 to revise EASA AD No. 2006-0357, dated November 29, 2006, by removing Agusta Model AB139 and AW139 helicopters modified with the structural reinforced frames from the applicability requirements of the fatigue crack inspection.

Comments

After our NPRM (78 FR 40640, July 8, 2013), was published, we received a comment from one commenter.

Request

One commenter requested that the Applicability section include an exception for Agusta Model AB139 and AW139 helicopters with Main Cabin serial numbers (S/Ns) "TA1721 and subsequent," and "PZL219 and subsequent." The commenter proposed this change because the specified helicopters have left-hand (LH) frame station 5700 part number (P/N) 3P5338A13354 and right-hand (RH) frame station 5700 P/N 3P5338A13454 installed.

We disagree that such a change is necessary. Paragraph (a) of the AD states that it does not apply to helicopters with LH frame station 5700, P/N 3P5338A13354, and RH frame station 5700, P/N 3P5338A13454, installed. Thus, helicopters with the specified main cabin S/Ns are already excepted from the applicability of this AD.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD

because we evaluated all information provided by EASA, reviewed the relevant information, considered the comment received, and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed, except we have correctly stated the design holder's name as Agusta S.p.A. instead of AgustaWestland S.p.A. as specified by the current FAA type certificate. This change is consistent with the intent of the proposals in the NPRM (78 FR 40640, July 8, 2013) and will not increase the economic burden on any operator nor increase the scope of the AD.

Differences Between This AD and the EASA AD

The EASA AD requires contacting the type certificate (TC) holder for further instructions if damage or a crack is found; this AD requires repairing the crack, before further flight, with FAA-approved procedures with no requirement to contact the TC holder. The EASA AD also excludes helicopters with S/Ns 31002, 31003, 31004, and 31007; whereas, this AD does not.

Related Service Information

Agusta issued Bollettino Tecnico No. 139-018, Revision B, dated October 18, 2006, which specifies inspection procedures for the middle section frame 5700 for all Model AB139 and AW139 helicopters except S/Ns 31002, 31003, 31004, and 31007. Subsequently, Agusta issued BT 139-089, which describes procedures for installing carbon fiber structural reinforcement skins at frame station 5700 for two part-numbered fuselage frames and for one frame station 3900 fuselage frame. Once the fuselage frames have been modified in accordance with BT 139-089, the inspection interval of Mandatory Inspection Task MI53-12 may be extended.

Costs of Compliance

We estimate this AD affects 33 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take about 1 work-hour to comply with the initial and each subsequent inspection required by this AD. The average labor rate is \$85 per work-hour so the approximate cost for each inspection is \$85 per helicopter or \$2,805 for the U.S.-registered fleet. We estimate the cost to repair the fuselage middle frame section to be about \$10,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

- (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);
- (3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2008-14-02, Amendment 39-15597 (73 FR 39572, July 10, 2008), and adding the following new AD:

2008-14-02 R1 Agusta S.p.A. (Agusta) Helicopters: Amendment 39-18046; Docket No. FAA-2008-0256; Directorate Identifier 2007-SW-01-AD.

(a) Applicability

This AD applies to Agusta Model AB139 and AW139 helicopters, except helicopters with reinforcement skin part number (P/N) 3G5306P08512 installed on left hand (LH) frame station 5700 P/N 3P5338A13352 and right hand (RH) frame station 5700 P/N 3P5338A13452; or with reinforcement skin P/N 3G5306P08513 installed on LH frame station 5700 P/N 3P5338A13353 and RH frame station 5700 P/N 3P5338A13453; or with LH frame station 5700 P/N 3P5338A13354 and RH frame station 5700 P/N 3P5338A13454, installed; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as a fatigue crack in the fuselage frame 5700 middle section. This condition could result in structural failure of the frame and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD revises AD 2008-14-02, Amendment 39-15597 (73 FR 39572, July 10, 2008).

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 10 hours time-in-service (TIS), or upon accumulating 100 hours TIS since new, whichever occurs later, inspect the fuselage frame 5700 middle section for a crack in accordance with the Compliance Instructions, paragraphs 1. through 4., of Agusta Bollettino Tecnico No. 139-018, Revision B, dated October 18, 2006.

(2) Thereafter, at intervals not exceeding 100 hours TIS, repeat the inspection as required by paragraph (e)(1) of this AD.

(3) If there is a crack, before further flight, repair the crack in accordance with an FAA-approved procedure.

(f) Effective Date

This AD becomes effective January 16, 2015.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas

76137; telephone (817) 222-5110; email sharon.y.miles@faa.gov.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Agusta Bollettino Tecnico No. 139-089, dated February 19, 2010, which is not incorporated by reference, contains additional information about the subject of this AD. For this service information, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39-0331-664757; fax 39-0331-664680; or at <http://www.agustawestland.com/technical-bulletins>. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2006-0357R1, dated April 22, 2010. You may view the EASA AD on the Internet at <http://www.regulations.gov> in Docket No. FAA-2008-0256.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 5311, Fuselage, Main Frame.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on August 14, 2008 (73 FR 39572, July 10, 2008).

(i) Agusta Bollettino Tecnico No. 139-018, Revision B, dated October 18, 2006.

(ii) Reserved.

(4) For Agusta service information identified in this AD, contact AgustaWestland, Product Support Engineering, Via del Gregge, 100, 21015 Lonate Pozzolo (VA) Italy, ATTN: Maurizio D'Angelo; telephone 39-0331-664757; fax 39-0331-664680; or at <http://www.agustawestland.com/technical-bulletins>.

(5) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222-5110.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://>

www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued in Fort Worth, Texas, on November 24, 2014.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2014-28913 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0717; Directorate Identifier 2014-CE-026-AD; Amendment 39-18045; AD 2014-25-04]

RIN 2120-AA64

Airworthiness Directives; Pilatus Aircraft Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an airworthiness directive (AD) 2013-11-08 for Pilatus Aircraft Limited Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to incorporate new revisions into the aircraft maintenance manual or in the limitations document of the FAA-approved maintenance program. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 16, 2015.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0717; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Liaison Manager, CH-6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 80; fax: +41 (0) 41 619 65 76; Internet: <http://www.pilatus-aircraft.com>; email: fodermatt@pilatus-aircraft.com. You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

FOR FURTHER INFORMATION CONTACT:

Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to add an AD that would apply to Pilatus Aircraft Limited Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 airplanes. That NPRM was published in the **Federal Register** on September 18, 2014 (79 FR 56023), and proposed to supersede AD 2013-11-08, Amendment 39-17468 (78 FR 37701; June 24, 2013).

The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states that:

The maintenance instructions and airworthiness limitations applicable to the Structure and Components of PC-6 aeroplanes are specified in the Aircraft Maintenance Manual (AMM) under Chapter 4 or in the Airworthiness Limitations Document (ALS), depending on aeroplane model.

The instructions contained in the ALS document have been identified as mandatory actions for continued airworthiness and failure to comply with these instructions and limitations could potentially lead to an unsafe condition.

Pilatus Aircraft Ltd. (Pilatus) recently issued PC-6 AMM, Chapter 04-00-00, Document Number 01975 issue 19 for PC-6 B2-H2 and PC-6 B2-H4 aeroplanes and PC-6 ALS, Document Number 02334 issue 4 for all other PC-6 aeroplane models to incorporate new life limits for the Fire Extinguisher.

For the reason described above, this AD retains the requirements of EASA AD 2012-0268, which is superseded, and requires

implementation of the new maintenance requirements and/or airworthiness limitations.

The MCAI can be found in the AD docket on the Internet at: <http://www.regulations.gov/#!docketDetail;D=FAA-2014-0717>.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to the comment.

Request

John Kruger of Pilatus Aircraft Limited commented that paragraph (f)(4)(ii) of this AD provides a compliance time of 30 days after effective date of the AD or within 10 hours time-in-service, but that Pilatus had recommended in the MCAI to allow a grace period of 6 months, as was done in the case of the PC-12 when the fire extinguisher life was changed, and that the compliance time should be changed for this AD per the recommendation.

We agree because the compliance time of 6 months allows for an acceptable level of safety. We revised the AD so that the compliance time in paragraph (f)(4)(ii) of this AD reads ". . . within 6 months after . . ."

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 56023, September 18, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 56023, September 18, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 50 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this AD.

Based on these figures, we estimate the cost of this AD on U.S. operators to be \$34,000, or \$680 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing \$1,000, for a cost of \$1,085 per

product. We have no way of determining the number of products that may need these actions.

The only costs that would be imposed by this AD over that already required by AD 2013-11-08 is 1 work-hour to incorporate the new airworthiness limitations section sections into the maintenance program, \$1,085 for replacement of the fire extinguisher if needed, and the addition of 35 airplanes from 15 airplanes to 50 airplanes.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-

0717; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Amendment 39-17311 (78 FR 11572, February 19, 2013) and adding the following new AD:

2014-25-04 Pilatus Aircraft Limited: Amendment 39-18045; Docket No. FAA-2014-0717; Directorate Identifier 2014-CE-026-AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 16, 2015.

(b) Affected ADs

This AD supersedes AD 2013-11-08, Amendment 39-17468 (78 FR 37701; June 24, 2013).

(c) Applicability

This AD applies to Pilatus Aircraft Limited Models PC-6, PC-6-H1, PC-6-H2, PC-6/350, PC-6/350-H1, PC-6/350-H2, PC-6/A, PC-6/A-H1, PC-6/A-H2, PC-6/B-H2, PC-6/B1-H2, PC-6/B2-H2, PC-6/B2-H4, PC-6/C-H2, and PC-6/C1-H2 airplanes, all manufacturer serial numbers (MSN), including MSN 2001 through 2092 (see Note 1 of paragraph c), certificated in any category.

Note 1 of paragraph (c): For MSN 2001-2092, these airplanes are also identified as Fairchild Republic Company PC-6 airplanes, Fairchild Industries PC-6 airplanes, Fairchild Heli Porter PC-6 airplanes, or Fairchild-Hiller Corporation PC-6 airplanes.

(d) Subject

Air Transport Association of America (ATA) Code 5: Time Limits.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI)

originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as a need to incorporate new revisions into the aircraft maintenance manual (AMM) or in the Limitations document of the FAA-approved maintenance program. The limitations were revised to incorporate new life limits for the fire extinguisher. These actions are required to ensure the continued operational safety of the affected airplanes.

(f) Actions and Compliance

(1) *Actions retained from AD 2013-11-08, Amendment 39-17468 (78 FR 37701; June 24, 2013) for all airplanes in the Applicability section of this AD:* If the flap actuator has accumulated 3,500 hours time-in-service (TIS) or more since new or last overhauled or 7 years or more since new or last overhauled, whichever occurs first, replacement of the flap actuator (except part numbers 978.73.14.101 and 978.73.14.103) is required within 350 hours TIS after July 29, 2013, (the effective date retained from AD 2013-11-08) or 6 months after July 29, 2013, (the effective date retained from AD 2013-11-08), whichever occurs first. Flap actuators with less than 3,500 hours TIS or 7 years since new or last overhauled are covered by the airworthiness limitations document (ALS) requirement.

(2) *Actions new to this AD for all affected Models PC-6/B2-H2 and PC-6/B2-H4 airplanes:* Before further flight after January 16, 2015 (the effective date of this AD) incorporate the maintenance requirements as specified in Section 04-00-00, Airworthiness Limitations, of Chapter 04, Airworthiness Limitations, of the Pilatus PC-6 Maintenance Manual, document number 01975, Revision 19, dated May 31, 2014, into your FAA-accepted maintenance program (maintenance manual).

(3) *Actions new to this AD for all airplanes in the Applicability section of this AD except for the Models PC-6/B2-H2 and PC-6/B2-H4 airplanes:* Before further flight after January 16, 2015 (the effective date of this AD) incorporate the maintenance requirements as specified in Pilatus ALS, document number 02334, Revision 4, dated May 31, 2014, into your FAA-accepted maintenance program (maintenance manual).

(4) *Actions new to this AD for all airplanes in the Applicability section of this AD:*

(i) For airplanes with Halon Fire Extinguishers that have not yet reached the 10 year life limit after January 16, 2015 (the effective date of this AD), when the Halon Fire Extinguisher reaches its life limit of 10 years, before further flight, replace with an airworthy Halon Fire Extinguisher following Section 04-00-00, Airworthiness Limitations, of Chapter 04, Airworthiness Limitations, of the Pilatus PC-6 Maintenance Manual, document number 01975, Revision 19, dated May 31, 2014; or Pilatus ALS document number 02334, Revision 4, dated May 31, 2014; as applicable.

(ii) For airplanes with Halon Fire Extinguishers that have reached the 10 year life limit on or before January 16, 2015 (the effective date of this AD), within the next 6 months after January 16, 2015 (the effective

date of this AD), replace with an airworthy Halon Fire Extinguisher following Section 04-00-00, Airworthiness Limitations, of Chapter 04, Airworthiness Limitations, of the Pilatus PC-6 Maintenance Manual, document number 01975, Revision 19, dated May 31, 2014; or Pilatus ALS document number 02334, Revision 4, dated May 31, 2014; as applicable.

(iii) Repetitively, after replacing the airplanes Halon Fire Extinguisher as required in paragraphs (f)(4)(i) or (f)(4)(ii), within 10 years after each last replacement, replace with an airworthy Halon Fire Extinguisher.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4059; fax: (816) 329-4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to European Aviation Safety Agency (EASA) AD No.: 2014-0181, dated July 31, 2014, for related information. The MCAI can be found in the AD docket on the Internet at: <http://www.regulations.gov/#/docketDetail;D=FAA-2014-0717>.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Pilatus Airworthiness Limitations document number 02334, Revision 4, dated May 31, 2014. The revision level of this document is indicated only in the Record of Revisions.

(ii) Section 04-00-00, Airworthiness Limitations, of Chapter 04, Airworthiness Limitations, of the Pilatus PC-6 Maintenance Manual, document number 01975, Revision 19, dated May 31, 2014.

(3) For Pilatus Aircraft Limited service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Liaison Manager, CH-6371 STANS, Switzerland; telephone: +41 (0) 41 619 65 80; fax: +41 (0) 41 619 65 76; Internet: <http://www.pilatus->

[aircraft.com](http://www.pilatus-aircraft.com); email: fodermatt@pilatus-aircraft.com.

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on December 2, 2014.

Robert Busto,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-28730 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0053; Directorate Identifier 2013-NM-174-AD; Amendment 39-18047; AD 2014-25-05]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777 airplanes. This AD was prompted by reports of corroded, migrated, or broken spring pins of the girt bar floor fitting; in one case the broken pins prevented a door escape slide from deploying during a maintenance test. This AD requires replacing the existing spring pins at each passenger entry door at both girt bar floor fittings with new spring pins. We are issuing this AD to prevent broken or migrated spring pins of the girt bar floor fittings, which could result in improper deployment of the escape slide/raft and consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

DATES: This AD is effective January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 16, 2015.

ADDRESSES: For service information identified in this AD, contact Boeing

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0053; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Ana Martinez Hueto, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6592; fax: 425-917-6591; email: ana.m.hueto@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on February 6, 2014 (79 FR 7103). The NPRM was prompted by reports of corroded, migrated, or broken spring pins of the girt bar floor fitting; in one case the broken pins prevented a door escape slide from deploying during a maintenance test. The NPRM proposed to require replacing the existing spring pins at each passenger entry door at both girt bar floor fittings with new spring pins. We are issuing this AD to prevent broken or migrated spring pins of the girt bar floor fittings, which could result in improper deployment of the escape slide/raft and consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

Revised Service Information

Since publication of the NPRM (79 FR 7103, February 6, 2014), Boeing has issued Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014. That revision states that no more work is necessary on airplanes changed in accordance with the original issue (Boeing Alert Service Bulletin 777-52A0050, dated June 18, 2013), which was specified as the appropriate source of service information in the NPRM.

We have changed paragraphs (c) and (g) of this AD to specify Boeing Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014; added a new paragraph (h) to this AD to give credit for actions done before the effective date of this AD using Boeing Alert Service Bulletin 777-52A0050, dated June 18, 2013; and redesignated subsequent paragraphs accordingly.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 7103, February 6, 2014) and the FAA's response to each comment.

Request To Change Compliance Time

Boeing asked that we change the compliance time in paragraph (g) of the NPRM (79 FR 7103, February 6, 2014) from 36 months to 1,175 days. Boeing stated that 1,175 days (3 years, 80 days) is consistent with the compliance time specified in Boeing Alert Service Bulletin 777-52A0050, dated June 18, 2013. Boeing noted that this compliance time encompasses the 777 maintenance planning document C-check inspection interval of 1,125 days (3 years, 30 days) for structural items. Boeing added that this change is not significant.

American Airlines (AA) asked that we change the compliance time to match the Maintenance Review Board (MRB) limit of 1,125 days, which would allow AA's maintenance to be scheduled at regular maintenance visits without any undue burden on current flight schedules.

We agree with changing the compliance time to coincide with regular maintenance inspection intervals. However, instead of specifying 1,175 days, we worked in conjunction with Boeing to determine that a 37-month compliance time is appropriate. We have changed paragraph (g) of this AD accordingly.

Request To Limit Parts Installation Prohibition

Delta Airlines (Delta) asked that we revise paragraph (h) of the NPRM (79 FR 7103, February 6, 2014), which is

paragraph (i) of this AD, to prohibit installation of the specified spring pins only in the locations being addressed by this AD. Delta stated that this clarification would allow the use of part number (P/N) MS39086-261 or P/N MS16562-252 in locations not subject to the actions in the NPRM. Delta added that the proposed language would prevent the use of these pins anywhere on the applicable Model 777 airplanes.

We agree to specify the location on the airplane where installation of the spring pins is prohibited. We have changed paragraph (i) of this AD accordingly.

Request To Revise Parts Installation Prohibition to Pertain to Unmodified Airplanes Only

AA asked that we prohibit installation of spring pins only on airplanes modified in accordance with Boeing Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014, and allow installation of the spring pins on unmodified airplanes. AA added that the Boeing Model 777 Illustrated Parts Catalog (IPC) currently identifies spring pins having P/N MS16562-252 as valid parts for installation on unmodified airplanes. AA added that, since the analysis of broken spring pins has shown that they have failed due to stress corrosion, it should be acceptable to install a new pin in an unmodified airplane because the airplane will be modified within a set amount of time.

We do not agree to allow installation of the spring pins having part number MS39086-261 or MS16562-252 on unmodified airplanes. In general, once we have determined that an unsafe condition exists, we do not allow that condition to be introduced into the fleet. In developing the technical information on which every AD is based, we consider the availability of replacement parts that the AD will require to be installed. Since we have determined that replacement parts are available to operators, this AD prohibits installation of the unsafe parts. We have not changed this AD in this regard.

Request To Define Configuration/Parts Control

Singapore Airlines asked for an explanation of how Boeing ensures that the affected spring pins are not delivered to operators since the girt bar assembly includes the spring pins.

FedEx asked that we revise the NPRM (79 FR 7103, February 6, 2014) either to specifically state that no reidentification of the floor fitting assemblies is required, or to provide a specific reidentification process. FedEx Express also asked that the issue of parts

identification as specified in the referenced service information (Boeing Alert Service Bulletin 777-52A0050, dated June 18, 2013), be resolved. FedEx noted “a vague requirement” to identify accomplishment of the service bulletin on the part but there are no specific instructions. FedEx stated this could result in the part being inadvertently returned to a pre-modification condition. FedEx recognized that ensuring compliance lies in the control of the spring pins, not the floor fitting assemblies. FedEx stated that there is no value added by identifying the part after the change is made because Boeing did not provide a step in the Work Instructions with a location to apply this identification.

We acknowledge the commenter’s concerns. Since issuance of the NPRM (79 FR 7103, February 6, 2014), Boeing has updated its IPC and Boeing Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014, to clarify appropriate parts installation. In addition, Boeing Service Bulletin 777-

52A0050, Revision 1, dated August 7, 2014, includes Work Instructions for applying the part identification. We have not changed this AD in this regard.

Concern Regarding Parts Availability

FedEx expressed concern about the ability of operators to obtain the required parts since Boeing currently restricts the part’s availability. FedEx noted that it has an adequate supply.

We consider the compliance times in this AD to be adequate to allow operators to acquire parts to have on hand for replacing the affected spring pins. Therefore, we have determined that, due to the safety implications and consequences associated with corroded, migrated, or broken spring pins, the existing pins must be replaced within 37 months after the effective date of this AD. We have not changed this AD regarding this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and

determined that air safety and the public interest require adopting this AD with the changes described previously, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 7103, February 6, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 7103, February 6, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 189 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	Up to 40 work-hours × \$85 per hour = Up to \$3,400.	\$0	Up to \$3,400	Up to \$642,600.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (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),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014-25-05 The Boeing Company: Amendment 39-18047 ; Docket No. FAA-2014-0053; Directorate Identifier 2013-NM-174-AD.

(a) Effective Date

This AD is effective January 16, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 777-200, -200LR, -300, -300ER, and 777F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by reports of corroded, migrated, or broken spring pins of the girt bar floor fitting; in one case the broken pins prevented a door escape slide from deploying during a maintenance test. We are issuing this AD to prevent broken or migrated spring pins of the girt bar floor fittings, which could result in improper deployment of the escape slide/raft and consequent delay and injury during evacuation of passengers and crew from the cabin in the event of an emergency.

(f) Compliance

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

(g) Spring Pin Replacement

Within 37 months after the effective date of this AD: Replace the spring pin at both girt bar floor fittings at each passenger entry door with a new spring pin, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014.

(h) Credit for Previous Actions

This paragraph provides credit for the action specified in paragraph (g) of this AD, if that action was performed before the effective date of this AD using Boeing Alert Service Bulletin 777-52A0050, dated June 18, 2013, which is not incorporated by reference in this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a spring pin having part number MS39086-261 or MS16562-252 at a girt bar floor fitting at a passenger entry door on any airplane.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

(k) Related Information

(1) For more information about this AD, contact Ana Martinez Hueto, Aerospace

Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057-3356; phone: 425-917-6592; fax: 425-917-6591; email: ana.m.hueto@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses in paragraphs (l)(3) and (l)(4) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Bulletin 777-52A0050, Revision 1, dated August 7, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, WA, on November 28, 2014.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-28916 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2013-1029; Directorate Identifier 2013-NM-177-AD; Amendment 39-18042; AD 2014-25-01]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2010-13-04 for certain Bombardier, Inc. Model

DHC-8-400 series airplanes. AD 2010-13-04 required modifying the nose landing gear (NLG) trailing arm. This new AD requires installing a new pivot pin retention mechanism. This new AD also adds airplanes to the applicability. This AD was prompted by a report of several missing or damaged pivot pin retention bolts. We are issuing this AD to prevent failure of the pivot pin retention bolt, which could result in a loss of directional control or loss of a NLG tire during take-off or landing.

DATES: This AD becomes effective January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of July 28, 2010 (75 FR 35622, June 23, 2010).

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2013-1029>; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

FOR FURTHER INFORMATION CONTACT:

Ricardo Garcia, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7331; fax 516-794-5531.

SUPPLEMENTARY INFORMATION:**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010). AD 2010-13-04 applied to certain Bombardier, Inc. Model DHC-8-400 series airplanes. The NPRM published in the **Federal Register** on December 24, 2013 (78 FR 77615).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2009-29R1, dated August 14, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition on certain Bombardier, Inc. Model DHC-8-400 series airplanes. The MCAI states:

Two in-service incidents have been reported on DHC-8 Series 400 aircraft in which the nose landing gear (NLG) trailing arm pivot pin retention bolt (part number NAS6204-13D) was damaged. One incident involved the left hand NLG tire which ruptured on take-off. Investigation determined that the retention bolt failure was due to repeated contact of the castellated nut with the towing device including both the towbar and the towbarless rigs. The loss of the retention bolt allowed the pivot pin to migrate from its normal position and resulted in contact with and rupture of the tire. The loss of the pivot pin could compromise retention of the trailing arm and could result in a loss of directional control due to loss of nose wheel steering. The loss of an NLG tire or the loss of directional control could adversely affect the aircraft during take off or landing.

To prevent the potential failure of the pivot pin retention bolt, Bombardier Aerospace has developed a modification which includes a new retention bolt, a reverse orientation of the retention bolt and a rework of the weight on wheel (WOW) proximity sensor cover to provide clearance for the re-oriented retention bolt.

Since the original issue of this [Canadian] AD [which corresponds to AD 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010)], there have been several reports of pivot pin retention bolts found missing or damaged. Additional investigation determined that the failures were caused by high contact stresses on the retention bolt due to excessive frictional torque on the pivot pin and an adverse tolerance condition at the retention bolt.

Revision 1 of this [Canadian] AD mandates the installation of a new pivot pin retention mechanism.

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/#!documentDetail;D=FAA-2013-1029-0002>.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (78 FR 77615, December 24, 2013) and the FAA’s response to each comment.

Request To Revise Required Actions of Paragraph (h) of the Proposed AD (78 FR 77615, December 24, 2013)

Horizon Air requested that we revise paragraph (h) of the proposed AD (78 FR

77615, December 24, 2013) to refer to only the specific section of the Accomplishment Instructions of the service information that specifies the steps that correct the unsafe condition and exclude the steps related to the set-up and close-out actions. Horizon Air stated that only Part B. of the Accomplishment Instructions of Bombardier Service Bulletin 84-32-110, Revision A, dated April 8, 2013, contains any corrective actions.

We agree with the commenter’s request and rationale for excluding the “Job Set-Up” and “Close Out” sections of Bombardier Service Bulletin 84-32-110, Revision A, dated April 8, 2013. We have revised paragraph (h) of this AD to require accomplishment of paragraph 3.B., “Procedure,” of the Accomplishment Instructions of Bombardier Service Bulletin 84-32-110, Revision A, dated April 8, 2013.

Request To Provide Credit for Certain Actions

Horizon Air requested that we revise the proposed AD (78 FR 77615, December 24, 2013) to provide credit for accomplishing Goodrich Service Bulletin 47100-32-96. Horizon Air stated that a nose landing gear repaired by Goodrich Landing Gear (or other repair station) using the Goodrich service information would not have any Bombardier service bulletin entered into the maintenance record as the service information that was incorporated.

We do not agree. Paragraph (h) of this AD requires incorporating Bombardier Modsum 4-113749, which is entirely contained in Bombardier Service Bulletin 84-32-110, dated December 21, 2012; or Revision A, dated April 8, 2013; but not in Goodrich Service Bulletin 47100-32-96. The full contents of Bombardier Modsum 4-113749 must be incorporated and noted in the maintenance records. Goodrich Service Bulletin 47100-32-96 is considered to be a portion of the Bombardier Modsum. Bombardier developed the Modsum in consideration of the overall structure and airworthiness of the system. Paragraph (i)(2) of this AD addresses the acceptable service information that we have determined may be used as credit for complying with the requirements of paragraph (h) of this AD to incorporate the Modsum. In addition, operators may apply for an alternative method of compliance (AMOC) under the provisions of paragraph (j)(1) of this AD. We have not changed this final rule in this regard.

“Contacting the Manufacturer” Paragraph in This AD

Since late 2006, we have included a standard paragraph titled “Airworthy Product” in all MCAI ADs in which the FAA develops an AD based on a foreign authority’s AD.

The MCAI or referenced service information in an FAA AD often directs the owner/operator to contact the manufacturer for corrective actions, such as a repair. Briefly, the Airworthy Product paragraph allowed owners/operators to use corrective actions provided by the manufacturer if those actions were FAA-approved. In addition, the paragraph stated that any actions approved by the State of Design Authority (or its delegated agent) are considered to be FAA-approved.

In the NPRM (78 FR 77615, December 24, 2013), we proposed to prevent the use of repairs that were not specifically developed to correct the unsafe condition, by requiring that the repair approval provided by the State of Design Authority or its delegated agent specifically refer to this FAA AD. This change was intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we proposed to change the phrase “its delegated agent” to include a design approval holder (DAH) with State of Design Authority design organization approval (DOA), as applicable, to refer to a DAH authorized to approve required repairs for the proposed AD.

No comments were provided to the NPRM (78 FR 77615, December 24, 2013) about these proposed changes. However, a comment was provided for an NPRM having Directorate Identifier 2012-NM-101-AD (78 FR 78285, December 26, 2013). The commenter stated the following: “The proposed wording, being specific to repairs, eliminates the interpretation that Airbus messages are acceptable for approving minor deviations (corrective actions) needed during accomplishment of an AD mandated Airbus service bulletin.”

This comment has made the FAA aware that some operators have misunderstood or misinterpreted the Airworthy Product paragraph to allow the owner/operator to use messages provided by the manufacturer as approval of deviations during the accomplishment of an AD-mandated action. The Airworthy Product paragraph does not approve messages or other information provided by the manufacturer for deviations to the requirements of the AD-mandated

actions. The Airworthy Product paragraph only addresses the requirement to contact the manufacturer for corrective actions for the identified unsafe condition and does not cover deviations from other AD requirements. However, deviations to AD-required actions are addressed in 14 CFR 39.17, and anyone may request the approval for an alternative method of compliance to the AD-required actions using the procedures found in 14 CFR 39.19.

To address this misunderstanding and misinterpretation of the Airworthy Product paragraph, we have changed the paragraph and retitled it "Contacting the Manufacturer." This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, the TCCA, or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DAO, the approval must include the DAO-authorized signature. The DAO signature indicates that the data and information contained in the document are TCCA-approved, which is also FAA-approved. Messages and other information provided by the manufacturer that do not contain the DAO-authorized signature approval are not TCCA-approved, unless TCCA directly approves the manufacturer's message or other information.

This clarification does not remove flexibility previously afforded by the Airworthy Product paragraph. Consistent with long-standing FAA

policy, such flexibility was never intended for required actions. This is also consistent with the recommendation of the Airworthiness Directive Implementation Aviation Rulemaking Committee to increase flexibility in complying with ADs by identifying those actions in manufacturers' service instructions that are "Required for Compliance" with ADs. We continue to work with manufacturers to implement this recommendation. But once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Other commenters to the NPRM having Directorate Identifier 2012-NM-101-AD (78 FR 78285, December 26, 2013) pointed out that in many cases the foreign manufacturer's service bulletin and the foreign authority's MCAI might have been issued some time before the FAA AD. Therefore, the DOA might have provided U.S. operators with an approved repair, developed with full awareness of the unsafe condition, before the FAA AD is issued. Under these circumstances, to comply with the FAA AD, the operator would be required to go back to the manufacturer's DOA and obtain a new approval document, adding time and expense to the compliance process with no safety benefit.

Based on these comments, we removed the requirement that the DAH-provided repair specifically refer to this AD. Before adopting such a requirement, the FAA will coordinate with affected DAHs and verify they are

prepared to implement means to ensure that their repair approvals consider the unsafe condition addressed in this AD. Any such requirements will be adopted through the normal AD rulemaking process, including notice-and-comment procedures, when appropriate.

We also have decided not to include a generic reference to either the "delegated agent" or "DAH with State of Design Authority design organization approval," but instead we have provided the specific delegation approval granted by the State of Design Authority for the DAH.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (78 FR 77615, December 24, 2013) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (78 FR 77615, December 24, 2013).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 383 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification of the NLG trailing arm [retained actions from AD 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010)].	3 work-hours × \$85 per hour = \$255	\$100	\$355	\$135,965
Installation of new pivot pin retention mechanism [new required action].	2 work-hours × \$85 per hour = \$170	(¹)	170	65,110

¹ None.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures

the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> *#!docketDetail;D=FAA-2013-1029*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010), and adding the following new AD:

2014-25-01 Bombardier, Inc.: Amendment 39-18042. Docket No. FAA-2013-1029; Directorate Identifier 2013-NM-177-AD.

(a) Effective Date

This AD becomes effective January 16, 2015.

(b) Affected ADs

This AD replaces AD 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010).

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC-8-400, -401, and -402 airplanes, certificated in any category, serial numbers 4001 through 4435 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by a report of several missing or damaged pivot pin retention bolts. We are issuing this AD to prevent failure of the pivot pin retention bolt, which could result in a loss of directional control or a nose landing gear (NLG) tire during take-off or landing.

(f) Compliance

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

(g) Retained Actions and Compliance

This paragraph restates the requirements of paragraph (f)(1) of AD 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010), with no changes. For airplanes having serial numbers 4001, 4003, 4004, 4006, and 4008 through 4238 inclusive: Within 2,000 flight hours after July 28, 2010 (the effective date of AD 2010-13-04), modify the NLG trailing arm by incorporating Bombardier Modification Summary 4-113599, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-32-65, Revision A, dated March 2, 2009.

(h) New Requirement of This AD: Installation of a New Pivot Pin Retention Mechanism

For airplanes having serial numbers 4001 through 4435 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, install a new pivot pin retention mechanism by incorporating Bombardier Modification Summary 4-113749, in accordance with paragraph 3.B., “Procedure,” of the Accomplishment Instructions of Bombardier Service Bulletin 84-32-110, Revision A, dated April 8, 2013.

(i) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before July 28, 2010 (the effective date of AD 2010-13-04, Amendment 39-16335 (75 FR 35622, June 23, 2010)), using the Accomplishment Instructions of Bombardier Service Bulletin 84-32-65, dated December 17, 2008, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84-32-110, dated December 21, 2012, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANE-170, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE-170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2009-29R1, dated August 14, 2013, for related information. You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov> *#!documentDetail;D=FAA-2013-1029-0002*.

(2) Service information identified in this AD that is not incorporated by reference in this AD is available at the addresses specified in paragraphs (l)(5) and (l)(6) of this AD.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on January 16, 2015.

(i) Bombardier Service Bulletin 84-32-110, Revision A, dated April 8, 2013.

(ii) Reserved.

(4) The following service information was approved for IBR on July 28, 2010 (75 FR 35622, June 23, 2010).

(i) Bombardier Service Bulletin 84-32-65, Revision A, dated March 2, 2009.

(ii) Reserved.

(5) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; email thd.qseries@aero.bombardier.com; Internet <http://www.bombardier.com>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 28, 2014.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-28923 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2014-0567; Directorate Identifier 2014-NM-124-AD; Amendment 39-18043; AD 2014-25-02]

RIN 2120-AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by issuance of revised certification maintenance requirements for the horizontal stabilizer trim actuator (HSTA). This AD requires revising the maintenance or inspection program. We are issuing this AD to detect and correct premature wear and cracking of the HSTAs, which could result in reduced structural integrity and reduced control of the airplane due to the failure of system components.

DATES: This AD becomes effective January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 16, 2015.

ADDRESSES: You may examine the AD docket on the Internet at <http://www.regulations.gov/> #!documentDetail;D=FAA-2014-0567 or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-

30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

FOR FURTHER INFORMATION CONTACT:

Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7318; fax 516-794-5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. The NPRM published in the **Federal Register** on August 14, 2014 (79 FR 47594).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2014-13, dated April 17, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes. The MCAI states:

A revision has been made to Part 2 of the Canadair Regional Jet Maintenance Requirements Manual (MRM), Appendix A—Certification Maintenance Requirements [CMR] which introduces a new task for the HSTA. Failure to comply with the CMR task could lead to an unsafe condition.

This [Canadian] AD is issued to ensure that premature wear and cracking of the affected components are detected and corrected. [This condition could result in reduced structural integrity and reduced control of the airplane due to the failure of system components.]

You may examine the MCAI in the AD docket on the Internet at <http://www.regulations.gov/> #!documentDetail;D=FAA-2014-0567-0002.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (79

FR 47594, August 14, 2014) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 47594, August 14, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 47594, August 14, 2014).

Costs of Compliance

We estimate that this AD affects 416 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$0 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$35,360, or \$85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov/#!docketDetail;D=FAA-2014-0567>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES** section.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014-25-02 Bombardier, Inc.: Amendment 39-18043. Docket No. FAA-2014-0567; Directorate Identifier 2014-NM-124-AD.

(a) Effective Date

This AD becomes effective January 16, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, equipped with horizontal stabilizer trim actuator (HSTA) part number (P/N) 601R92305-7 (vendor P/N 8396-5).

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by issuance of revised certification maintenance requirements (CMR) for the HSTA. We are issuing this AD to detect and correct premature wear and cracking of certain HSTAs, which could result in reduced structural integrity and reduced control of the airplane due to the failure of system components.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Task C27-40-103-05, “Restoration (Overhaul) of the HSTA,” of Bombardier Temporary Revision (TR) 2A-58, dated January 31, 2014, into Appendix A—Certification Maintenance Requirements (CMR), of Part 2, of the Bombardier CL-600-2B19 Maintenance Requirements Manual (MRM). The initial compliance time for accomplishing Task C27-40-103-05, “Restoration (Overhaul) of the HSTA,” of Bombardier Temporary Revision (TR) 2A-58, dated January 31, 2014, is at the applicable phase-in time specified in Bombardier TR 2A-58, dated January 31, 2014, or within 30 days after the effective date of this AD, whichever occurs later. The revision required by paragraph (g) of this AD may be done by inserting a copy of Bombardier TR 2A-58, dated January 31, 2014, into Appendix A—CMR, of Part 2 of the Bombardier CL-600-2B19 MRM. When Bombardier TR 2A-58, dated January 31, 2014, has been included in the general revisions of the Bombardier CL-600-2B19 MRM, the general revisions may be inserted into the MRM, provided the relevant information in the general revision is identical to that in Bombardier TR 2A-58, dated January 31, 2014.

(h) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i)(1) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information

directly to the ACO, send it to Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE-170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2014-13, dated April 17, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0567.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Temporary Revision 2A-58, dated January 31, 2014, to Appendix A—Certification Maintenance Requirements, of Part 2 of the Bombardier CL-600-2B19 Maintenance Requirements Manual.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email thd.crj@aero.bombardier.com; Internet <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 28, 2014.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014-28924 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA-2014-0057; Directorate Identifier 2013-NM-210-AD; Amendment 39-18044; AD 2014-25-03]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. This AD was prompted by reports from multiple operators that have found fatigue cracking in the corners of the forward galley service doorway. This AD requires repetitive inspections for any cracking of the skin and bear strap doublers in the corners of the forward galley service doorway, and corrective action if necessary. This AD also provides optional terminating actions for certain repetitive inspections. We are issuing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

DATES: This AD is effective January 16, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 16, 2015.

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

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2014-0057; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and

other information. The address for the Docket Office (phone: 800-647-5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5234; fax: 562-627-5210; email: nenita.odesa@faa.gov.

SUPPLEMENTARY INFORMATION:**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737-100, -200, -200C, -300, -400, and -500 series airplanes. The NPRM published in the **Federal Register** on February 25, 2014 (79 FR 10429). The NPRM was prompted by reports from multiple operators that have found fatigue cracking of the skin and bear strap in the corners of the forward galley service doorway. Some of the reported cracks were found outside of areas of directed or recommended inspections, or in areas modified as specified in previous revisions of Boeing Alert Service Bulletin 737-53A1116. Some airplanes were found to have multiple cracks in the corner areas. The NPRM proposed to require repetitive inspections for any cracking of the skin and bear strap doublers in the corners of the forward galley service doorway, and corrective action if necessary. The NPRM also proposed to provide optional terminating actions for certain repetitive inspections. We are issuing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 10429, February 25, 2014) and the FAA's response to each comment.

Request To Clarify Terminating Action for Initial Inspection

Southwest Airlines (Southwest) requested that the NPRM (79 FR 10429, February 25, 2014) be revised to include provisions in paragraph (i)(1) of the proposed AD for terminating the requirement proposed by paragraph (g) of the proposed AD for initial inspections in the areas of the upper aft

corner that are covered by the repair. Southwest noted that paragraph (i)(1) of the proposed AD provides for terminating the repetitive inspections required by paragraph (g) of the AD. Southwest also stated that it would like clarification on whether accomplishment of a repair also terminates the initial inspection requirements of paragraph (g) of the proposed AD for the upper aft corner.

We agree to revise paragraph (i)(1) of this AD. Notes in the tables of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, state that accomplishing certain repairs terminates repetitive inspections in the areas covered by the repair. We have determined that accomplishing the repair as required by paragraph (i)(1) of this AD would also terminate the initial inspection requirement for that repaired corner. We have coordinated this issue with Boeing and revised paragraph (i)(1) of this AD to terminate the initial inspection requirement as well. We have also revised paragraphs (i)(2) and (i)(3) of this AD accordingly.

Request To Add a Repair as a Method of Compliance

Southwest requested that paragraph (i) of the proposed AD (79 FR 10429, February 25, 2014), be revised to specifically provide for repairs accomplished using information from certain repair procedures specified in Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, and to allow accomplishment of those repairs as terminating action for the inspection requirements of paragraph (g) of the proposed AD. Southwest also requested an additional provision to allow Repair 2 of section 53-10-01 of the Boeing 737-300/-500 Structural Repair Manual as terminating action for the initial and repetitive inspections proposed in paragraph (g) of the proposed AD.

We partially agree with the request. Certain repair procedures are addressed in Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, as possible methods of corrective action or preventative modification. Provisions for these repair procedures are provided in paragraphs (i)(2) and (i)(3) of this AD. However, Repair 2 of section 53-10-01 of the Boeing 737-300/-500 Structural Repair Manual was not addressed in Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, or considered during development of this AD. We do not consider that delaying this action until the manufacturer revises the service

information to include the information in Repair 2 is warranted. To delay this action would be inappropriate since we have determined that an unsafe condition exists and that actions required by this AD must be conducted to ensure continued safety. Operators may apply for an alternative method of compliance (AMOC) under the requirements of paragraph (m) of this AD.

Request To Revise Credit Paragraph

Southwest noted that paragraph (k) of the proposed AD (79 FR 10429, February 25, 2014), gives credit for inspections of the upper corners of the forward galley doors, provided that the preventative modification is also inspected in accordance with the requirements of paragraph (g) of the proposed AD. Southwest also noted that paragraph (k) of the proposed AD does not specifically mention whether credit is given for previous repairs that were accomplished using the specified service information or explain how these repairs affect compliance with the initial inspection requirements of paragraph (g) of the AD.

We agree to clarify the intent of paragraph (k) of this AD. If any inspection of the upper corners of the forward galley service door was accomplished before the effective date of this AD using any of the service information identified in paragraphs (k)(1), (k)(2), (k)(3), and (k)(4) of this AD instead of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, those inspections are considered acceptable for compliance with certain requirements of paragraph (g) of this AD. Certain modifications specified in those previous service bulletins that were previously determined to be terminating action for inspections, have now been determined to need further inspection in accordance with paragraph (g) of this AD and Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013. Paragraphs (i)(1) and (i)(2) of this AD address repairs of

the upper corners and clarify that accomplishing the repairs terminates the requirements of paragraph (g) of this AD for the inspections of the repaired area. Repetitive inspections specified in paragraph (g) of this AD are required and are only terminated if optional terminating action specified in paragraph (i) of this AD is done. We have not changed the AD in this regard.

Request To Accommodate Certain AMOCs

Southwest noted that Note 14 in the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, specifies that inspections as given in that service bulletin for the upper forward corner are not necessary in the repaired area if, among other conditions, “the repair has been approved as an Alternative Method of Compliance (AMOC) to AD 2008-11-04.” Southwest pointed out that AD 2008-11-04, Amendment 39-15526 (73 FR 29421, May 21, 2008), has been superseded by AD 2014-05-21, Amendment 39-17794 (79 FR 14992, March 18, 2014), and requests that Note 14 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, also apply to repairs approved as an AMOC to AD 2014-05-21.

We partially agree with Southwest’s request. We cannot revise Boeing’s service information. However, we have added paragraph (j)(3) to this AD to provide an exception to Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, and allow a Boeing-provided repair that has been approved as an AMOC to AD 2014-05-21, Amendment 39-17794 (79 FR 14992, March 18, 2014), for the repaired area only, provided the approval was made before the effective date of this AD and the repair doubler covers the doorway upper forward corner and the upper hinge cutout.

Effect of Winglets on This AD

Aviation Partners Boeing stated that accomplishing the supplemental type

certificate (STC) ST01219SE ([http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/\\$FILE/ST01219SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf)) does not affect the actions specified in the NPRM (79 FR 10429, February 25, 2014).

We concur with the commenter. We have redesignated paragraph (c) of the NPRM (79 FR 10429, February 25, 2014) as (c)(1) and added new paragraph (c)(2) to this final rule to state that installation of STC ST01219SE ([http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/\\$FILE/ST01219SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf)) does not affect the ability to accomplish the actions required by this final rule. Therefore, for airplanes on which STC ST01219SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (79 FR 10429, February 25, 2014) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 10429, February 25, 2014).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD affects 419 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	19 work-hours × \$85 per hour = \$1,615 per inspection cycle.	None	\$1,615 per inspection cycle	\$676,685 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for any on-condition actions specified in this AD. We have no way

of determining the number of aircraft that might need this repair.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

- (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),
- (3) Will not affect intrastate aviation in Alaska, and
- (4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2014–25–03 The Boeing Company:

Amendment 39–18044 ; Docket No.

FAA–2014–0057; Directorate Identifier 2013–NM–210–AD.

(a) Effective Date

This AD is effective January 16, 2015.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE ([http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/\\$FILE/ST01219SE.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/ebd1cec7b301293e86257cb30045557a/$FILE/ST01219SE.pdf)) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports from multiple operators that have found fatigue cracking in the corners of the forward galley service doorway. We are issuing this AD to detect and correct fatigue cracking, which could result in rapid loss of cabin pressure.

(f) Compliance

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

(g) Inspections and Corrective Actions for Groups 1 Through 4 Airplanes

For Groups 1 through 4 airplanes identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013: Within the applicable compliance times specified in Tables 1 through 10 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013, except as provided by paragraph (j)(1) and (j)(3) of this AD, do the applicable detailed and low frequency eddy current inspections for any cracking of the skin and bear straps in the corners of the forward galley service door, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013, except as required by paragraph (j)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspections at the applicable time specified in Tables 1 through 10 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013.

(h) Inspections and Corrective Actions for Group 5 Airplanes

For Group 5 airplanes identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013: Within 120 days after the effective date of this AD, do inspections of the skin and bear straps and all applicable corrective actions using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(i) Optional Terminating Actions

(1) For Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013: Accomplishment of a repair before the effective date of this AD in the upper aft corner of the forward galley service doorway, in accordance with the Accomplishment Instructions of any service information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this AD, terminates the inspections required by paragraph (g) of this AD for that repaired doorway corner only.

(i) Boeing Service Bulletin 737–53–1116, dated July 21, 1988.

(ii) Boeing Service Bulletin 737–53–1116, Revision 1, dated September 7, 1989.

(iii) Boeing Service Bulletin 737–53–1116, Revision 2, dated September 30, 1993.

(iv) Boeing Service Bulletin 737–53–1116, Revision 3, dated July 27, 1995.

(2) For Group 2 airplanes identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013, on which no repair or modification was done using any of the service information identified in paragraphs (i)(2)(i) through (i)(2)(iv) of this AD; and for Group 3 airplanes identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013: Repairing or modifying the upper aft corner of the forward galley service doorway, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013, terminates the inspections required by paragraph (g) of this AD for that repaired or modified doorway corner only.

(i) Boeing Service Bulletin 737–53–1116, dated July 21, 1988.

(ii) Boeing Service Bulletin 737–53–1116, Revision 1, dated September 7, 1989.

(iii) Boeing Service Bulletin 737–53–1116, Revision 2, dated September 30, 1993.

(iv) Boeing Service Bulletin 737–53–1116, Revision 3, dated July 27, 1995.

(3) For Groups 2 and 3 airplanes identified in Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013: Repairing or modifying the lower forward or lower aft corner of the forward galley service doorway, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013, terminates the inspections required by paragraph (g) of this AD for that repaired or modified doorway corner only.

(j) Exceptions to the Service Information

(1) Where Boeing Alert Service Bulletin 737–53A1116, Revision 4, dated September 30, 2013, specifies a compliance time "after

the Revision 4 date of this service bulletin," this AD requires compliance within the specified compliance time "after the effective date of this AD."

(2) Where Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, specifies to contact Boeing for repair instructions: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(3) Note 14 of paragraph 3.A., "General Information" in the Accomplishment Instructions of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, states that inspections as given in that service bulletin are not required for the upper forward corner if there is a Boeing-provided repair which has been approved as an alternative method of compliance (AMOC) to AD 2008-11-04, Amendment 39-15526 (73 FR 29421, May 21, 2008). This AD also does not require inspections for the upper forward corner given in Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, if there is a Boeing-provided repair approved as an AMOC to the corresponding requirements of AD 2014-05-21, Amendment 39-17794 (79 FR 14992, March 18, 2014), for the repaired area only, provided the approval was made before the effective date of this AD and the repair doubler covers the doorway upper forward corner and the upper hinge cutout.

(k) Credit for Previous Actions

This paragraph provides credit for the inspections of the upper corners of the forward galley service doors specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using any of the service information identified in paragraphs (k)(1) through (k)(4) of this AD (which are not incorporated by reference in this AD), provided that any preventative modification installed using this service information is inspected in accordance with paragraph (g) of this AD.

(1) Boeing Service Bulletin 737-53-1116, dated July 21, 1988.

(2) Boeing Service Bulletin 737-53-1116, Revision 1, dated September 7, 1989.

(3) Boeing Service Bulletin 737-53-1116, Revision 2, dated September 30, 1993.

(4) Boeing Service Bulletin 737-53-1116, Revision 3, dated July 27, 1995.

(l) Post-Repair Inspections

The post-repair inspections specified in Table 11 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, are not required by this AD.

Note 1 to paragraph (l) of this AD: The post-repair inspections specified in Table 11 of paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013, may be used in support of compliance with section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)).

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(n) Related Information

For more information about this AD, contact Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712-4137; phone: 562-627-5234; fax: 562-627-5210; email: nenita.odesa@faa.gov.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Service Bulletin 737-53-1116, dated July 21, 1988.

(ii) Boeing Service Bulletin 737-53-1116, Revision 1, dated September 7, 1989. Pages 20, 21, and 22 are dated July 21, 1988.

(iii) Boeing Service Bulletin 737-53-1116, Revision 2, dated September 30, 1993.

(iv) Boeing Service Bulletin 737-53-1116, Revision 3, dated July 27, 1995.

(v) Boeing Alert Service Bulletin 737-53A1116, Revision 4, dated September 30, 2013.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H-65, Seattle, WA 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; Internet <https://www.myboeingfleet.com>.

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on November 28, 2014.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9706]

RIN 1545-BJ69

Reporting of Specified Foreign Financial Assets

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations providing guidance relating to the provisions of the Hiring Incentives to Restore Employment (HIRE) Act that require specified foreign financial assets to be reported to the Internal Revenue Service for taxable years beginning after March 18, 2010. In particular, the final regulations provide guidance relating to the requirement that individuals attach a statement to their income tax return to provide required information regarding specified foreign financial assets in which they have an interest. The final regulations affect individuals required to file Form 1040, "U.S. Individual Income Tax Return," or Form 1040-EZ, "Income Tax Return for Single and Joint Filers With No Dependents," and certain individuals required to file Form 1040-NR, "Nonresident Alien Income Tax Return," or Form 1040NR-EZ, "U.S. Income Tax Return for Certain Nonresident Aliens with No Dependents."

DATES: *Effective Date:* These regulations are effective on December 12, 2014.

Applicability Date: For dates of applicability, see §§ 1.6038D-1(b), 1.6038D-2(g), 1.6038D-3(e), 1.6038D-4(b), 1.6038D-5(g), 1.6038D-7(d), and 1.6038D-8(g).

FOR FURTHER INFORMATION CONTACT: Joseph S. Henderson or Michael Kaercher, (202) 317-6942 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid control number. The collection of information contained in these regulations has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information is satisfied by filing Form 8938, "Statement of Specified Foreign Financial Assets," OMB No. 1545-2195, with the respondent's income tax return.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 19, 2011, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published temporary regulations (TD 9567) (the "2011 temporary regulations") and a notice of proposed rulemaking by cross-reference to the 2011 temporary regulations in the **Federal Register** addressing the reporting requirements under section 6038D (76 FR 78553, TD 9567, 2012-1 IRB 395); (76 FR 75894; REG-130302-10, 2012-1 IRB 412). The notice of proposed rulemaking also included Prop. Reg. § 1.6038D-6, setting out the conditions under which a domestic entity will be considered a specified domestic entity and, therefore, required to report specified foreign financial assets in which it holds an interest. Corrections to the 2011 temporary regulations were published on February 21, 2012, in the **Federal Register** (77 FR 9845). Corrections to Prop. Reg. § 1.6038D-6 were published in the **Federal Register** on February 21, 2012 (77 FR 9877) and February 22, 2012 (77 FR 10422).

The Treasury Department and the IRS received written comments on the 2011 temporary regulations and Prop. Reg. § 1.6038D-6. All comments are available at www.regulations.gov or upon request. Because no requests to speak were received, no public hearing was held. After consideration of the comments received, the Treasury Department and the IRS adopt the 2011 temporary regulations as final regulations with the modifications described herein. The Treasury Department and the IRS are not adopting Prop. Reg. § 1.6038D-6 as a final regulation at this time. Prop. Reg. § 1.6038D-6 (REG-144339-14) will be

adopted as a final regulation at a later date.

Summary of Comments and Explanation of Revisions

I. Requirement To Report Specified Foreign Financial Assets (§ 1.6038D-2)

A. Individuals Required To Report (§ 1.6038D-2(a))

A number of comments were received requesting that additional categories of individuals be relieved of the requirement to report specified foreign financial assets under section 6038D.

1. Dual Resident Taxpayers

A comment recommended an exemption from the section 6038D reporting requirements be included for an individual who is a dual resident taxpayer and who, pursuant to a provision of a treaty that provides for resolution of conflicting claims of residence by the United States and the treaty partner, claims to be treated as a resident of the treaty partner. In such a case, a dual resident taxpayer may claim a treaty benefit as a resident of the treaty partner and will be taxed as a nonresident for U.S. tax purposes for the taxable year (or portion of the taxable year) that the individual is treated as a nonresident. The final rule adopts this recommendation for a dual resident taxpayer who determines his or her U.S. tax liability as if he or she were a nonresident alien and claims a treaty benefit as a nonresident of the United States as provided in § 301.7701(b)-7 by timely filing a Form 1040NR, "Nonresident Alien Income Tax Return," (or such other appropriate form under that section) and attaching a Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)." The Treasury Department and the IRS have concluded that reporting under section 6038D is closely associated with the determination of an individual's income tax liability. Because the taxpayer's filing of a Form 8833 with his or her Form 1040NR (or other appropriate form) will permit the IRS to identify individuals in this category and take follow-up tax enforcement actions when considered appropriate, reporting on Form 8938, "Statement of Specified Foreign Financial Assets," is not essential to effective IRS tax enforcement efforts relating to this category of U.S. residents.

2. Individuals Resident in the United States Under Non-Immigrant Visas

A number of comments requested an exemption from the section 6038D reporting requirements for foreign

executives and employees resident in the United States under non-immigrant H, L, or E visas. The final rule does not adopt this recommendation. Section 6038D is intended to provide the IRS with information concerning the specified foreign financial assets of U.S. taxpayers to aid the IRS in enforcing tax laws fairly and uniformly. Because all U.S. residents are taxable on worldwide income, excluding categories of residents from the scope of section 6038D reporting is not consistent with the purposes for which the provision was enacted. Individuals in the United States under non-immigrant visas often stay in the United States for years, making it difficult to justify treating them more favorably than other U.S. residents. For stays in the United States of a shorter duration, the Treasury Department and the IRS have determined that the distinctions drawn in the definition of a U.S. resident in § 1.6038D-1(a)(3) (which cross-references section 7701(b)) best carry out the purposes of section 6038D.

3. Persons That Do Not Owe U.S. Tax for the Taxable Year

Another comment requested revising § 1.6038D-2(a)(7) to exempt from the section 6038D reporting requirements specified persons that do not owe U.S. taxes for the taxable year. The final rule does not adopt this comment. As provided in the 2011 temporary regulations, the final rule states that a specified person that does not have to file a tax return for the year does not have to file a Form 8938. See § 1.6038D-2(a)(7)(i). If the law requires the filing of a tax return, however, information reported on a Form 8938 concerning the taxpayer's specified foreign financial assets is an important component of that return, even if no tax liability is shown. Requiring this filing will aid the IRS in devising effective enforcement programs with respect to such returns.

B. Applicable Reporting Thresholds (§ 1.6038D-2(a))

Several comments requested increases to the reporting thresholds provided in § 1.6038D-2(a) for certain types of assets or for certain classes of individuals. Other comments recommended that the increased thresholds in the 2011 temporary regulations applicable to certain specified individuals living abroad be extended to additional categories of taxpayers.

1. Assets Received in Connection With the Performance of Personal Services

Some comments requested increased reporting thresholds, or a complete exemption from reporting, for specified

foreign financial assets received in connection with an individual's performance of personal services as an employee of a foreign employer. The concerns raised in these comment letters primarily relate to the difficulty of valuing these types of assets. However, the 2011 temporary regulations already broadly address valuation concerns relating to these assets by providing a simplified valuation rule for interests in foreign pension plans or foreign deferred compensation plans if the beneficiary does not know, or have reason to know based on readily accessible information, the value of the interest. In such cases, the value of the individual's interest in the plan is limited to the value of the distributions received from the plan during the year for purposes of both calculating the applicable reporting thresholds and reporting the maximum value of the interest. See § 1.6038D-5(f)(3).

These comments are further addressed by clarifying in the final rule that nonvested interests in property received in connection with the performance of personal services are not required to be reported. See section I.C.1 in this preamble, which describes this clarification incorporated in the final rule.

Because the Treasury Department and the IRS have determined that the concerns underlying these comments are best addressed by these rules and that the method of acquisition of a specified foreign financial asset should not determine an individual's section 6038D reporting obligations, the final rule does not adopt this request.

2. Employees Seconded to the United States

Comments requested that higher reporting thresholds (or a reporting exemption) should apply in the case of certain employees seconded to the United States by foreign employers. For the reasons set forth in section I.A.2 (relating to individuals resident in the United States under non-immigrant visas) and in section I.B.3 (addressing U.S. residents who do not qualify for section 911 benefits), the final rule does not adopt this recommendation.

3. Non-Citizen U.S. Residents Who Do Not Qualify for Section 911 Benefits

A comment was received requesting that higher reporting thresholds apply in the case of a non-citizen resident of the United States who would qualify for benefits under section 911(d)(1)(A) if he or she were a U.S. citizen. This request has not been adopted in the final rule for administrability reasons. The 2011

temporary regulations tie the increased reporting thresholds in § 1.6038D-2(a) to an individual's status as a qualified individual under section 911(d)(1) in order to allow the IRS to use the taxpayer's filing of the return required to claim section 911 benefits (Form 2555, "Foreign Earned Income", or Form 2555-EZ, "Foreign Earned Income Exclusion") as a marker to indicate that higher reporting thresholds may apply to the taxpayer. The ability to easily identify taxpayers who may be eligible for the increased thresholds is essential to permit the IRS to target appropriate enforcement programs to taxpayers subject to different reporting thresholds in a cost effective manner.

C. Interest in a Specified Foreign Financial Asset (§ 1.6038D-2(b))

A number of comments requested that the final regulations clarify the reporting requirements with respect to certain interests in assets under § 1.6038D-2(b). These clarifications have been incorporated in the final rule.

1. Nonvested Property Under Section 83

A comment requested clarification regarding whether an individual is considered to have an interest in property transferred in connection with the performance of personal services during any period that the individual's interest in the property is not vested. The final rule in § 1.6038D-2(b)(2) clarifies that a specified person that is transferred property in connection with the performance of personal services is first considered to have an interest in the property for purposes of section 6038D on the first date that the property is substantially vested (within the meaning of § 1.83-3(b)) or, in the case of property with respect to which a specified person makes a valid election under section 83(b), on the date of transfer of the property.

2. Assets Held by a Disregarded Entity

A number of comments requested clarification of the section 6038D reporting requirements with respect to specified foreign financial assets held by an entity disregarded as an entity separate from its owner under § 301.7701-2 of this chapter (a disregarded entity). In response to these requests, and consistent with instructions to Form 8938, the final rule provides in § 1.6038D-2(b)(4)(iii) that a specified person that owns a foreign or domestic entity that is a disregarded entity is treated as having an interest in any specified foreign financial assets held by the disregarded entity. As a result, a specified person that owns a disregarded entity (whether domestic or

foreign) that, in turn, owns specified foreign financial assets must include the value of those assets in determining whether the specified person meets the reporting thresholds in § 1.6038D-2(a) and, if so, must report such assets on Form 8938.

D. Jointly Owned Assets (§ 1.6038D-2(c))

A number of comments requested clarification of aspects of the rules in § 1.6038D-2(c) and (d) relating to joint owners of a specified foreign financial asset. These comments have been adopted. Specifically, the final rule clarifies that each of the joint owners of a specified foreign financial asset who are not married to each other must include the full value of the asset (rather than only the value of the specified person's interest in the asset) in determining whether the aggregate value of such specified individual's specified foreign financial assets exceeds the applicable reporting thresholds, and each joint owner must report the full value of the asset on his or her Form 8938. See § 1.6038D-2(c)(1)(i) and (c)(1)(ii). In addition, the final rule clarifies that, in the case of joint owners who are married to each other and file separate returns, each joint owner of a specified foreign financial asset must report the full value of the asset (rather than only the value of the specified person's interest in the asset) on the individual's Form 8938, even if both spouses are specified individuals and only one-half of the value of the asset is considered in determining the applicable reporting thresholds under § 1.6038D-2(c)(3)(i). See § 1.6038D-2(d)(2).

II. Specified Foreign Financial Assets (§ 1.6038D-3)

A. Financial Account (§ 1.6038D-3(a))

1. Retirement and Pension Accounts and Certain Non-Retirement Savings Accounts

The definition of a financial account in the 2011 temporary regulations is based on the definition of a financial account for chapter 4 purposes, subject to an exception for certain retirement and pension accounts and non-retirement savings accounts that are financial accounts for section 6038D purposes but that are not treated as financial accounts for purposes of chapter 4. See §§ 1.6038D-1(a)(7), 1.1471-1(b)(49), and 1.1471-5(b). These final regulations modify the definition of a financial account for purposes of section 6038D in order to require consistent reporting under section 6038D with respect to retirement and pension accounts and certain non-

retirement savings accounts regardless of whether the account is maintained in a jurisdiction treated as having in effect a Model 1 IGA or Model 2 IGA. For financial accounts that are maintained by a foreign financial institution that is not located in a jurisdiction treated as having in effect a Model 1 IGA or Model 2 IGA, the definition of a financial account in the final rule continues to include the retirement and pension accounts and non-retirement savings accounts described in § 1.1471–5(b)(2)(i), consistent with the section 6038D coordination rule in that section. See § 1.1471–5(b)(2)(i)(D). For taxable years beginning after December 12, 2014, these final regulations also provide that retirement and pension accounts, non-retirement savings accounts, and accounts satisfying conditions similar to those described in § 1.1471–5(b)(2)(i) and that are excluded from the definition of a financial account under an applicable Model 1 IGA or Model 2 IGA (as provided in § 1.1471–5(b)(2)(vi)) are included in the definition of a financial account for purposes of section 6038D. The Treasury Department and the IRS intend to amend the chapter 4 regulations to add a section 6038D coordination rule to § 1.1471–5(b)(2)(vi) providing that such accounts are included in the definition of a financial account for purposes of section 6038D.

2. Short-Term Accounts

One comment recommended the addition of an exception to the definition of a financial account for an account in which funds are held for less than 15 days, provided the income generated from the account does not exceed \$1,000. The final rule does not incorporate this comment. The 2011 temporary regulations already provide relief for many short-term accounts through a broad exception to the definition of financial account for escrow accounts. See §§ 1.6038D–1(a)(7) and 1.1471–5(b)(2)(iv). This exception is administrable because these accounts are of a type that is distinguishable from other accounts. A broader exception for short-term accounts could significantly complicate IRS efforts to devise effective enforcement programs based on comprehensive account reporting under section 6038D.

3. Assets Held in an Account Maintained by a Foreign Financial Institution

Another comment requested clarification that specified foreign financial assets held in a financial account are excluded from the definition of specified foreign financial

assets. The 2011 temporary regulations already provide that the foreign financial account itself, and not the assets held in such an account, must be reported for section 6038D purposes. See § 1.6038D–3(a)(1). Accordingly, no change has been adopted in response to this comment.

4. Life Insurance With a Cash Surrender Value

A comment requested clarification of the section 6038D reporting requirements applicable to a life insurance policy with a cash surrender value. Because the definition of financial account for section 6038D purposes is based on the definition of a financial account for chapter 4 purposes, which includes these contracts, the 2011 temporary regulations already provide clear rules requiring a taxpayer to report these contracts on Form 8938. Accordingly, the final rule is not modified to further address this issue. See §§ 1.6038D–1(a)(7), 1.1471–5(b)(1)(iv), and 1.1471–5(b)(3)(vii).

5. Request for Examples of Foreign Financial Assets Not To Be Reported

A number of comments requested examples of the types of financial assets that are not required to be reported under section 6038D. The Treasury Department and the IRS have not provided these examples in the final rule because the 2011 temporary regulations, as well as the relevant portions of the regulations under chapters 4 and 61, already include detailed rules to support taxpayer determinations as to whether an asset is a specified foreign financial asset that must be reported. For example, § 1.6038D–3(d) includes examples of assets other than financial accounts that are included within the definition of specified foreign financial asset, and the rules in § 1.6049–5(b)(5)(i) provide detail concerning which financial institutions are U.S. payors for purposes of determining that an account is maintained by such an institution and therefore is not required to be reported under section 6038D.

The Treasury Department and the IRS will continue to consider comments and whether additional guidance is warranted to address particular types of assets under section 6038D.

B. Other Specified Foreign Financial Assets (§ 1.6038D–3(b))

1. Assets Held for Investment and Not Used in, or Held for Use in, the Conduct of the Taxpayer's Trade or Business

A number of comment letters recommended changes to the approach set forth in the 2011 temporary regulations for determining whether an asset other than a financial account is held for investment (and therefore may be reportable under section 6038D) or is instead excepted from the definition of a specified foreign financial asset because it is used in, or held for use in, the conduct of a trade or business under § 1.6038D–3(b)(3), (b)(4), and (b)(5).

Several comments requested a bright line test for distinguishing between non-financial account assets subject to reporting and those not subject to reporting. For example, one such comment recommended looking to whether an asset was *acquired in the taxpayer's trade or business* rather than whether the asset was used in, or held for use in, the conduct of the taxpayer's trade or business. Another comment suggested providing that contracts issued in the ordinary course of *the issuer's* (rather than the taxpayer's) trade or business should not be reportable by the taxpayer. The final rule does not change the definition of a specified foreign financial asset as suggested in these comments. The Treasury Department and the IRS have determined that the reporting rule under the 2011 temporary regulations strikes an appropriate balance under section 6038D by focusing on whether an asset is held for investment. Distinguishing assets held for investment from assets with a close nexus to the taxpayer's trade or business is an inherently factual determination that is not susceptible to a bright line test. The Treasury Department and the IRS have concluded that the 2011 temporary regulations provide reasonable rules that will yield appropriate reporting results in a wide variety of fact patterns involving the taxpayer's trade or business.

Another comment requested a rule specifying that an asset inadvertently acquired as a result of a corporate reorganization or an in-kind asset distribution not be treated as held for investment, so long as the asset is held by the taxpayer for only a short period of time. The Treasury Department and the IRS have concluded that this type of exception is not warranted because the general test set forth in the 2011 temporary regulations is fair, should be uniformly applied, and should not be unduly burdensome to apply under these fact patterns.

2. Certain Hedging Transactions

One comment recommended modifying § 1.6038D-3(b) to provide that certain hedging transactions described in section 1221(a)(7) are not specified foreign financial assets. The final rule does not adopt the requested change. The Treasury Department and the IRS have concluded that taxpayers engaging in hedging transactions should determine whether such transactions are specified foreign financial assets by applying the same general test applied by other taxpayers, that is, by determining whether the hedging transaction is “used in, or held for use in, the conduct of a trade or business and not held for investment.”

3. Employment Contracts

Another comment requested that the final rule provide that employment contracts are not specified foreign financial assets. The comment did not, however, suggest a definition of an employment contract for this purpose. Moreover, the scope of property that could be covered by such a contract may vary widely among taxpayers depending on the industry and the location in which the taxpayer works. The Treasury Department and the IRS have determined that the trade or business test of § 1.6038D-3(b)(3), (b)(4), and (b)(5) should apply broadly to a wide range of financial assets in order to achieve uniform reporting results for taxpayers with aggregate specified foreign financial assets of similar value, and that a broad exclusion for employment contracts should not be provided. Accordingly, the final rule does not adopt this recommendation.

4. Shares of Foreign Corporations Traded on Public Stock Exchange

Some comments recommended that the definition of a specified foreign financial asset exclude stock of a foreign corporation that is traded on a public stock exchange (whether or not the exchange is located in the United States). The Treasury Department and the IRS have concluded that it is not appropriate to exclude stock or securities issued by a person other than a U.S. person from section 6038D reporting. If such stock or securities are held in a financial account, the financial account would be reported for section 6038D purposes, and if such stock or securities are held directly by a specified person and not in a financial account, based on section 6038D(b)(2), it is appropriate to require reporting of such stock or securities for section 6038D purposes. Thus, this comment is not adopted.

5. Interest in a Social Security, Social Insurance, or Similar Program

Several comments recommended amending § 1.6038D-3(b) to specify that an interest in a social security, social insurance, or similar program of a foreign government is not considered a specified foreign financial asset. As a general matter, the definition of a specified foreign financial asset already excludes these interests because they are not assets described in § 1.6038D-3(b)(1). In addition, the preamble to the 2011 temporary regulations and the instructions to Form 8938 already illustrate the application of this rule to these interests, stating that “an interest in a social security, social insurance, or other similar program of a foreign government” is not a specified foreign financial asset. A chart comparing the Form 8938 reporting requirements to the FBAR reporting requirements, available at www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements, also addresses these programs. Because the Treasury Department and the IRS already have addressed this issue, the final rule does not adopt the recommendation.

6. Financial Assets Issued by a Person Organized Under the Laws of a U.S. Possession

The final rule clarifies that specified foreign financial assets include stock, securities, financial instruments, and contracts that are held for investment and not held in an account maintained by a financial institution and are issued by a person organized under the laws of a U.S. possession. See § 1.6038D-3(b)(1). For special rules applicable to bona fide residents of the U.S. possessions, see § 1.6038D-7(c).

C. Interest in a Foreign Trust or Foreign Estate (§ 1.6038D-3(c))

A number of comments expressed concern that the reason to know standard of knowledge to report an interest in a foreign trust or estate could result in compliance difficulties for specified individuals who are aware that they have a beneficial interest in a trust or estate but who have not received a distribution from the trust or estate and do not know the value of the interest. These comments recommended that the final rule provide that a beneficiary of a foreign trust or estate should not be required to report the interest on Form 8938 for any year in which the beneficiary did not receive a distribution.

The Treasury Department and the IRS have concluded that the concerns expressed in these comments have

already been addressed comprehensively in the 2011 temporary regulations, including by the adoption of simple valuation rules that substantially ease the reporting burdens of beneficiaries. In the case of a foreign trust, for a year in which the beneficiary does not know, or have reason to know based on readily accessible information, the fair market value of the beneficiary's interest and the beneficiary does not receive a distribution, the value of the beneficiary's interest in the trust, both for purposes of determining whether the beneficiary meets the reporting thresholds in § 1.6038D-2(a) and, if so, for reporting the maximum value of that beneficial interest, is considered to be zero. See § 1.6038D-5(f)(2). Similar rules apply with respect to a foreign estate. See § 1.6038D-5(f)(3). Thus, a specified individual who is such a beneficiary of a foreign trust or estate but has not received a distribution generally is only required to report the beneficial interest if the beneficiary otherwise is required to file Form 8938. If a Form 8938 filing is required, the taxpayer's reporting burdens are minimal with respect to the beneficial interest. The Treasury Department and the IRS have determined that these rules achieve a reasonable and appropriate balance between the government's tax administration interests and the beneficiary's compliance burden.

D. Request for Comments on the Treatment of Virtual Currency

The Treasury Department and the IRS are considering the proper treatment of virtual currency under section 6038D and welcome comments on this topic.

III. Information Required To Be Reported (§ 1.6038D-4)

A. Reporting With Respect to Stock or Other Securities of a Foreign Corporation

A comment requested clarification regarding whether to report on Form 8938 the foreign office address of a foreign corporation in which the taxpayer has an interest or the address of the U.S. payor reported on Form 1099 with respect to dividends paid by the foreign corporation. Because the rules set forth in the 2011 temporary regulations are clear, the final rule is not changed to reflect these comments. If stock of a foreign corporation is held by a taxpayer outside of a financial account, § 1.6038D-4(a)(2) provides that the corporation's address must be reported. If stock of a foreign corporation is held through a financial account other than one maintained by a financial institution that is a U.S. payor,

the financial account is reported, and § 1.6038D-4(a)(1) provides that the address of the financial institution with which the account is maintained must be reported. However, if stock of a foreign corporation is held by a taxpayer in a financial account maintained by a financial institution that is a U.S. payor, § 1.6038D-3(a)(3)(i) provides that neither the financial account nor the foreign stock held in that account must be reported on Form 8938.

B. Scope of Information Required To Be Reported With Respect to an Asset

Another comment recommended that taxpayers not be required to report the items listed in § 1.6038D-4(a)(6), (a)(7) and (a)(8) (that is, whether a financial account was opened or closed during the year, the date on which a specified foreign financial asset (other than a financial account) was acquired or disposed of during the year, and details regarding income, gain, loss, deduction or credit items recognized during the year and where those items are reported by the taxpayer, respectively). This comment has not been adopted in the final rule. The Treasury Department and the IRS have determined that collection of this information is necessary for effective tax enforcement actions and is consistent with congressional intent in enacting section 6038D.

IV. Valuation Guidelines (§ 1.6038D-5)

The Treasury Department and the IRS received a number of comments requesting changes and clarifications to the applicable valuation guidelines under the regulations.

A. Asset With No Positive Value During the Year

Several comments requested that the final rule clarify the valuation and reporting rules applicable to specified foreign financial assets with no positive value during the year. Under § 1.6038D-2(a)(5), a specified foreign financial asset is subject to reporting even if the asset does not have a positive value during the year, although reporting on Form 8938 is required only if the aggregate fair market value of a taxpayer's specified foreign financial assets exceeds the applicable reporting thresholds in § 1.6038D-2(a). The final rule clarifies in § 1.6038D-5(b)(3) that the maximum fair market value for a specified foreign financial asset with no positive value during the year is treated as zero. The final rule also is revised to include in § 1.6038D-2(a)(5) a cross-reference to the valuation rules in § 1.6038D-5(b)(3).

B. Appraisals

One comment recommended revising § 1.6038D-5 to provide that a specified person is not required to obtain an appraisal from a third party to establish a reasonable estimate of an asset's fair market value. For the reasons set forth in section IV.C. of this preamble (relating to a reasonable estimate of fair market value), the guidance provided with respect to the reasonable estimate standard adequately addresses this comment. In addition, the preamble to the 2011 temporary regulations and the instructions to Form 8938 already note that a taxpayer need not obtain a third-party appraisal to establish a reasonable estimate of a specified foreign financial asset's fair market value for purposes of section 6038D. Accordingly, the final rule does not adopt the requested change.

C. Reasonable Estimate of Fair Market Value

Several comments requested that the final rule clarify what constitutes a reasonable estimate of an asset's fair market value for purposes of reporting under section 6038D. Some comments also recommended including examples in the final rule addressing when a taxpayer would be considered to know, or have reason to know based on readily accessible information, that a valuation in a periodic account statement was not a reasonable estimate for purposes of reporting.

The final rule does not provide additional guidance on what constitutes a reasonable estimate of fair market value under section 6038D. The Treasury Department and the IRS have concluded that the "reasonable estimate" standard is an appropriately flexible one that will result in helpful information for the IRS with respect to a wide range of assets, while not proving unduly burdensome for taxpayers. Further, valuation is an inherently factual inquiry, and it is not feasible to devise detailed rules that clearly describe outcomes that are appropriate for a broad range of factual situations. The 2011 temporary regulations and final rule incorporate valuation rules designed to reduce taxpayer reporting burdens in specific circumstances, such as the rule permitting reliance on periodic account statements from a financial institution to determine a financial account's fair market value (see § 1.6038D-5(d)) and the rule permitting the use of a year-end value to determine a reasonable estimate of maximum value for certain specified foreign financial assets held outside of

a financial account (see § 1.6038D-5(f)(1)).

D. Hard-to-Value Assets

A comment requested that the final rule establish a presumptive standard to be applied to determine the fair market value of certain illiquid assets such as contractual rights and interests in non-publicly traded entities. The Treasury Department and the IRS recognize that the reporting burdens under section 6038D can be significant with respect to hard-to-value assets. However, the Treasury Department and the IRS have concluded that the requirement under the 2011 temporary regulations to make a reasonable estimate strikes an appropriate balance between the usefulness of the information reported on Form 8938 and the taxpayer burdens associated with complying with the standard. For these reasons, the final rule does not adopt valuation presumptions for particular types of assets that are hard to value.

E. Interests in Pension Plans and Deferred Compensation Plans

Another comment recommended that the value of interests in pension plans and deferred compensation plans should not be considered to be readily ascertainable if the taxpayer has no current rights to withdraw plan assets without penalty. Adopting this recommendation would result in a taxpayer's interest in a pension or deferred compensation plan being valued at zero if the taxpayer has no right to withdraw, even if the taxpayer regularly receives statements providing the fair market value of the interest in the pension or deferred compensation plan. This result is not consistent with the purpose for requiring reporting of the maximum value of a specified foreign financial asset and is not adopted in the final rule.

F. Foreign Currency

The final rule adopts two modifications to the valuation rules relating to foreign currency. First, in response to a comment, the final rule states that a foreign currency conversion shown on a periodic financial account statement is among the aspects of the statement that a taxpayer may rely upon to the extent provided in § 1.6038D-5(d). Second, § 1.6038D-5(c) of the 2011 temporary regulations provides that, except as otherwise provided, a specified person must use the foreign currency exchange rate issued by the U.S. Treasury Department's Financial Management Service for purposes of section 6038D. The final rule is updated to reflect the fact that foreign currency

exchange rates are now issued by the Treasury Department's Bureau of the Fiscal Service.

V. Exceptions From the Reporting of Certain Assets Under Section 6038D (§ 1.6038D-6)

A. General Alternatives To Reporting on Form 8938

Several comments recommended that the Treasury Department and the IRS adopt an alternative approach to Form 8938 reporting. One comment suggested consolidating all foreign asset reporting for U.S. tax purposes on one form and eliminating Form 8938. Another comment recommended a revision to Schedule B of Form 1040 to permit specified individuals to indicate on that schedule that all of their specified foreign financial assets were reported on the IRS forms specified in § 1.6038D-7(a) such that no Form 8938 is required.

The final rule does not adopt these recommendations. The Treasury Department and the IRS have determined that consolidating a taxpayer's information concerning his or her specified foreign financial assets on Form 8938 best carries out the purposes of section 6038D by making the information readily accessible for use in IRS enforcement programs. In addition, using Form 8938 avoids the need to incur costs disproportionate to expected benefits from revising existing IRS forms, IT systems, submission processing, and enforcement programs.

B. Form 8858, "Information Return of U.S. Persons With Respect to Foreign Disregarded Entities"

Several comments recommended revising § 1.6038D-7(a) to add Form 8858, "Information Return of U.S. Persons With Respect to Foreign Disregarded Entities." However, the Treasury Department and the IRS do not regard the information furnished on Form 8858 concerning specified foreign financial assets held by a disregarded entity as sufficiently detailed to consider reporting on Form 8938 duplicative of reporting on Form 8858. Thus, the final rule does not adopt this recommendation.

C. Form 8854, "Initial and Annual Expatriation Statement"

Several comments recommended adding Form 8854, "Initial and Annual Expatriation Statement," to the list of forms in § 1.6038D-7(a) intended to relieve duplicative reporting. However, after considering the nature of the information collected on Form 8854, the Treasury Department and the IRS have concluded that requiring Form 8938

would not duplicate the information currently being reported on Form 8854. Further, filing of Form 8938 is expected to substantially enhance IRS compliance programs with respect to Form 8854 filers. Thus, the final rule does not adopt this recommendation.

D. Form 8891, "U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans"

Rev. Proc. 2014-55, 2014-44 IRB 753, obsoletes Form 8891, "U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans," on a prospective basis. Thus, the final rule is modified to describe the taxable years for which the taxpayer's reporting of an asset on Form 8891 will relieve the taxpayer of reporting that asset on Form 8938 (that is, taxable years beginning after March 18, 2010, and ending on or before December 31, 2013).

E. Joint Filers of Forms Listed in § 1.6038D-7(a)

A comment requested clarification that a specified person included as part of a jointly filed Form 5471, "Information Return of U.S. Persons With Respect to Certain Foreign Corporations," pursuant to § 1.6038-2(j) or as a joint filer of Form 8865, "Return of U.S. Persons With Respect to Certain Foreign Partnerships," pursuant to § 1.6038-3(c) and who notifies the IRS as required by § 1.6038-2(i) and § 1.6038-3(c) will be considered to have filed such forms for purposes of § 1.6038D-7(a). Because a joint filer of Form 5471 or Form 8865 fully meets the reporting requirements for such forms, reporting on the Form 8938 would be duplicative. Thus, the final rule adopts this clarification in § 1.6038D-7(a)(3).

F. Interests in Certain Foreign Trusts

A number of comments recommended revisions to the section 6038D reporting requirements for specified persons with an interest in a foreign trust.

One comment recommended that a foreign trustee of a foreign trust with a U.S. owner who is required to file Form 3520-A, "Annual Information Return of Foreign Trust With a U.S. Owner," be permitted to satisfy the section 6038D reporting requirements for all trust beneficiaries by filing Form 3520-A so as to consolidate all foreign trust filings in one place. Another comment recommended that a foreign trustee of a foreign trust be permitted to satisfy the Form 8938 filing requirements on behalf of the trust's beneficiaries. Another comment recommended that trust beneficiaries should be excused from filing Form 8938 if a specified person files a Form 8938 as the owner of the

trust and discloses the specified foreign financial assets of the foreign trust.

The final rule does not adopt these recommendations to allow a beneficiary's Form 8938 filing responsibilities to be satisfied by the trustee of the trust or to relieve the beneficiary's reporting obligation in the case of a specified person filing Form 8938 as the owner of the trust. The IRS can best use the information reported on the Form 8938 to enforce tax compliance when it is provided in connection with the filing of an annual return by the taxpayer who is the beneficial owner of the interest in the foreign trust. Thus, the final rule continues to provide that a beneficiary of a trust must file Form 8938 with his or her annual return when there is a section 6038D filing requirement.

G. Reporting on Both FinCEN Form 114 and Form 8938

A number of comments recommended that a foreign account reported on FinCEN Form 114, "Report of Foreign Bank and Financial Accounts," (formerly Form TD F 90-22.1, "Report of Foreign Bank and Financial Accounts") (an FBAR), should not be required to be reported on Form 8938. The final rule does not adopt this recommendation.

Congress enacted both the Title 31 and the Title 26 provisions regarding the reporting requirements of the FBAR and Form 8938. Reporting on the FBAR is required for law enforcement purposes under the Bank Secrecy Act, as well as for purposes of tax administration. As a consequence, different policy considerations apply to Form 8938 and FBAR reporting. These different policies are reflected in the different categories of persons required to file Form 8938 and the FBAR, the different filing thresholds for Form 8938 and FBAR reporting, and the different assets (and accompanying information) required to be reported on each form. Although certain information may be reported on both Form 8938 and the FBAR, the information required by the forms is not identical in all cases, and reflects the different rules, key definitions (for example, "financial account"), and reporting requirements applicable to Form 8938 and FBAR reporting.

These differing policy considerations were recognized by Congress during the passage of the HIRE Act (Pub. L. 111-147 (124 Stat. 71)) and the enactment of Section 6038D. Congress's intention to retain FBAR reporting requirements, notwithstanding the enactment of section 6038D, was specifically noted in the *Technical Explanation of the*

Revenue Provisions Contained in Senate Amendment 3310, the "Hiring Incentives To Restore Employment Act," Under Consideration by the Senate (Staff of the Joint Committee on Taxation, JCX-4-10 (February 23, 2010)) (Technical Explanation) accompanying the HIRE Act. The Technical Explanation states that "[n]othing in this provision [section 511 of the HIRE Act enacting new section 6038D] is intended as a substitute for compliance with the FBAR reporting requirements, which are unchanged by this provision." (Technical Explanation at p. 60) Against this background, reporting on the Form 8938 and on the FBAR is not duplicative and both forms must be filed, if required. The IRS Web site provides additional guidance comparing the requirements of both forms (<http://www.irs.gov/Businesses/Comparison-of-Form-8938-and-FBAR-Requirements>).

VI. Penalties

A. Reasonable Cause for Failure to Report

Several comments requested that the final rule provide additional guidance concerning the reasonable cause standard for relief from the section 6038D penalty set forth in section 6038D(g) and § 1.6038D-8(e). For example, one comment recommended that the final rule provide objective examples of when a taxpayer would be considered to have reasonable cause for failing to report under section 6038D. Another comment requested that the final rule state that a specified person's failure to file Form 8938 would be considered due to reasonable cause and not subject to penalty if all of that person's specified foreign financial assets were reflected on timely and properly filed forms described in § 1.6038D-7(a)(i). Another comment recommended that the final rule provide a presumption that reasonable cause exists with respect to all Form 8938 filing errors in the first year a taxpayer is required to file Form 8938. Yet another comment recommended that a specified person with a continuing failure to report for purposes of the section 6038D(d)(2) "add on" component of the penalty should no longer be subject to penalty once a specified person has requested the information necessary to complete Form 8938, provided the specified person furnishes the IRS with proof of the requests to obtain that information.

The final rule does not adopt these recommendations because the Treasury Department and the IRS have determined that the appropriate standards for determining whether the

reasonable cause exception to the penalty applies in a particular case are the general standards set out in the Internal Revenue Manual (IRM) addressing the approach that IRS employees must take whenever considering the application of a civil penalty and whether a reasonable cause exception applies. The general reasonable cause standards are set out in the IRS's "Penalty Handbook," which is included in the IRM at section 20.1. The Penalty Handbook sets forth general policy and procedural requirements for assessing and abating penalties, as well as the criteria for relief from certain penalties. For example, IRM 20.1.1.2.2 discusses the need to have a fair and consistent approach to penalty administration. Section 20.1.1.3.2 of the IRM discusses reasonable cause and what constitutes reasonable cause. Consistent with § 1.6038D-8(e)(3), the Penalty Handbook states that all of the facts and circumstances must be considered to determine whether or not there is reasonable cause for penalty relief in a particular case.

B. Section 6038D Penalty and Other Potentially Applicable Civil Penalties

Other comments requested the final rule modify the penalty amount and its application in the context of other potentially applicable civil penalties. One comment recommended that the final rule provide a range of penalties corresponding to the range of reporting errors as opposed to the \$10,000 penalty amount of section 6038D(d). Another comment requested that the final rule provide that a specified person's failure to report a specified foreign financial asset on Form 8938 would not be penalized under section 6038D if the specified person was also being penalized for failing to report the asset on a separate IRS form (for example, Form 5471).

The final rule does not adopt these recommendations. The general penalty administration rules set forth in the IRM apply in the context of the section 6038D penalty and its interaction with other potentially applicable penalties. In addition, section 6038D provides a specific dollar amount of penalty and does not permit selection of a penalty amount from a range of permissible penalty amounts based on taxpayer-specific considerations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory

assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Joseph S. Henderson, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entries for §§ 1.6038D-0T, 1.6038D-1T, 1.6038D-2T, 1.6038D-3T, 1.6038D-4T, 1.6038D-5T, 1.6038D-7T, and 1.6038D-8T and adding entries for §§ 1.6038D-0, 1.6038D-1, 1.6038D-2, 1.6038D-3, 1.6038D-4, 1.6038D-5, 1.6038D-7, and 1.6038D-8 in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6038D-0 also issued under 26 U.S.C. 6038D.

Section 1.6038D-1 also issued under 26 U.S.C. 6038D.

Section 1.6038D-2 also issued under 26 U.S.C. 6038D.

Section 1.6038D-3 also issued under 26 U.S.C. 6038D.

Section 1.6038D-4 also issued under 26 U.S.C. 6038D.

Section 1.6038D-5 also issued under 26 U.S.C. 6038D.

Section 1.6038D-7 also issued under 26 U.S.C. 6038D.

Section 1.6038D-8 also issued under 26 U.S.C. 6038D.

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■ **Par. 2.** Section 1.6038D-0 is added to read as follows:

§ 1.6038D-0 Outline of regulation provisions.

This section lists the table of contents for §§ 1.6038D-1 through 1.6038D-8.

§ 1.6038D-1 Reporting with respect to specified foreign financial assets, definition of terms.

- (a) In general.
 - (1) Specified person.
 - (2) Specified individual.
 - (3) Resident alien.
 - (4) Bona fide resident of a U.S. possession.
 - (5) U.S. possession.
 - (6) Specified foreign financial asset.
 - (7) Financial account.
 - (8) Financial institution.
 - (9) Foreign financial institution.
 - (10) Foreign entity.
 - (11) Annual return.
 - (12) Specified domestic entity.
- [Reserved]
 - (13) Model 1 IGA and Model 2 IGA.
- (b) Effective/applicability dates.
 - (1) In general.
 - (2) Financial accounts.

§ 1.6038D-2 Requirement to report specified foreign financial assets.

- (a) Reporting requirement.
 - (1) In general.
 - (2) Special rule for married specified individuals filing a joint annual return.
 - (3) Special rule for certain specified individuals living abroad.
 - (4) Special rule for married specified individuals filing a joint annual return and living abroad.
 - (5) Assets with no positive value.
 - (6) Aggregate value calculation in case of specified foreign financial asset excluded from reporting.
 - (7) Form 8938 filed with annual return.
 - (i) General rule.
 - (ii) Consolidated returns.
 - (8) Reporting required regardless of tax result.
 - (9) Reporting period.
 - (10) Successor forms.
- (b) Interest in a specified foreign financial asset.
 - (1) In general.
 - (2) Property transferred in connection with the performance of services.
 - (3) Special rule for parent making an election under section 1(g)(7).
 - (4) Entities.
 - (i) In general.
 - (ii) Specified foreign financial assets held by certain trusts.
 - (iii) Specified foreign financial assets held by a disregarded entity.
 - (iv) Interest in a foreign trust or foreign estate.
 - (c) Special rules for joint interests.
 - (1) In general.
 - (i) Determining aggregate value of assets.

- (ii) Reporting maximum value.
- (2) Aggregate asset value for married specified individuals filing a joint annual return.
- (3) Aggregate asset value for married specified individuals filing a separate annual return.
 - (i) Both spouses are specified individuals.
 - (ii) One spouse is not a specified individual.
- (d) Annual return filed by a married specified individual.
 - (1) Joint annual return.
 - (2) Separate annual return.
- (e) Special rules for dual resident taxpayers.
 - (1) In general.
 - (2) Dual resident taxpayer filing as a nonresident alien at end of taxable year.
 - (3) Dual resident taxpayer filing as a resident alien at end of taxable year.
- (f) Example.
 - (1) Facts.
 - (2) Filing requirement.
 - (i) Married specified individuals filing separate annual returns.
 - (ii) Married specified individuals filing a joint annual return.
 - (g) Effective/applicability dates.

§ 1.6038D-3 Specified foreign financial assets.

- (a) Financial accounts.
 - (1) In general.
 - (2) Financial account in a U.S. possession.
- (3) Excepted financial accounts.
 - (i) Accounts maintained by U.S. payors.
 - (ii) Mark-to-market election under section 475.
- (b) Other specified foreign financial assets.
 - (1) In general.
 - (2) Mark-to-market election under section 475.
 - (3) Held for investment.
 - (4) Trade-or-business test.
 - (5) Direct relationship between holding an asset and a trade or business.
 - (i) In general.
 - (ii) Presumption of direct relationship.
 - (c) Special rule for interests in foreign trusts and foreign estates.
 - (d) Examples.
 - (e) Effective/applicability dates.

§ 1.6038D-4 Information required to be reported.

- (a) Required information.
- (b) Effective/applicability dates.

§ 1.6038D-5 Valuation guidelines.

- (a) Fair market value.
- (b) Valuation of assets.
 - (1) Maximum value.
 - (2) U.S. dollars.

- (3) Asset with no positive value.
- (c) Foreign currency conversion.
 - (1) In general.
 - (2) Other publicly available exchange rate.
 - (3) Currency exchange rate.
 - (4) Determination date.
 - (d) Financial accounts.
 - (e) Asset held in a financial account.
 - (f) Other specified foreign financial assets.
 - (1) General rule.
 - (2) Interests in trusts that are specified foreign financial assets.
 - (i) Maximum value.
 - (ii) Reporting threshold.
 - (3) Interests in estates, pension plans, and deferred compensation plans.
 - (i) Maximum value.
 - (ii) Reporting threshold.
 - (g) Effective/applicability dates.

§ 1.6038D-6 Specified domestic entities. [Reserved]**§ 1.6038D-7 Exceptions from the reporting of certain assets under section 6038D.**

- (a) Elimination of duplicative reporting of assets.
 - (1) In general.
 - (2) Foreign grantor trusts.
 - (3) Joint Form 5471 or Form 8865 filing.
- (b) Owner of certain trusts.
- (c) Special rules for bona fide residents of a U.S. possession.
- (d) Effective/applicability dates.

§ 1.6038D-8 Penalties for failure to disclose.

- (a) In general.
- (b) Married specified individuals filing a joint annual return.
 - (c) Increase in penalty.
 - (d) Presumption of aggregate value.
 - (e) Reasonable cause exception.
 - (1) In general.
 - (2) Affirmative showing required.
 - (3) Facts and circumstances taken into account.
 - (f) Penalties for underpayments attributable to undisclosed foreign financial assets.
 - (1) Accuracy related penalty.
 - (2) Criminal penalties.
 - (g) Effective/applicability dates.

§ 1.6038D-0T [Removed]

■ **Par. 3.** Section 1.6038D-0T is removed.

■ **Par. 4.** Section 1.6038D-1 is added to read as follows:

§ 1.6038D-1 Reporting with respect to specified foreign financial assets, definition of terms.

- (a) *In general.* The following definitions apply for purposes of section 6038D and the regulations—
 - (1) *Specified person.* The term *specified person* means a specified

individual or a specified domestic entity.

(2) *Specified individual*. The term *specified individual* means an individual who is a—

- (i) U.S. citizen;
- (ii) Resident alien of the United States for any portion of the taxable year;
- (iii) Nonresident alien for whom an election under section 6013(g) or (h) is in effect; or
- (iv) Nonresident alien who is a bona fide resident of Puerto Rico or a section 931 possession (as defined in § 1.931-1(c)(1)).

(3) *Resident alien*. The term *resident alien* has the meaning set forth in section 7701(b) and §§ 301.7701(b)-1 through 301.7701(b)-9 of this chapter.

(4) *Bona fide resident of a U.S. possession*. The term *bona fide resident of a U.S. possession* means an individual who is a “bona fide resident” under section 937(a) and § 1.937-1.

(5) *U.S. possession*. The term *U.S. possession* means American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

(6) *Specified foreign financial asset*. The term *specified foreign financial asset* has the meaning set forth in § 1.6038D-3.

(7) *Financial account*. The term *financial account* has the meaning set forth in § 1.1471-5(b), provided, however, that the exclusions of retirement and pension accounts and non-retirement savings accounts under § 1.1471-5(b)(2)(i) and retirement and pension accounts, non-retirement savings accounts, and accounts satisfying similar conditions in an applicable Model 1 IGA or Model 2 IGA under § 1.1471-5(b)(2)(vi) shall not apply (see the section 6038D coordination rule in § 1.1471-5(b)(2)(i)(D)). See § 1.6038D-3(a)(2) relating to financial accounts maintained by a financial institution that is organized under the laws of a U.S. possession.

(8) *Financial institution*. The term *financial institution* has the meaning set forth in section 1471(d)(5) and the regulations thereunder.

(9) *Foreign financial institution*. The term *foreign financial institution* has the meaning set forth in § 1.1471-5(d).

(10) *Foreign entity*. The term *foreign entity* has the meaning set forth in § 1.1473-1(e).

(11) *Annual return*. The term *annual return* means an annual federal income tax return of a specified individual or an annual federal income tax return or information return of a specified domestic entity filed with the Internal Revenue Service under section 876,

6011, 6012, 6013, 6031, or 6037, and the regulations.

(12) *Specified domestic entity*. [Reserved].

(13) *Model 1 IGA* and *Model 2 IGA*. The terms *Model 1 IGA* and *Model 2 IGA* have the meanings set forth in § 1.1471-1(b)(78) and (79), respectively.

(b) *Effective/applicability dates*—(1) *In general*. Except as otherwise provided in this paragraph (b), this section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

(2) *Financial accounts*. For purposes of applying the financial account definition in § 1.6038D-1(a)(7), the treatment under § 1.1471-5(b)(2)(vi) of retirement and pension accounts, non-retirement savings accounts, and accounts satisfying similar conditions in an applicable Model 1 IGA or Model 2 IGA (see § 1.1471-1(b)(78) and (79)) as financial accounts for purposes of the reporting required under section 6038D and § 1.6038D-2(a) shall apply to taxable years beginning after December 12, 2014.

§ 1.6038D-1T [Removed]

■ **Par. 5.** Section 1.6038D-1T is removed.

■ **Par. 6.** Section 1.6038D-2 is added to read as follows:

§ 1.6038D-2 Requirement to report specified foreign financial assets.

(a) *Reporting requirement*—(1) *In general*. Except as otherwise provided, a specified person that has any interest in a specified foreign financial asset during the taxable year must attach Form 8938, “Statement of Specified Foreign Financial Assets,” to that specified person’s annual return for the taxable year to report the information required by section 6038D and § 1.6038D-4 if the aggregate value of all such assets exceeds—

- (i) \$50,000 on the last day of the taxable year; or
- (ii) \$75,000 at any time during the taxable year.

(2) *Special rule for married specified individuals filing a joint annual return*. Except as provided in paragraph (a)(4) of this section, married specified individuals who file a joint annual return for the taxable year must attach a single Form 8938 to their joint annual return for the taxable year to report the information required by section 6038D and § 1.6038D-4 if the aggregate value of all of the specified foreign financial assets in which either married specified individual has an interest exceeds—

- (i) \$100,000 on the last day of the taxable year; or

(ii) \$150,000 at any time during the taxable year.

(3) *Special rule for certain specified individuals living abroad*. Except as provided in paragraph (a)(4) of this section, a specified individual who is a qualified individual under section 911(d)(1) for the taxable year must attach a Form 8938 to his or her annual return for the taxable year to report the information required by section 6038D and § 1.6038D-4 if the aggregate value of the specified foreign financial assets in which the specified individual has an interest exceeds—

- (i) \$200,000 on the last day of the taxable year; or
- (ii) \$300,000 at any time during the taxable year.

(4) *Special rule for married specified individuals filing a joint annual return and living abroad*. A specified individual who is a qualified individual under section 911(d)(1) for the taxable year and the qualified individual’s spouse who file a joint annual return for the taxable year must attach a single Form 8938 to their return for the taxable year to report the information required by section 6038D and § 1.6038D-4 if the aggregate value of the all of the specified foreign financial assets in which either married individual has an interest exceeds—

- (i) \$400,000 on the last day of the taxable year; or
- (ii) \$600,000 at any time during the taxable year.

(5) *Assets with no positive value*. A specified foreign financial asset is subject to reporting even if the specified foreign financial asset does not have a positive value. See § 1.6038D-5(b)(3) to determine the maximum value of a specified foreign financial asset that does not have a positive value during the taxable year.

(6) *Aggregate value calculation in case of specified foreign financial asset excluded from reporting*. The value of any specified foreign financial asset in which a specified individual has an interest and that is excluded from reporting on Form 8938 pursuant to § 1.6038D-7(a) (concerning certain assets reported on another form) is included for purposes of determining the aggregate value of specified foreign financial assets. The value of any specified foreign financial asset in which a specified individual has an interest and that is excluded from reporting under § 1.6038D-7(b) (concerning assets held by certain domestic trusts) or § 1.6038D-7(c) (concerning certain assets owned by a bona fide resident of a U.S. possession) is excluded for purposes of determining

the aggregate value of specified foreign financial assets.

(7) *Form 8938 filed with annual return*—(i) *General rule.* A specified person, including a specified individual who is a bona fide resident of a U.S. possession, is not required to file Form 8938 with respect to a taxable year if the specified person is not required to file an annual return with the Internal Revenue Service with respect to such taxable year.

(ii) *Consolidated returns.* If a specified domestic entity is a member of an affiliated group of corporations that files a consolidated income tax return, the Form 8938 of the specified domestic entity must be filed with the affiliated group's annual return.

(8) *Reporting required regardless of tax result.* The Form 8938 required by section 6038D and this section must be furnished by a specified person even if none of the specified foreign financial assets that must be reported affect the specified person's tax liability under the Internal Revenue Code for the taxable year.

(9) *Reporting period.* The reporting period covered by Form 8938 is the specified person's taxable year, except the reporting period for a specified person that is a specified individual for less than an entire taxable year is the portion of the taxable year that the specified person is a specified individual.

(10) *Successor forms.* References to Form 8938 include any successor form.

(b) *Interest in a specified foreign financial asset*—(1) *In general.* A specified person has an interest in a specified foreign financial asset if any income, gains, losses, deductions, credits, gross proceeds, or distributions attributable to the holding or disposition of the specified foreign financial asset are or would be required to be reported, included, or otherwise reflected by the specified person on an annual return. A specified person has an interest in a specified foreign financial asset even if no income, gains, losses, deductions, credits, gross proceeds, or distributions are attributable to the holding or disposition of the specified foreign financial asset for the taxable year.

(2) *Property transferred in connection with the performance of services.* A specified person that is transferred property in connection with the performance of personal services is first considered to have an interest in the property for purposes of section 6038D on the first date that the property is substantially vested (within the meaning of § 1.83-3(b)) or, in the case of property with respect to which a specified person makes a valid election

under section 83(b), on the date of transfer of the property.

(3) *Special rule for parent making election under section 1(g)(7).* A parent who makes an election under section 1(g)(7) to include certain unearned income of a child in the parent's gross income has an interest in any specified foreign financial asset held by the child for the purposes of section 6038D and the regulations.

(4) *Entities*—(i) *In general.* Except as provided in this paragraph (b)(4), a specified person is not treated as having an interest in any specified foreign financial assets held by a corporation, partnership, trust, or estate solely as a result of the specified person's status as a shareholder, partner, or beneficiary of such entity.

(ii) *Specified foreign financial assets held by certain trusts.* A specified person that is treated as the owner of a trust or any portion of a trust under sections 671 through 679, other than a domestic liquidating trust under § 301.7701-4(d) of this chapter created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code, or a domestic widely held fixed investment trust under § 1.671-5, is treated as having an interest in any specified foreign financial assets held by the trust or the portion of the trust.

(iii) *Specified foreign financial assets held by a disregarded entity.* A specified person that owns a foreign or domestic entity that is disregarded as an entity separate from its owner as described in § 301.7701-2 of this chapter (a disregarded entity) is treated as having an interest in any specified foreign financial assets held by the disregarded entity.

(iv) *Interest in a foreign trust or foreign estate.* See § 1.6038D-3(c) to determine whether an interest in a foreign trust or foreign estate is a specified foreign financial asset. See § 1.6038D-5(f) to determine the maximum value of an interest in a foreign trust or foreign estate.

(c) *Special rules for joint interests*—(1) *In general*—(i) *Determining aggregate value of assets.* Except as otherwise provided in this paragraph (c), each specified person that is a joint owner of a specified foreign financial asset (whether with a spouse or other person) must include the entire value of the specified foreign financial asset (and not the value of the specified person's interest) for purposes of determining whether the aggregate value of the specified person's specified foreign

financial assets exceeds the reporting thresholds set forth in § 1.6038D-2(a).

(ii) *Reporting maximum value.* Except as provided in paragraph (d) of this section, a specified person that is a joint owner of a specified foreign financial asset must report the entire value of each jointly owned specified foreign financial asset on Form 8938.

(2) *Aggregate asset value for married specified individuals filing a joint annual return.* Married specified individuals who file a joint annual return must include the value of each specified foreign financial asset that they jointly own or in which both have an interest under paragraph (b)(1) of this section only once in determining whether the aggregate value of all of the specified foreign financial assets in which either married specified individual has an interest exceeds the reporting thresholds set forth in § 1.6038D-2(a).

(3) *Aggregate asset value for married specified individual filing a separate annual return*—(i) *Both spouses are specified individuals.* If a married specified individual files a separate annual return and his or her spouse is a specified individual, the married specified individual must include one-half of the value of a specified foreign financial asset that the married specified individual jointly owns with his or her spouse in determining whether the married specified individual has an interest in specified foreign financial assets the aggregate value of which exceeds the reporting thresholds set forth in § 1.6038D-2(a).

(ii) *One spouse is not a specified individual.* If a married specified individual files a separate annual return and his or her spouse is not a specified individual, the married specified individual must include the entire value of a specified foreign financial asset that the married specified individual jointly owns with his or her spouse in determining whether the married specified individual has an interest in specified foreign financial assets the aggregate value of which exceeds the reporting thresholds set forth in § 1.6038D-2(a).

(d) *Annual return filed by a married specified individual*—(1) *Joint annual return.* Married specified individuals who file a joint annual return must file a single Form 8938 to fulfill their reporting requirements under section 6038D and § 1.6038D-2(a). The single Form 8938 must report all of the specified foreign financial assets in which either married specified individual has an interest. If both married specified individuals jointly own a specified foreign financial asset

or if they have an interest in a specified foreign financial asset under paragraph (b)(1) of this section, the asset must be reported only once on the single Form 8938 filed for the taxable year.

(2) *Separate annual return.* A married specified individual who files a separate annual return for the taxable year must fulfill the reporting requirements under section 6038D and § 1.6038D-2(a) by filing a separate Form 8938 with his or her return that reports all of the specified foreign financial assets in which the married specified individual has an interest, including each of the assets jointly owned with the married specified individual's spouse or with another person. If both of the spouses are specified individuals, each specified individual must report the entire value of each specified foreign financial asset that the spouses jointly own on Form 8938, not the value taken into account under paragraph (c)(3)(i) of this section for purposes of applying the applicable reporting thresholds.

(e) *Special rules for dual resident taxpayers*—(1) *In general.* Subject to the provisions of paragraphs (e)(2) and (3) of this section, a specified individual is not required to report specified foreign financial assets on Form 8938 for a taxable year or any portion of a taxable year that the individual is a dual resident taxpayer (within the meaning of § 301.7701(b)-7(a)(1) of this chapter) who is treated as a nonresident alien pursuant to § 301.7701(b)-7 of this chapter for purposes of computing his or her U.S. tax liability with respect to the portion of the taxable year the individual is considered a dual resident taxpayer.

(2) *Dual resident taxpayer filing as a nonresident alien at end of taxable year.* If a specified individual to whom this paragraph (e) applies computes his or her U.S. income tax liability as a nonresident alien on the last day of the taxable year and complies with the filing requirements of § 301.7701(b)-7(b) and (c) of this chapter and, in particular, such individual timely files with the Internal Revenue Service Form 1040NR, "U.S. Nonresident Alien Income Tax Return," or Form 1040NR-EZ, "U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents," as applicable, and attaches thereto Form 8833, "Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b)," such individual will not be required to report specified foreign financial assets on Form 8938 with respect to the portion of the taxable year covered by Form 1040NR (or Form 1040NR-EZ).

(3) *Dual resident taxpayer filing as resident alien at end of taxable year.* If

a specified individual to whom this paragraph (e) applies computes his or her U.S. income tax liability as a resident alien on the last day of the taxable year and complies with the filing requirements of § 1.6012-1(b)(2)(ii)(a) and, in particular, such individual timely files with the Internal Revenue Service Form 1040, "U.S. Individual Income Tax Return," or Form 1040EZ, "Income Tax Return for Single and Joint Filers With No Dependents," as applicable, and attaches a properly completed Form 8833 to the schedule required by § 1.6012-1(b)(2)(ii)(a), such individual will not be required to report specified foreign financial assets on Form 8938 with respect to the portion of the individual's taxable year reflected on the schedule to such Form 1040 or Form 1040EZ required by § 1.6012-1(b)(2)(ii)(a).

(f) *Example.* The following example illustrates the application of paragraph (c) of this section:

Example (1) Facts. Two married specified individuals, H and W, jointly own a specified foreign financial asset with a value of \$90,000 at all times during the taxable year. H separately has an interest in a specified foreign financial asset with a value of \$10,000 at all times during the taxable year. W separately has an interest in a specified foreign financial asset with a value of \$1,000 at all times during the taxable year.

(2) *Filing requirement*—(i) *Married specified individuals filing separate annual returns.* If H and W file separate annual returns, the aggregate value of the specified foreign financial assets in which H has an interest at the end of the taxable year is \$55,000, comprising one-half of the value of the jointly owned asset, \$45,000, and the value of H's separately owned specified foreign financial asset, \$10,000. The aggregate value of the specified foreign financial assets in which W has an interest at the end of the taxable year is \$46,000, comprising one-half of the value of the jointly owned asset, \$45,000, and the value of W's separately owned specified foreign financial asset, \$1,000. H must file Form 8938 with his annual return for the taxable year because the aggregate value of the specified foreign financial assets in which H has an interest exceeds the applicable reporting threshold (\$50,000) set forth in § 1.6038D-2(a)(1). H must report the maximum value of the entire jointly owned asset, \$90,000, and the maximum value of the separately owned asset, \$10,000. See § 1.6038D-5(b) regarding the maximum value of a jointly owned specified foreign financial asset to be reported by a specified person, including a married specified individual, that is a joint owner of an asset. The aggregate value of the specified foreign financial assets in which W has an interest, \$46,000, does not exceed the applicable reporting threshold set forth in § 1.6038D-2(a)(1). W is not required to file Form 8938 with her separate annual return.

(ii) *Married specified individuals filing a joint annual return.* If H and W file a joint annual return, they must file a single Form 8938 with their joint annual return for the taxable year because the aggregate value of all of the specified foreign financial assets in which either H or W have an interest (\$90,000 (included only once), \$10,000, and \$1,000, or \$101,000) exceeds the applicable reporting threshold (\$100,000) set forth in § 1.6038D-2(a)(2). The single Form 8938 must report the maximum value of the jointly owned specified foreign financial asset, \$90,000, and the maximum value of the specified foreign financial assets separately owned by H and W, \$10,000 and \$1,000, respectively.

(g) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D-2T [Removed]

■ **Par. 7.** Section 1.6038D-2T is removed.

■ **Par. 8.** Section 1.6038D-3 is added to read as follows:

§ 1.6038D-3 Specified foreign financial assets.

(a) *Financial accounts*—(1) *In general.* Except as otherwise provided in this section, a specified foreign financial asset includes any financial account maintained by a foreign financial institution. An asset held in a financial account maintained by a foreign financial institution is not required to be separately reported on Form 8938, "Statement of Specified Foreign Financial Assets."

(2) *Financial account in a U.S. possession.* A specified foreign financial asset includes a financial account maintained by a financial institution that is organized under the laws of a U.S. possession.

(3) *Excepted financial accounts*—(i) *Accounts maintained by U.S. payors.* A financial account maintained by a U.S. payor as defined in § 1.6049-5(c)(5)(i) (including assets held in such an account) is not a specified foreign financial asset for purposes of section 6038D and the regulations.

(ii) *Mark-to-market election under section 475.* A financial account is not a specified foreign financial asset if the rules of section 475(a) apply to all of the holdings in the account or an election under section 475(e) or (f) is made with respect to all of the holdings in the account.

(b) *Other specified foreign financial assets*—(1) *In general.* Except as otherwise provided in this section, a specified foreign financial asset includes any of the following assets that

are not financial accounts and that are held for investment and not held in an account maintained by a financial institution—

(i) Stock or securities issued by a person other than a United States person (including stock or securities issued by a person organized under the laws of a U.S. possession);

(ii) A financial instrument or contract that has an issuer or counterparty which is other than a United States person (including a financial instrument or contract issued by a person organized under the laws of a U.S. possession); and

(iii) An interest in a foreign entity.

(2) *Mark-to-market election under section 475.* An asset is not a specified foreign financial asset if the rules of section 475(a) apply to the asset or an election under section 475(e) or (f) is made with respect to the asset.

(3) *Held for investment.* An asset is held for investment for purposes of section 6038D and the regulations if that asset is not used in, or held for use in, the conduct of a trade or business of a specified person.

(4) *Trade-or-business test.* For purposes of section 6038D and the regulations, an asset is used in, or held for use in, the conduct of a trade or business and not held for investment if the asset is—

(i) Held for the principal purpose of promoting the present conduct of the trade or business;

(ii) Acquired and held in the ordinary course of the trade or business, as, for example, in the case of an account or note receivable arising from that trade or business; or

(iii) Otherwise held in a direct relationship to the trade or business as determined under paragraph (b)(5) of this section.

(5) *Direct relationship between holding an asset and a trade or business—(i) In general.* In determining whether an asset is held in a direct relationship to the conduct of a trade or business by a specified person, principal consideration will be given to whether the asset is needed in the trade or business of the specified person. An asset shall be considered needed in the trade or business, for this purpose, only if the asset is held to meet the present needs of that trade or business and not its anticipated future needs. An asset shall be considered as needed in the trade or business if, for example, the asset is held to meet the operating expenses of the trade or business. Conversely, an asset shall be considered as not needed in the trade or business if, for example, the asset is held for the purpose of providing for future

diversification into a new trade or business, future plant replacement, or future business contingencies. Stock is never considered used or held for use in a trade or business for purposes of applying this test.

(ii) *Presumption of direct relationship.*

An asset will be treated as held in a direct relationship to the conduct of a trade or business of a specified person if—

(A) The asset was acquired with funds generated by the trade or business of the specified person or the affiliated group of the specified person, if any;

(B) The income from the asset is retained or reinvested in the trade or business; and

(C) Personnel who are actively involved in the conduct of the trade or business exercise significant management and control over the investment of such asset.

(c) *Special rule for interests in foreign trusts and foreign estates.* An interest in a foreign trust or a foreign estate is not a specified foreign financial asset of a specified person unless the person knows, or has reason to know based on readily accessible information, of the interest. Receipt of a distribution from the foreign trust or foreign estate constitutes actual knowledge for this purpose.

(d) *Examples.* Examples of assets other than financial accounts that may be considered other specified foreign financial assets include, but are not limited to—

(1) Stock issued by a foreign corporation;

(2) A capital or profits interest in a foreign partnership;

(3) A note, bond, debenture, or other form of indebtedness issued by a foreign person;

(4) An interest in a foreign trust;

(5) An interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement with a foreign counterparty; and

(6) Any option or other derivative instrument with respect to any of the items listed as examples in this paragraph or with respect to any currency or commodity that is entered into with a foreign counterparty or issuer.

(e) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D-3T [Removed]

■ **Par. 9.** Section 1.6038D-3T is removed.

■ **Par. 10.** Section 1.6038D-4 is added to read as follows:

§ 1.6038D-4 Information required to be reported.

(a) *Required information.* The following information must be reported on Form 8938, “Statement of Specified Foreign Financial Assets,” with respect to each specified foreign financial asset:

(1) In the case of a financial account, the name and address of the foreign financial institution with which the account is maintained and the account number of the financial account;

(2) In the case of stock or securities, the name and address of the issuer, and information that identifies the class or issue of which the stock or security is a part;

(3) In the case of a financial instrument or contract, information that identifies the financial instrument or contract, including the names and addresses of all issuers and counterparties;

(4) In the case of an interest in a foreign entity, information that identifies the interest, including the name and address of the foreign entity in which the interest is held;

(5) The maximum value of the specified foreign financial asset during the portion of the taxable year in which the specified person has an interest in the asset;

(6) In the case of a financial account that is a depository account as defined in § 1.1471-5(b)(3)(i) or a custodial account as defined in § 1.1471-5(b)(3)(ii), whether the account was opened or closed during the taxable year;

(7) The date, if any, on which the specified foreign financial asset, other than a financial account that is a depository account as defined in § 1.1471-5(b)(3)(i) or a custodial account as defined in § 1.1471-5(b)(3)(ii), was either acquired or disposed of (or both) during the taxable year;

(8) The amount of any income, gain, loss, deduction, or credit recognized for the taxable year with respect to the reported specified foreign financial asset, and the schedule, form, or return filed with the Internal Revenue Service on which the income, gain, loss, deduction, or credit, if any, is reported or included by the specified person;

(9) The foreign currency in which the account is maintained or the asset is denominated, the foreign currency exchange rate and, if the source of such rate is other than as described in § 1.6038D-5(c)(1), the source of the rate used to determine the specified foreign

financial asset's U.S. dollar value, including maximum value;

(10) For any specified foreign financial asset excepted from reporting on Form 8938 under § 1.6038D-7(a), the specified person must report the number of Forms 3520, "Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts," Forms 3520-A, "Annual Information Return of Foreign Trust With a U.S. Owner," Forms 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations," Forms 8621, "Return by a Shareholder of a Passive Foreign Investment Company or a Qualified Electing Fund," Forms 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships," and, solely for taxable years beginning after March 18, 2010, and ending on or before December 31, 2013, Forms 8891, "U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans," or such other form under Title 26 of the United States Code identified by the Secretary under § 1.6038D-7(a), timely filed with the Internal Revenue Service on which excepted foreign financial assets are reported or reflected for the taxable year; and

(11) Such other information as may be required by Form 8938 or its instructions or other guidance.

(b) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D-4T [Removed]

■ **Par. 11.** Section 1.6038D-4T is removed.

■ **Par. 12.** Section 1.6038D-5 is added to read as follows:

§ 1.6038D-5 Valuation guidelines.

(a) *Fair market value.* Except as provided in paragraphs (c) and (e) of this section, the value of a specified foreign financial asset for purposes of determining the aggregate value of specified foreign financial assets held by a specified person and the maximum value of a specified foreign financial asset required to be reported on Form 8938, "Statement of Specified Foreign Financial Assets," is the asset's fair market value.

(b) *Valuation of assets—(1) Maximum value.* Except as provided in this section, the maximum value of a specified foreign financial asset means a reasonable estimate of the asset's maximum fair market value during the taxable year.

(2) *U.S. dollars.* For purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest and determining the maximum value of a specified foreign financial asset, the value of a specified foreign financial asset denominated in a foreign currency during the taxable year must be determined in the foreign currency and then converted to U.S. dollars.

(3) *Asset with no positive value.* If the maximum fair market value of a specified foreign financial asset is zero or less than zero, then the asset's value is treated as zero for purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest, and the maximum value of the specified foreign financial asset is zero for purposes of reporting under § 1.6038D-4(a)(5).

(c) *Foreign currency conversion—(1) In general.* Except as provided in paragraphs (c)(2) and (d) of this section, the U.S. Treasury Department's Bureau of the Fiscal Service foreign currency exchange rate is to be used to convert the value of a specified foreign financial asset into U.S. dollars for purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest and determining the maximum value of a specified foreign financial asset.

(2) *Other publicly available exchange rate.* If no U.S. Treasury Department Bureau of the Fiscal Service foreign currency exchange rate is available for a particular currency, another publicly available foreign currency exchange rate may be used to convert the value of a specified foreign financial asset into U.S. dollars. In such case, the source of the foreign currency exchange rate must be disclosed on Form 8938.

(3) *Currency exchange rate.* In converting the currency of a foreign country, the foreign currency exchange rate applicable for converting the currency into U.S. dollars (that is, to purchase U.S. dollars) must be used.

(4) *Determination date.* In converting the currency of a foreign country into U.S. dollars for purposes of determining the maximum value of a specified foreign financial asset and determining the aggregate value of specified foreign financial assets in which a specified person has an interest, the applicable foreign currency exchange rate is the rate on the last day of the taxable year of the specified person, even if the specified person sold or otherwise disposed of a specified foreign financial asset prior to the last day of such year.

(d) *Financial accounts.* A specified person may rely upon periodic account

statements that are provided at least annually by or on behalf of a financial institution maintaining an account, including the foreign currency conversion reflected in those statements, to determine the financial account's maximum value unless the specified person has actual knowledge, or reason to know based on readily accessible information, that the statements do not reflect a reasonable estimate of the maximum account value during the taxable year.

(e) *Asset held in a financial account.* The value of an asset held in a financial account maintained by a foreign financial institution is included in determining the value of that financial account for purposes of § 1.6038D-5(a).

(f) *Other specified foreign financial assets—(1) General rule.* Except as provided in paragraphs (f)(2) and (3) of this section, for specified foreign financial assets that are not financial accounts and that are held for investment and not held in an account maintained by a financial institution, a specified person may use the value of the asset as of the last day of the taxable year on which the specified person has an interest in the asset as the maximum value of that asset, unless the specified person has actual knowledge, or reason to know based on readily accessible information, that the value does not reflect a reasonable estimate of the maximum value of the asset during the taxable year.

(2) *Interests in trusts that are specified foreign financial assets—(i) Maximum value.* If a specified person is a beneficiary of a foreign trust, the maximum value of the specified person's interest in the trust is the sum of—

(A) The fair market value, determined as of the last day of the taxable year, of all of the currency or other property distributed from the foreign trust during the taxable year to the specified person as a beneficiary; and

(B) The value, determined as of the last day of the taxable year, of the specified person's right as a beneficiary to receive mandatory distributions from the foreign trust as determined under section 7520.

(ii) *Reporting threshold.* For purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest, if the specified person does not know, or have reason to know based on readily accessible information, the fair market value of the person's interest in a foreign trust during the taxable year, the value to be included in determining the aggregate value of the specified foreign financial assets is the maximum

value of the specified person's interest in the foreign trust under paragraph (f)(2)(i) of this section.

(3) *Interests in estates, pension plans, and deferred compensation plans—(i) Maximum value.* The maximum value of a specified person's interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan is the fair market value, determined as of the last day of the taxable year, of the specified person's beneficial interest in the assets of the foreign estate, foreign pension plan, or foreign deferred compensation plan. If the specified person does not know, or have reason to know based on readily accessible information, such fair market value, the maximum value to be reported is the fair market value, determined as of the last day of the taxable year, of the currency and other property distributed during the taxable year to the specified person as a beneficiary or participant.

(ii) *Reporting threshold.* For purposes of determining the aggregate value of specified foreign financial assets in which a specified person has an interest, if the specified person does not know, or have reason to know based on readily accessible information, the fair market value of the person's interest in a foreign estate, foreign pension plan, or foreign deferred compensation plan during the taxable year, the value to be included in determining the aggregate value of the specified foreign financial assets is the fair market value, determined as of the last day of the taxable year, of the currency and other property distributed during the taxable year to the specified person as a beneficiary or participant.

(g) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D-5T [Removed]

■ **Par. 13.** Section 1.6038D-5T is removed.

■ **Par. 14.** Section 1.6038D-6 is added to read as follows:

§ 1.6038D-6 Specified domestic entities. [Reserved]

§ 1.6038D-6T [Removed]

■ **Par. 15.** Section 1.6038D-6T is removed.

■ **Par. 16.** Section 1.6038D-7 is added to read as follows:

§ 1.6038D-7 Exceptions from the reporting of certain assets under section 6038D.

(a) *Elimination of duplicative reporting of assets—(1) In general.* A

specified person is not required to report a specified foreign financial asset on Form 8938, "Statement of Specified Foreign Financial Assets," if the specified person—

(i) Reports the asset on at least one of the following forms timely filed with the Internal Revenue Service for the taxable year—

(A) Form 3520, "Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts" (in the case of a specified person that is the beneficiary of a foreign trust);

(B) Form 5471, "Information Return of U.S. Persons With Respect To Certain Foreign Corporations";

(C) Form 8621, "Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund";

(D) Form 8865, "Return of U.S. Persons With Respect To Certain Foreign Partnerships";

(E) For taxable years beginning after March 18, 2010, and ending on or before December 31, 2013, Form 8891, "U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans"; or

(F) Any other form under Title 26 of the United States Code timely filed with the Internal Revenue Service and identified for this purpose by the Secretary in regulations or other guidance; and

(ii) Reports on Form 8938 the filing of the form on which the asset is reported.

(2) *Foreign grantor trusts.* A specified person that is treated as an owner of a foreign trust or any portion of a foreign trust under sections 671 through 679 is not required to report any specified foreign financial assets held by the foreign trust on Form 8938, provided—

(i) The specified person reports the trust on a Form 3520 timely filed with the Internal Revenue Service for the taxable year;

(ii) The trust timely files Form 3520-A, "Annual Information Return of Foreign Trust With a U.S. Owner," with the Internal Revenue Service for the taxable year; and

(iii) The Form 8938 filed by the specified person for the taxable year reports the filing of the Form 3520 and Form 3520-A.

(3) *Joint Form 5471 or Form 8865 filing.* A specified person that is included as part of a joint Form 5471 filing pursuant to § 1.6038-2(j) or a joint Form 8865 filing pursuant to § 1.6038-3(c) and who notifies the Internal Revenue Service as required by § 1.6038-2(i) or § 1.6038D-3(c) will be considered to have filed a Form 5471 or Form 8865 for purposes of paragraph (a)(1) of this section.

(b) *Owner of certain trusts.* A specified person that is treated as an owner of any portion of a domestic trust under sections 671 through 678 is not required to file Form 8938 to report any specified foreign financial asset held by the trust if the trust is—

(1) A widely-held fixed investment trust under § 1.671-5; or

(2) A liquidating trust within the meaning of § 301.7701-4(d) of this chapter that is created pursuant to a court order issued in a bankruptcy under Chapter 7 (11 U.S.C. 701 *et seq.*) or a confirmed plan under Chapter 11 (11 U.S.C. 1101 *et seq.*) of the Bankruptcy Code.

(c) *Special rules for bona fide residents of a U.S. possession.* A specified individual who is a bona fide resident of a U.S. possession is not required to include the following specified foreign financial assets in the determination of the aggregate value of his or her specified foreign financial assets and, if required to file Form 8938 with the Internal Revenue Service, is not required to report the following specified foreign financial assets:

(1) A financial account maintained by a financial institution organized under the laws of the U.S. possession of which the specified individual is a bona fide resident;

(2) A financial account maintained by a branch of a financial institution not organized under the laws of the U.S. possession of which the specified individual is a bona fide resident, if the branch is subject to the same tax and information reporting requirements applicable to a financial institution organized under the laws of the U.S. possession;

(3) Stock or securities issued by an entity organized under the laws of the U.S. possession of which the specified individual is a bona fide resident;

(4) An interest in an entity organized under the laws of the U.S. possession of which the specified individual is a bona fide resident; and

(5) A financial instrument or contract held for investment, provided each issuer or counterparty that is not a United States person is—

(i) An entity organized under the laws of the U.S. possession of which the specified individual is a bona fide resident; or

(ii) A bona fide resident of the U.S. possession of which the specified individual is a bona fide resident.

(d) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D-7T [Removed]

■ **Par. 17.** Section 1.6038D-7T is removed.

■ **Par. 18.** Section 1.6038D-8 is added to read as follows:

§ 1.6038D-8 Penalties for failure to disclose.

(a) *In general.* If a specified person fails to file a Form 8938, "Statement of Specified Foreign Financial Assets," that includes the information required by section 6038D(c) and § 1.6038D-4 with respect to any taxable year at the time and in the manner described in section 6038D(a) and § 1.6038D-2, a penalty of \$10,000 will apply to that specified person.

(b) *Married specified individuals filing a joint annual return.* Married specified individuals who file a joint annual return and fail to file a required Form 8938 that includes the information required by section 6038D(c) and § 1.6038D-4 with respect to any taxable year at the time and in the manner described in section 6038D(a) and § 1.6038D-2 are subject to penalties under this section as if the married specified individuals are a single specified individual. The liability of married specified individuals who file a joint annual return with respect to any penalties under this section is joint and several.

(c) *Increase in penalty.* If any failure to comply with the applicable reporting requirement of section 6038D and the regulations continues for more than 90 days after the day on which the Commissioner or his delegate mails a notice of the failure to the specified person required to file the Form 8938, the specified person is required to pay an additional penalty of \$10,000 for each 30-day period (or fraction thereof) during which the failure continues after the 90-day period has expired. The additional penalty imposed by section 6038D(d)(2) and this paragraph (c) is limited to a maximum of \$50,000 for each such failure.

(d) *Presumption of aggregate value.* For the purpose of assessing penalties imposed under section 6038D(d), if the Commissioner or his delegate determines that a specified person has an interest in one or more specified foreign financial assets and the specified person does not provide sufficient information to demonstrate the aggregate value of the assets upon request by the Commissioner or his delegate, then the aggregate value of the assets is treated as being in excess of the applicable reporting threshold set forth in § 1.6038D-2(a).

(e) *Reasonable cause exception—(1) In general.* If the failure to report the

information required in section 6038D(c) and § 1.6038D-4 is shown to be due to reasonable cause and not due to willful neglect, no penalty will be imposed under section 6038D(d) or this section.

(2) *Affirmative showing required.* In order to show that the failure to report the information required in section 6038D(c) and § 1.6038D-4 is due to reasonable cause and not due to willful neglect for purposes of section 6038D(g) and this section, the specified person must make an affirmative showing of all the facts alleged as reasonable cause for the failure to disclose.

(3) *Facts and circumstances taken into account.* The determination of whether a failure to disclose a specified foreign financial asset on Form 8938 was due to reasonable cause and not due to willful neglect is made on a case-by-case basis, taking into account all pertinent facts and circumstances. The fact that a foreign jurisdiction would impose a civil or criminal penalty on the specified person (or any other person) for disclosing the required information is not reasonable cause.

(f) *Penalties for underpayments attributable to undisclosed foreign financial assets—(1) Accuracy-related penalty.* For application of the accuracy-related penalty in the case of any portion of an underpayment attributable to any undisclosed foreign financial asset understatement, see section 6662(j).

(2) *Criminal penalties.* In addition to other penalties, failure to comply with the reporting requirements of section 6038D and the regulations, or any underpayment related to such failure, may result in criminal penalties under sections 7201, 7203, 7206, *et seq.*, or other provisions of Federal law.

(g) *Effective/applicability dates.* This section applies to taxable years ending after December 19, 2011. Taxpayers may elect to apply the rules of this section to taxable years ending prior to December 19, 2011.

§ 1.6038D-8T [Removed]

■ **Par. 19.** Section 1.6038D-8T is removed.

John Dalrymple,
Deputy Commissioner for Services and Enforcement.

Approved: December 4, 2014.

Mark J. Mazur,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014-29125 Filed 12-11-14; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Bureau of Ocean Energy Management****30 CFR Part 553**

[Docket ID: BOEM-2012-0076]

RIN 1010-AD87

Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Final rule.

SUMMARY: The Oil Pollution Act of 1990 (OPA) establishes a comprehensive regime for addressing the consequences of oil spills, ranging from spill response to compensation for damages to injured parties. Other than deepwater ports subject to the Deepwater Port Act of 1974, the Bureau of Ocean Energy Management (BOEM) is authorized to adjust the limit of liability in OPA for offshore facilities, including pipelines. This rule amends BOEM's regulations to add to the regulations on Oil Spill Financial Responsibility (OSFR) for offshore facilities in order to increase the limit of liability for damages caused by the responsible party for an offshore facility from which oil is discharged, or which poses the substantial threat of an oil discharge, as described in OPA. This rule adjusts the limit of liability to reflect the significant increase in the Consumer Price Index (CPI) that has taken place since 1990. It also establishes a methodology for BOEM to use to periodically adjust the OPA offshore facility limit of liability for inflation. BOEM is hereby increasing the limit of liability for damages under OPA from \$75 million to \$133.65 million.

DATES: This final rule is effective January 12, 2015.

FOR FURTHER INFORMATION CONTACT:

Peter Meffert, Office of Policy, Regulations and Analysis (OPRA), Bureau of Ocean Energy Management, Department of the Interior, at 381 Elden Street, MS-4050 Herndon, Virginia 20170-4817 at (703) 787-1610, or email at peter.meffert@boem.gov. Questions related to the limit of liability or the adjustment process should be directed to Dr. Marshall Rose, Chief, Economics Division, Office of Strategic Resources, Bureau of Ocean Energy Management, at 381 Elden Street, MS-4050 Herndon, Virginia 20170-4817 at (703) 787-1538, or email at marshall.rose@boem.gov.

SUPPLEMENTARY INFORMATION:

Introduction

OPA requires inflation adjustments to the offshore facility limit of liability not less than every three years to reflect significant increases in the CPI. 33 U.S.C. 2704(d)(4). This requirement is to preserve the deterrent effect and “polluter pays” principle embodied in the OPA Title I liability and compensation provisions.

On February 24, 2014, BOEM published a proposed rule to increase the OPA offshore facility limit of liability to \$133.65 million and establish the methodology for future inflation adjustments (79 FR 10056). The rulemaking comment period initially closed on March 26, 2014. Various groups requested additional time to review and analyze the implications of this proposed rule and BOEM extended the comment period by an additional 30 days (79 FR 15275) which closed on April 25, 2014.

Of the public comments received, all were generally supportive of the proposed rule. Also, one offered an alternative CPI adjustment. BOEM has posted all comments received in the docket [BOEM–2012–0076] for this rulemaking at www.regulations.gov.

Background

In general, under Title I of OPA, the responsible parties for any vessel or facility, including any offshore facility that discharges or poses a substantial threat of discharge of oil into or upon navigable waters, adjoining shorelines, or the exclusive economic zone, are liable for the OPA removal costs and damages that result from such incident (as specified in 33 U.S.C. 2702(a) and (b)). Under 33 U.S.C. 2704(a), however, the total liability of the responsible parties is limited (with certain exceptions specified in 33 U.S.C. 2704(c)). In instances when the OPA liability limit applies, the Oil Spill Liability Trust Fund (OSLTF) is available to compensate claimants for damages in excess of the liability limit and to reimburse responsible parties for damages that they pay for that are in excess of the liability limit, as provided in 33 U.S.C. 2708, 2712(a)(4), and 2713. The OPA at 33 U.S.C. 2704(a)(3) provides that responsible parties for an offshore facility incident are liable for “the total of all removal costs plus \$75,000,000.” The \$75 million limit of liability only applies to damages covered by OPA.

To prevent the real value of the amount of liability authorized by OPA from declining over time as a result of inflation, and shifting the financial risk of oil spill incidents to the OSLTF, OPA

(33 U.S.C. 2704(d)(4), requires that the President adjust the limit of liability” not less than every three years,” by regulation, to reflect significant increases in the CPI. This mandate has been in place since 1990.

Executive Order 12777, as amended, delegates the implementation of the President’s OPA limit of liability inflation adjustment authority, dividing the responsibility among several Federal agencies. Among those delegations, section 4 of Executive Order 12777 vests the Secretary of the Interior (DOI) with authority to adjust the limit of liability for “offshore facilities, including associated pipelines, other than deepwater ports subject to the [Deepwater Port Act of 1974]” for inflation. Under Secretarial Order 3299, BOEM exercises this authority on behalf of DOI. In addition, section 4 of Executive Order 12777, as amended and in relevant part, vests in the Secretary of the Department in which the Coast Guard is operating the President’s authority to adjust for inflation the OPA limits of liability for vessels and deepwater ports (including associated pipelines), and the statutory limit of liability for onshore facilities. This authority has been redelegated by the Secretary of Homeland Security to the Coast Guard.

Regulatory History

On July 1, 2009, following substantial coordination with DOI, the Environmental Protection Agency and the Department of Transportation to achieve consistent approaches to the inflation adjustment mandate, the Coast Guard published an Interim Final Rule With Request For Comments (IFR) (74 FR 31357), implementing the first set of regulatory inflation adjustments to the limits of liability for vessels and deepwater ports, and establishing the methodology the Coast Guard will use for future inflation adjustments to the limits of liability for its delegated source categories. (See 33 CFR 138.240. See also, Notice of Final Rulemaking, 73 FR 54997 (September 24, 2008), and Final Rule, 75 FR 750 (January 6, 2010)).

As described in the preamble to the Coast Guard’s IFR, DOI and other agencies with delegated authority for adjusting the OPA liability limits agreed to follow the Coast Guard’s inflation adjustment methodology. BOEM has coordinated with the Coast Guard on the inflation adjustments to the OPA liability limit in this rulemaking.

BOEM published its proposed rule to increase the OPA offshore facility limit of liability on February 24, 2014 (79 FR 10056). The comment period closed on April 25, 2014. This final rule increases

the offshore facility limit of liability for OPA damages to \$133.65 million and establishes the methodology for future inflation adjustments, which generally follows the Coast Guard’s approach.

Offshore Facility Limit of Liability

This rule implements the first mandated adjustment, under 33 U.S.C. 2704(d)(4), to the OPA limit of liability for damages for offshore facilities to reflect significant increases in the CPI. This rule also establishes a methodology for making inflation adjustments to the OPA limit of liability for offshore facilities. To ensure maximum consistency in promulgating rules for CPI adjustments to the OPA limit of liability, the approach used by BOEM follows, in most respects, the inflation adjustment approach used by the Coast Guard in its 2009 CPI rulemaking that adjusted the limits of liability for vessels and deepwater ports. That approach, found at 33 CFR part 138, subpart B, went through a full notice and comment rulemaking and received no adverse comments.

Offshore facilities are unique among the vessels and facilities covered under OPA. The OPA, at 33 U.S.C. 2704(a), assigns unlimited liability to the responsible parties for removal costs resulting from an offshore facility oil spill incident, and only limits their liability for the damages that result from such a spill and that are covered by OPA. This rulemaking adjusts the offshore facility limit of liability for OPA damages to \$133.65 million. Under OPA, the responsible parties’ liability for removal costs resulting from an offshore facility oil spill incident remains unlimited.

Oil Spill Financial Responsibility Requirements Are Not Affected by This Rulemaking

This rulemaking does not affect the level of oil spill financial responsibility (OSFR) coverage (found in 33 U.S.C. 2716(c), and 30 CFR 553.13) that responsible parties must demonstrate for covered offshore facilities (COFs) under subparts B through E in the regulations at 30 CFR part 553.

The OPA offshore facility limit of liability applies to more facilities than are covered by the OSFR requirement. The limit of liability for offshore facilities applies to all offshore facilities (other than deepwater ports), while OSFR coverage is required only for offshore facilities (other than deepwater ports) located seaward of the coastline, or in any portion of a bay connected to the sea generally, with a worst case oil discharge potential of more than 1,000 barrels and meeting other specific

criteria in the definition of COF found in 30 CFR 553.3.

The OSFR coverage levels are specified at 33 U.S.C. 2716 and are not tied to the offshore facility limit of liability and, therefore, are not affected by the inflation adjustments required under OPA at 33 U.S.C. 2704(d)(4). The OSFR coverage provisions of OPA establish minimum and maximum coverage amounts for any activity involving a COF. The OSFR coverage amounts are found in OPA at 33 U.S.C. 2716(c) and in the regulations at 30 CFR 553.13.

Unlike the evidence of financial responsibility requirements applicable to vessels and deepwater ports, which are administered by the Coast Guard and are directly tied to the applicable CPI-adjusted limits of liability, OSFR coverage requirements are not directly tied to, and their levels do not automatically increase with changes in, the offshore facility limit of liability. OPA does not authorize an OSFR increase based solely on an increase in the limit of liability for offshore facilities occasioned by CPI adjustments. Rather, as stated in 33 U.S.C. 2716(c)(1)(C), any adjustment to the required OSFR coverage amount must be separately “justified based on the relative operational, environmental, human health, and other risks posed by the quantity or quality of oil that is explored for, drilled for, produced, or transported by the responsible party”

BOEM specifically requested comments on any potential OSFR insurance underwriter premium increases. We received no comments related to OSFR insurance premiums during the proposed rule comment period.

Additional Regulatory Changes in 30 CFR Part 553

Section 553.1 of this rule, consistent with the proposed rule, expands the purpose section to include adjusting the limit of liability. In section 553.3, the final rule also adds, consistent with the proposed rule, the following three new definitions to facilitate the implementation of the inflation adjustment process: *Annual CPI-U*, *Current Period*, and *Previous Period*. It also adds a new definition for *Responsible Party*, in the context of Subpart G.

Discussion of This Rule

I. Explanation of the CPI Adjustment to the Offshore Facility Limit of Liability for Damages

This rule implements the first adjustment, mandated by 33 U.S.C.

2704(d)(4), to the OPA limit of liability for damages caused by the responsible party for a facility from which oil is discharged, or which poses the substantial threat of a discharge from offshore facilities other than deepwater ports to reflect significant increases in the CPI. This rule also establishes the methodology that BOEM will use to make periodic CPI adjustments to the OPA offshore facility limit of liability for damages. These provisions are encompassed in a new 30 CFR part 553 subpart G.

1. How will BOEM calculate CPI adjustments to the limit of liability for offshore facilities?

BOEM will calculate the new limit of liability for the offshore facility source category using the following formula: New limit of liability = Previous limit of liability + (Previous limit of liability multiplied by the decimal equivalent of the percent change in the CPI from the year the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later, to the present year), then rounded to the closest \$100.

2. Which CPI will BOEM use?

The Bureau of Labor Statistics (BLS) publishes a variety of inflation indices, including the “Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84 = 100,” also known as “CPI-U,” for both monthly and annual periods. Consistent with the Coast Guard regulations at 30 CFR 138.240, BOEM will use CPI-U values, which may be viewed on the BLS Web site at: <http://www.bls.gov/cpi/cpifiles/cpiui.txt>. For consistency with the Coast Guard’s limits of liability CPI adjustment rule, BOEM will use the annual period CPI-U (hereinafter the “Annual CPI-U”), rather than the monthly period CPI-U.

3. How will BOEM calculate the percent change in the Annual CPI-U?

Consistent with the Coast Guard’s inflation adjustment methodology, BOEM will calculate the percent change in the Annual CPI-U using the BLS escalation formula described in Fact Sheet 00–1, U.S. Department of Labor Program Highlights, “How to Use the Consumer Price Index for Escalation,” September 2000. This formula provides that: Percent change in the Annual CPI-U = [(Annual CPI-U for Current Period—Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] × 100. Fact Sheet 00–1 is available from the BLS online at <http://www.bls.gov/cpi/cpi1998d.pdf>.

4. Which Annual CPI-U “Previous Period” and “Current Period” will BOEM use for its first inflation adjustment to the offshore facility limit of liability?

To maintain the real value of the amount of liability authorized by OPA for damages, as contemplated in the original OPA mandate that directed the limit of liability be adjusted for the CPI, BOEM will use a “Previous Period” of 1990, the year OPA was enacted. For the “Current Period,” BOEM will use the most recently published Annual CPI-U (see 30 CFR 553.703(a)). The latter is consistent with the Coast Guard’s OPA limits of liability rule at 30 CFR 138.240 for vessels and deep water ports.

For the calculations in this rule, BOEM has used the 2013 Annual CPI-U, published on January 16, 2014. Future updates will proceed on a 3-year schedule, as provided in 30 CFR 553.703.

5. How has BOEM calculated the adjustment to the limit of liability and what is the new limit?

The following illustrates how BOEM will apply the BLS escalation formula to calculate the decimal equivalent of the percent change in the Annual CPI-U to adjust the limit of liability for offshore facilities. The Annual CPI-U (index base period (1982–84 = 100)) for Current Period (2013): 232.957 – Annual CPI-U for Previous Period (1990): 130.7 = an index point change: 102.257 ÷ Annual CPI-U for Previous Period: 130.7 = 0.782; result multiplied by 100: 0.782 × 100 = percent change in the Annual CPI-U of 78.2 percent. Note that the cumulative percent change value is rounded to one decimal place as provided in § 553.703.

The “Current Period” value for this methodology is the Annual CPI-U for the previous calendar year, due to the BLS Annual CPI-U publication schedule.

Applying these values, this final rule adjusts the statutory offshore facility limit of liability for OPA damages of \$75 million by the 78.2 percent increase in the Consumer Price Index Annual (CPI-U) that has taken place since 1990, to \$133,650,000.

6. How will BOEM calculate the percent change for subsequent inflation adjustments to the OPA limit of liability for offshore facilities?

This rule establishes the adjustment methodology BOEM will use for subsequent CPI adjustments to the OPA limit of liability for offshore facilities. Key features for the future inflation adjustments to the limit of liability include:

- BOEM plans to publish, through a final rule in the **Federal Register**, the inflation adjustments to the limit of liability for offshore facilities every three years, counting from 2014 with this rulemaking, provided that the threshold for a significant increase in the Annual CPI-U is met. A three percent or more change constitutes the significant increase threshold. The current adjustment uses the 2013 Annual CPI-U for the “Current Period.”

- BOEM has discretion to adjust the offshore facility limit of liability more frequently than every three years, by regulation, to reflect significant increases in the CPI.

- If Congress amends the limit of liability for offshore facilities, BOEM will calculate the Annual CPI-U change with the “Previous Period” beginning with the year in which Congress amends the limit of liability. Otherwise we will calculate the percent change in the CPI-U for the next CPI adjustment to the offshore facility limit using the 2013 Annual CPI-U (the “Current Period” for today’s adjustment to the limit of liability) as the “Previous Period” value.

- BOEM will evaluate whether the cumulative percent change in the Annual CPI-U since the last adjustment has exceeded three percent no later than 2017 (using the 2016 Annual CPI-U as the “Current Period”). If the change is three percent or greater, BOEM will publish a final rule in the **Federal Register** with the new inflation-adjusted offshore facility limit of liability. If, by the end of the three-year period, the cumulative percent change in the Annual CPI-U is less than three percent, BOEM will publish a notice in the **Federal Register** of no inflation adjustment to the limit of liability.

- Following a notice of no inflation adjustment, BOEM will evaluate the cumulative percent change in the Annual CPI-U annually and adjust the limit based on the cumulative percent change in the Annual CPI-U, once the three-percent threshold is reached. After this adjustment is made, BOEM will resume its process of conducting a review every three years.

7. How will BOEM provide public notice for the offshore facility limit of liability adjustments?

BOEM will publish subsequent CPI or statutory adjustments to the offshore facility limit of liability for damages in a final rule in the **Federal Register**. A final rule will provide for timely notice of the CPI adjustments and will keep the offshore facility limit of liability amount current in BOEM regulations.

II. Additional Changes to 30 CFR Part 553

1. Update to Section 553.1 (What is the purpose of this part?)

Consistent with the proposed rule, BOEM is making the following changes to 30 CFR part 553, setting forth the limit of liability for offshore facilities under OPA.

2. Definition Changes for Terms Found at 30 CFR 553.3 (“How are the terms used in this regulation defined?”)

BOEM is adding the following definitions to 30 CFR 553.3: *Annual CPI-U, current period, previous period and Responsible party for purposes of Subpart G.*

Changes Made Between the Proposed Rule and This Final Rule

The proposed rule would have revised the definition of “responsible party” in the existing regulation at 30 CFR 553.3, which addresses the party’s responsibilities for COFs under the OSFR program. While the existing definition of “responsible party” adequately addresses the needs of the OSFR program, it does not contemplate the broader range of facilities that are covered by the limit of liability for offshore facilities under OPA at 33 U.S.C. 2704. In the context of OPA liability, a responsible party’s liability is not limited to damages or removal costs associated with a COF. In this final rule, the new definition of “responsible party” for the limit of liability for offshore facilities in subpart G now makes clear that it also applies to all offshore facilities, whether the facilities are COFs (subject to the financial responsibility requirements of subparts A through F), or not, while the existing definition of “responsible party” for OSFR remains unchanged.

Further, BOEM has removed the following sentence from the definition of “responsible party” that appeared in the notice of proposed rulemaking: “The owner of operating rights in a lease is a responsible party with respect to facilities that serve or served an area and depth in which it holds operating rights, but not with respect to any facility that only serves parts of the lease to which it does not hold operating rights.” A lessee of the area in which the facility is located is a responsible party under OPA at sec. 2701(32)(C). The definition of “responsible party” in both the proposed rule and in this final rule includes lessees as responsible parties. BOEM’s definition of “lessee” in its existing regulation at 30 CFR 553.3 (which is not changed by this final rule)

includes a holder of operating rights (working interest owner). Therefore, when read together, the definition of “responsible party” without the described sentence and the definition of “lessee” hold operating rights owners responsible, making this sentence unnecessary. To reinforce this connection between the definitions, BOEM has added a phrase in the second sentence of the definition of “responsible party for purposes of Subpart G” to expressly state that a responsible party includes lessees “as defined in this subpart.”

Response to Comments

BOEM published a proposed rule entitled, “Consumer Price Index Adjustments of the Oil Pollution Act of 1990 Limit of Liability for Offshore Facilities” in the **Federal Register** on February 24, 2014, with a 30 day request for comment period. The comment period was extended by an additional 30 days on March 26, 2014. The comment period ended on April 25, 2014. BOEM received a number of comment letters from interested stakeholders, and carefully considered them prior to finalizing the rulemaking.

Sixteen distinct written comments, eight from organizations and eight from individuals, were submitted regarding the proposed rule. Of the organizations, BOEM received three comments from industry/trade associations, one from a charitable trust, and the four remaining comments, submitted on behalf of a total of 17 organizations, were from environmental organizations. None of the comments that BOEM received expressed any opposition to the proposed increase in the limit of liability for offshore facilities.

One company, ConocoPhillips, supported the rule as proposed; while other industry organizations, the Independent Petroleum Association of America and the National Ocean Industries Association took no position on the proposed rule. The Pew Charitable Trust, the Gulf Restoration Network, the Ocean Conservancy, and five of the individual commenters supported the rule as proposed.

The Alaska Wilderness League, the Center for Biological Diversity (CBD), the Alaska Inter-Tribal Council, the Citizens’ Coalition to Ban Toxic Dispersants, Clean Ocean Action, Defenders of Wildlife, Friends of the Earth, Greenpeace, Hands Across the Sand, the Natural Resources Defense Council, the Northern Alaska Environmental Center, Oasis Earth, Ocean Conservation Research, Pacific Environment, and the Surfrider Foundation also supported the proposed

increase, but argued that the amount of increase is too small. The CBD suggested an alternative limit of between \$20 and \$50 billion.

With one exception, all of the comments expressed support for the proposed inflation index and

methodology, which BOEM proposed to use to adjust the limit of liability on an ongoing basis. BOEM received a comment suggesting the Chained CPI-U (C-CPI-U) be used instead of the standard CPI-U for adjusting the

offshore facility limit of liability. The commenter suggested that the C-CPI-U is a “closer approximation to a cost-of-living index” than the CPI-U.

Responses to those comments are contained in the table below.

Comment received	BOEM response
<p>Commenter Tupper suggested that BOEM should use a chained Consumer Price Index (C-CPI-U) instead of the CPI for All Urban Consumers (CPI-U).</p>	<p>That issue is addressed in detail at the end of this Section.</p>
<p>Commenter Tupper also suggested that the update methodology should include a mechanism for adjusting the limit for offshore facilities downward, as well as upward, to account for potential deflation, as well as inflation.</p>	<p>BOEM's authority to increase the financial responsibility requirements is limited to the circumstances and amount set forth in 33 U.S.C. 2716(c)(1)(C). The Oil Pollution Act does not have any provision to allow for downward revisions in the limits of liability for deflation. In addition to the statutory restriction, BOEM believes that the limit of liability is already potentially too low and that any downward adjustment would conflict with the goals of the statute. For these reasons, the adjustment formula is not revised to allow for downward adjustments in the limit of liability amount.</p>
<p>The CBD and its co-respondents suggested that BOEM “should also increase the financial responsibility requirements to ensure that companies in fact have the capability to meet the increased liability requirements”.</p>	<p>BOEM's authority to increase the financial responsibility requirements is limited to the circumstances and amount set forth in 33 U.S.C. 2716(c)(1)(C).</p>
<p>Commenter Dobkin suggested that the state and federal tax deductibility of payments made in connection with an oil spill be eliminated. Commenter Commeaux suggested that an automatic stop-work order be issued in the event of a spill.</p>	<p>Laws related to taxation are outside the scope of this rule and not within BOEM's authority to regulate. Stop work orders are outside the scope of this rule.</p>
<p>Commenter Commeaux also suggested that criminal penalties be implemented against those responsible for any spill.</p>	<p>Authority to invoke criminal penalties against those responsible for oil spills is outside the scope of this rule and not within BOEM or the DOI's authority to regulate.</p>
<p>Commenter Commeaux also implied that new or increased civil penalties be considered against those responsible for any spill.</p>	<p>Authority to impose or increase civil penalties against those responsible for oil spills is outside the scope of this rule and not within BOEM or the DOI's authority to regulate.</p>
<p>Commenter Donovan suggested that BOEM redefine the meaning of the word “expenditure” as used in the context of any oil spill. “. . . the proper definition of the term “expenditure,” under the OSLTF, means an expenditure that is not reimbursed by the responsible party.” Mr. Donovan explains why he believes this change would be appropriate: “The advantage of defining an expenditure, under the OSLTF, as “an expenditure that is not reimbursed by the responsible party,” is twofold: (a) It eliminates, without the need to pass retroactive legislation, the \$1 billion cap which may be paid from the OSLTF with respect to any single incident and allows the OSLTF to maintain a balance of at least \$1 billion for the purpose of paying claims for damages resulting from other oil spill incidents. As the OSLTF pool of \$1 billion is depleted by payments made to oil spill claimants, it is replenished, by virtue of subrogation, by reimbursements made to the OSLTF by the responsible party; and (b) It ensures that the cost of a catastrophic oil spill incident shall be borne by the responsible party, not the federal taxpayer”.</p>	<p>Interpreting the meaning of the word “expenditure,” as used in 26 U.S.C. 9509(c) (per incident cap on Oil Spill Liability Trust Funds (OSLTF) expenditures), is outside the scope of this rule and not within BOEM or the DOI's authority to regulate.</p>

The CPI-U measures prices of a base basket, which uses a single expenditure base period to compute the price change over time; in contrast, the C-CPI-U, which the commenter suggested, reflects the effect of any substitutions consumers make across item categories in response to relative price changes. BOEM is retaining the CPI-U for several reasons.

(a) The adjustment of the limit of liability addresses inflation since 1990 when the current offshore facility limit was established. The C-CPI-U was first published by Bureau of Labor Statistics (BLS) in 2002, with a historical series

dating back to 1999. The officially published C-CPI-U series from BLS does not extend back to 1990. Although it may be possible to join the published C-CPI-U with the older, non-chained CPI-U series or with data not included in the officially published C-CPI-U, such an adjustment would not represent an official BLS statistical series. Therefore, to ensure a consistent adjustment to reflect inflation, this rule uses the CPI-U.

(b) The CPI-U was the primary CPI measure at the time of the Delaware River Protection Act (DRPA) OPA amendments in 2006 (Pub. L. 109-241).

The DRPA amendments maintained the requirement of three year adjustments to “reflect significant increases in the Consumer price Index.” In addition, the C-CPI-U was available when DRPA amended the limits of liability adjustment provision of OPA, 33 U.S.C. 2704(d)(4), and Congress could have, but did not, require its use.

(c) The CPI-U is the most frequently used escalation variable in private sector collective bargaining agreements, rental contracts, and insurance policies with automatic inflation protection.

(d) Also, the U.S. Coast Guard uses the CPI-U for the OPA limit of liability

adjustments under its jurisdiction. Based on this and the three previous considerations, BOEM has concluded that the C-CPI-U does not provide a compelling advantage for more accurate price measurements of changes in potential liabilities under this rulemaking.

Summary of Changes to 30 CFR Part 553 by Subpart

Amendments to Subpart A

Changes to sections 553.1 and 553.3, as described above.

Amendments to Subpart B

None.

Amendments to Subpart C

None.

Amendments to Subpart D

None.

Amendments to Subpart E

None.

Amendments to Subpart F

None.

Addition of New Subpart G

New Subpart, as described above.

Legal and Regulatory Analyses

Presidential Executive Orders

E.O. 12630—Takings Implication Assessment

According to Executive Order 12630, this final rule does not have significant takings implications. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights. A Takings Implication Assessment is not required.

E.O. 12866—Regulatory Planning and Review

The Office of Management and Budget (OMB) has not reviewed this rulemaking under section 6(a)(3) of E.O. 12866. BOEM does not believe this rulemaking constitutes a “significant regulatory action” under E.O. 12866 based on the following:

(1) These provisions simply adjust the offshore facility limit of liability for damages by the CPI. This rule will likely not have an annual effect of \$100 million or more on the economy. It will likely also not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The new offshore facility limit of liability increases the pollution liability of offshore facility responsible parties and may result in increased costs if

damages exceed \$75 million. If damages from an offshore facility oil spill exceed \$75 million, the higher limit of liability (\$133.65 million) in this rule will impose greater nominal costs on the responsible parties. In constant 1990 dollars, the limit of liability for offshore facilities implemented by this final rule is the same as established in OPA and preserves the “polluter pays” principle. The infrequent occurrence of large oil spills from offshore facilities suggests that the compliance costs from this increase in the limit of liability are likely to be immaterial to the operating costs for offshore facility responsible parties over time.

(2) This final rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BOEM has coordinated with the Coast Guard and the Department of Justice on this rulemaking.

(3) This final rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This final rule does not raise any novel legal or policy issues. OPA requires the offshore facility limit of liability to be adjusted for inflation not less than every three years to reflect significant increases in the CPI.

E.O. 12988—Civil Justice Reform

This final rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

E.O. 13045—Protection of Children From Environmental Health Risks and Safety Risks

BOEM has analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and an analysis of environmental health risks is therefore not required. Regardless, this is an administrative rule and it does not create any environmental risk to health or any risk to safety that may disproportionately affect children.

E.O. 13132—Federalism

Under the criteria in E.O. 13132, this final rule does not have federalism implications. This final rule does not

have substantial direct effects on the relationship between the Federal and State governments. This final rule will not affect the role of State and local governments with respect to their offshore facility activities. A Federalism Assessment is not required.

E.O. 13175—Consultation and Coordination With Indian Tribal Governments

This final rule does not have tribal implications under E.O. 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. Under the criteria in E.O. 13175, we evaluated this final rule and determined that it has no substantial direct effects on federally recognized Indian tribes.

E.O. 13211—Effects on the Nation’s Energy Supply

BOEM has analyzed this final rule under E.O. 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.” BOEM has determined that it is not a “significant energy action” under that order. This final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

E.O. 13563—Improving Regulation and Regulatory Review

E.O. 13563 requires that our regulatory system protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. It must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

This E.O. is supplemental to and reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in E.O. 12866. As stated in that E.O., and to the extent permitted by law, each agency must, among other things: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive benefits; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information with which choices can be made by the public.

The increased offshore facility limit of liability for damages in this rulemaking is required by statute (OPA). This rulemaking does not amend the OSFR requirements in 30 CFR part 553. BOEM does not believe that OSFR insurance premiums will be significantly impacted by this rulemaking. BOEM solicited comments on that issue; however, no comments were received. The limit of liability increase is necessary to ensure that the deterrent effect and the “polluter pays” principle embodied in OPA’s liability provisions are preserved.

Clarity of this Regulation

E.O. 12866 (section 1(b)(2)), E.O. 12988 (section 3(b)(1)(B)), and, E.O. 13563 (section 1(a)), and the Presidential Memorandum of June 1, 1998, require that every agency write its rules in plain language. This means that, wherever possible, each rule must: (a) Have a logical organization; (b) use the active voice to address readers directly; (c) use common, everyday words, and clear language, rather than jargon; (d) use short sections and sentences; and (e) maximize the use of lists and tables.

With the issuance of the proposed rule, BOEM requested that any commenters that believed that it has not met these requirements should send

their comments to Peter Meffert at Peter.Meffert@boem.gov. To better help us revise the final rule, BOEM requested that your comments be as specific as possible. For example, BOEM asked whether any of the sections or the paragraphs were written unclearly, which sections or sentences were too long, what additional sections, lists or tables would be useful, etc. No comments were received on this topic. For that reason, BOEM has concluded that no changes in the clarity and organization of the rule are necessary.

Public Availability of Comments

All written comments that have been received in the docket [BOEM–2012–0076] for this rulemaking, including names and addresses of respondents, have been posted at www.regulations.gov.

Statutes

Data Quality Act

In developing this final rule, BOEM did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153 to 154).

National Environmental Policy Act (NEPA) of 1969

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEM has analyzed this final rule under the criteria of NEPA and DOI’s regulations implementing NEPA. This final rule meets the criteria set forth at 43 CFR 46.210(i) for a Departmental Categorical Exclusion in that this final rule is “. . . of an administrative, financial, legal, technical, or procedural nature . . .” BOEM also has analyzed this final rule to determine if it involves any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement, as set forth in 43 CFR 46.215, and concluded that this final rule would not involve any extraordinary circumstances.

Further, this final rule involves congressionally mandated regulations and there is no discretion in the agency to be informed by NEPA analysis.

National Technology Transfer and Advancement Act (NTTAA)

The NTTAA, Public Law 104–113 (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with

applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This final rule does not require the use of any technical specifications or standards and, therefore, the requirement to follow voluntary consensus standards does not apply to this rulemaking.

Paperwork Reduction Act (PRA) of 1995

This rule does not contain new information collection requirements that require approval by OMB under the PRA (44 U.S.C. 3501 *et seq.*). OMB has reviewed and approved the information collection requirements associated with 30 CFR 553 and assigned OMB Control Number 1010–0106, which expires December 31, 2016. BOEM may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Regulatory Flexibility Act (RFA)

DOI certifies that this final rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

The changes in this final rule will potentially affect all oil and gas lessees, operators of leases, holders or rights of use and easement, and pipeline right-of-way holders in the OCS and in State waters. The changes further may affect any operators of oil and gas facilities in other offshore locations, such as navigable rivers and lakes; however, the level of damages for inland water offshore facility incidents have historically been far below the statutory limit and are not likely to exceed the statutory limit of liability. Available information indicates that the changes would mainly affect about 170 active operators and owners on the OCS and State offshore waters. These approximately 170 operators and owners provide OSFR coverage for more than 7,800 OCS Right-of-Use and Easement (RUE) facilities, pipeline Rights-of-Way (ROWs), and leases (both with and without permanent facilities). Small lessees, ROW or RUE holders or operators that operate under this final rule primarily fall under the Small Business Administration’s North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, 213111, Drilling Oil and Gas Wells and

237120, Oil and Gas Pipeline and Related Structures. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, an estimated two-thirds of these companies are considered small. This final rule, therefore, will affect a substantial number of small entities, but it would not have a significant economic effect on those entities, since the OSFR thresholds are not being adjusted.

This final rule could impact certain OCS and other offshore operators and owners through negligibly higher insurance premiums. Most small entities do not self-insure, but rather share ownership with larger companies that provide them with OSFR coverage or else they obtain insurance for their OSFR obligations in the private marketplace. BOEM does not expect the 78.2 percent increase in the limit of liability to cause the OSFR insurance premiums to materially increase because of the very low anticipated frequency of claims and because each guarantor's or insurer's exposure is limited to the OSFR prescribed coverage limit of \$35 million or \$150 million. Any potential increased insurance premium should be relatively insignificant as compared to the considerable operational costs and liability risks associated with activities on the OCS. This is true for even the smallest of OCS and other offshore operators and owners. BOEM welcomed specific comments on any expected or potential corresponding OSFR premium increases that may occur because of the increased limit of liability or for some related reason. No such comments were received. For this reason, BOEM believes that its original assessment was correct that no such OSFR premium increases will necessarily occur as a result of this rulemaking.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually rate an agency's responsiveness to their comments and evaluate the enforcement activities. If you wish to comment on the actions of BOEM, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

Pursuant to section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), BOEM wants to assist small entities in understanding this final rule so that they can better evaluate its effects and participate in the rulemaking. If you believe that this final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marshall Rose, of the BOEM Economics Division, at the address in the Technical Information Section listed above.

This final rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule will not:

- Have an annual effect on the economy of \$100 million or more;
- Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The requirements of this rule will apply to all entities having oil and gas operations offshore, including in State waters.

Based on the maximum potential worst case oil spill discharge, approximately 110 of the 170 companies with covered offshore facilities are required to demonstrate OSFR coverage of \$70 million or less (see 30 CFR 553.13). These 110 companies will likely not experience any insurance premium increases because of the increased limit of liability, since the level of required OSFR is not impacted by the offshore limit of liability adjustment to \$133.65 million. Another five companies must demonstrate OSFR coverage of \$105 million. BOEM believes that these companies are unlikely to experience increased insurance premiums resulting from the increased offshore facility limit of liability, just as the few companies demonstrating the \$150 million in OSFR coverage that are not self-insured or guaranteed are unlikely to be affected by this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of BOEM, call 1-888-REG-FAIR (1-888-734-3247).

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector, of more than \$100 million per year. The final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

List of Subjects in 30 CFR Part 553

Administrative practice and procedure, Continental shelf, Economic analysis, Environmental impact statements, Environmental protection, Financial responsibility, Government contracts, Intergovernmental relations, Investigations, OCS, Oil and gas exploration, Oil pollution, Liability, Limit of liability, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Treasury securities.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, the Bureau of Ocean Energy Management amends 30 CFR part 553 as follows:

PART 553—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

- 1. Revise the authority citation for part 553 to read as follows:

Authority: 33 U.S.C. 2704, 2716; E.O. 12777, as amended.

- 2. Revise § 553.1 to read as follows:

§ 553.1 What is the purpose of this part?

This part establishes the requirements for demonstrating Oil Spill Financial Responsibility for covered offshore facilities (COF), sets forth the procedures for claims against COF guarantors, and sets forth the limit of liability for offshore facilities, as adjusted, under Title I of the Oil Pollution Act of 1990, as amended, 33 U.S.C. 2701 *et seq.* (OPA).

- 3. Amend § 553.3 by:
 - a. Adding in alphabetical order the definitions of “Annual CPI-U,”

“Current period,” and “Previous period;”

■ b. Revising the definition of “Responsible party” to read as follows:
§ 553.3 *How are the terms used in this regulation defined?*

§ 553.3 How are the terms used in this regulation defined?

* * * * *

Annual CPI-U means the annual “Consumer Price Index-All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All items, 1982 – 84 = 100,” published by the U.S. Department of Labor, Bureau of Labor Statistics.

* * * * *

Current period means the year in which the Annual CPI-U was most recently published by the U.S. Department of Labor, Bureau of Labor Statistics.

* * * * *

Previous period means the year in which the previous limit of liability was established, or last adjusted by statute or regulation, whichever is later.

Responsible party, for purposes of subparts B through F, has the following meanings:

(1) For a COF that is a pipeline, responsible party means any person owning or operating the pipeline;

(2) For a COF that is not a pipeline, responsible party means either the lessee or permittee of the area in which the COF is located, or the holder of a right-of-use and easement granted under applicable State law or the OCSLA (43 U.S.C. 1301–1356) for the area in which the COF is located (if the holder is a different person than the lessee or permittee). A Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body that as owner transfers possession and right to use the property to another person by lease, assignment, or permit is not a responsible party; and

(3) For an abandoned COF, responsible party means any person who would have been a responsible party for the COF immediately before abandonment.

Responsible party, for purposes of subpart G, has the meaning in 33 U.S.C. 2701(32)(C), (E) and (F). This definition includes, as applicable, lessees as defined in this subpart, permittees, right-of-use and easement holders, and pipeline owners and operators.

* * * * *

■ 4. Add a new subpart G to part 553 to read as follows:

Subpart G—Limit of Liability for Offshore Facilities

Sec.

553.700 What is the scope of this subpart?

553.701 To which entities does this subpart apply?

553.702 What limit of liability applies to my offshore facility?

553.703 What is the procedure for calculating the limit of liability adjustment for inflation?

553.704 How will BOEM publish the offshore facility limit of liability adjustment?

§ 553.700 What is the scope of this subpart?

This subpart sets forth the limit of liability for damages for offshore facilities under Title I of the Oil Pollution Act of 1990, as amended (33 U.S.C. 2701 *et seq.*) (OPA), as adjusted, under section 1004(d) of OPA (33 U.S.C. 2704(d)). This subpart also sets forth the method for adjusting the limit of liability for damages for offshore facilities for inflation, by regulation, under section 1004(d) of OPA (33 U.S.C. 2704(d)).

§ 553.701 To which entities does this subpart apply?

This subpart applies to you if you are a responsible party for an offshore facility, other than a deepwater port under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524), but including an offshore pipeline, or an abandoned offshore facility, including any abandoned offshore pipeline, unless your liability is unlimited under OPA 90 (33 U.S.C. 2704(c)).

§ 553.702 What limit of liability applies to my offshore facility?

Except as provided in 33 U.S.C. 2704(c), the limit of liability under OPA for a responsible party for any offshore facility, including any offshore pipeline, is the total of all removal costs plus \$133.65 million for damages with respect to each incident.

§ 553.703 What is the procedure for calculating the limit of liability adjustment for inflation?

The procedure for calculating limit of liability adjustments for inflation is as follows:

(a) *Formula for calculating a cumulative percent change in the Annual CPI-U.* BOEM calculates the cumulative percent change in the Annual CPI-U from the year the limit of liability was established by statute, or last adjusted by regulation, whichever is later (*i.e.*, the Previous Period), to the year in which the Annual CPI-U is most recently published (*i.e.*, the Current Period), using the following formula:

Percent change in the Annual CPI-U = [(Annual CPI-U for Current Period – Annual CPI-U for Previous Period) ÷ Annual CPI-U for Previous Period] × 100. This cumulative percent change value is rounded to one decimal place.

(b) *Significance threshold.*

(1) A cumulative increase in the Annual CPI-U equal to three percent or more constitutes a significant increase in the Consumer Price Index within the meaning of 33 U.S.C. 2704(d)(4).

(2) Not later than every three years from the year the limit of liability was last adjusted for inflation, BOEM will evaluate whether the cumulative percent change in the Annual CPI-U since that year has reached a significance threshold of three percent or greater.

(3) For any three-year period evaluated under paragraph (b)(2) of this section in which the cumulative percent increase in the Annual CPI-U is less than three percent, if BOEM has not issued an inflation adjustment during that period, BOEM will publish a notice of no inflation adjustment to the offshore facility limit of liability for damages in the **Federal Register**.

(4) Once the three-percent threshold is reached, BOEM will increase by final rule the offshore facility limit of liability for damages in § 553.702 by an amount equal to the cumulative percent change in the Annual CPI-U from the year the limit was established by statute, or last adjusted by regulation, whichever is later. After this adjustment is made, BOEM will resume its process of conducting a review every three years.

(5) Nothing in this section will prevent BOEM, in BOEM's sole discretion, from adjusting the offshore facility limit of liability for damages for inflation by regulation issued more frequently than every three years.

(c) *Formula for calculating inflation adjustments.* BOEM calculates adjustments to the offshore facility limit of liability in 30 CFR 553.702 for inflation using the following formula:

New limit of liability = Previous limit of liability + (Previous limit of liability × the decimal equivalent of the percent change in the Annual CPI-U calculated under paragraph (a) of this section), then rounded to the closest \$100.

§ 553.704 How will BOEM publish the offshore facility limit of liability adjustment?

BOEM will publish the inflation-adjusted limit of liability, and any statutory amendments to that limit of liability in the **Federal Register**, as amendments to § 553.702. Updates to the limit of liability under this section are effective on the 90th day after

publication in the **Federal Register** of the amendments to § 553.702, unless otherwise specified by statute (in the event of a statutory amendment to the limit of liability), or in the **Federal Register** rule amending § 553.702.

[FR Doc. 2014–29093 Filed 12–11–14; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AB24

Federal Government Participation in the Automated Clearing House

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Final rule; technical correction.

SUMMARY: This document corrects a technical error that appeared in the July 24, 2014 amendments to our regulation governing the use of the Automated Clearing House (ACH) network by Federal agencies.

DATES: This technical correction is effective December 12, 2014.

FOR FURTHER INFORMATION CONTACT: Ian Macoy, Director, Settlement Services Division, at (202) 874–6835 or ian.macoy@fiscal.treasury.gov or Natalie H. Diana, Senior Counsel, at (202) 874–6680 or natalie.diana@fiscal.treasury.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 2014, the Bureau of the Fiscal Service (Service) published a final rule in the **Federal Register** (79 *FR* 42974) to amend our regulation at 31 CFR part 210 (Part 210) governing the use of the ACH network by Federal agencies. Among the revisions to Part 210 that were published in the final rule were several non-substantive changes to § 210.8(b) to reflect the re-numbering of the NACHA Rules and the updated citation to the Consumer Financial Protection Bureau's Regulation E. In revising § 210.8(b), subparagraphs (1) and (2) of paragraph (b) were inadvertently omitted due to a drafting error.

Description of Correction

This action corrects the omission of paragraphs (b)(1) and (2) from § 210.8(b). In the section-by-section analysis of the final rule preamble published on July 24, 2014, the Service stated that the changes to § 210.8 consisted of the replacement of specific

ACH Rules references to reflect re-numbering of the ACH Rules and the updating of the regulatory citation to Regulation E to reflect its re-codification at 12 CFR part 1005. There was no indication in the section-by-section analysis or discussion elsewhere in the preamble of the deletion of subparagraphs (1) and (2), which have no relation to the reasons for the technical revisions to § 210.8, *i.e.*, the re-numbering of the ACH Rules and the re-codification of Regulation E. Similarly, there was no proposal to make any substantive change to § 210.8 in the preamble or section-by-section analysis of the Service's notice of proposed rulemaking to amend Part 210, which was published on December 12, 2013 (78 *FR* 75528). Subparagraphs (1) and (2) were omitted by error from the final rule purely due to a drafting error in which the text of the subparagraphs was not included in the amendatory instructions to § 210.8(b).

Procedural Matters

Section 553 of the Administrative Procedure Act (APA) (5 *U.S.C.* 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, and provides a statement of the reasons for that finding, the agency may issue a final rule without providing notice and an opportunity for public comment. The APA also generally requires that a final rule be effective no sooner than 30 days after the date of publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds good cause why the effective date should not be delayed, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The Service finds that there is good cause, and that it would be contrary to the public interest and unnecessary, to undertake notice and comment procedures to make this technical correction. As discussed above, the preamble and the section-by-section analysis to both the notice of proposed rulemaking and the final rule amendments correctly refer to and discuss the substance of the section affected by this technical correction. The Service is also waiving the 30-day delay in effective date for this correction. We believe that it is in the public interest to ensure that the correction be made as expeditiously as possible to avoid confusion. Therefore, we find that delaying the effective date of this correction would be contrary to the public interest and we find good

cause to waive the 30-day delay in the effective date.

This document is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review.

The Regulatory Flexibility Act (RFA) (5 *U.S.C.* 601 *et seq.*) 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 impact on a substantial number of small entities. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act do not apply.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Words of Issuance

Accordingly, 31 CFR part 210 is corrected by making the following correcting amendments:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

- 1. The authority citation for part 210 continues to read as follows:

Authority: 5 *U.S.C.* 5525; 12 *U.S.C.* 391; 31 *U.S.C.* 321, 3301, 3302, 3321, 3332, 3335, and 3720.

- 2. Amend § 210.8 by revising paragraph (b) to read as follows:

§ 210.8 Financial institutions.

* * * * *

(b) *Liability.* Notwithstanding ACH Rules Subsections 2.4.4, 2.8.4, 4.8.5, 2.9.2, 3.2.2, and 3.13.3, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section. A financial institution shall not be liable to any third party for any loss or damage resulting directly or indirectly from an agency's error or omission in originating an entry. Nothing in this section shall affect any obligation or liability of a financial institution under Regulation E, 12 CFR part 1005, or the Electronic Funds Transfer Act, 12 *U.S.C.* 1693 *et seq.*

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated

authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the ODFI's account at the Federal Reserve Bank of the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury General Account (TGA) was debited to the day the TGA is credited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization. An RDFI that transmits to an agency an authorization containing an incorrect account number shall be liable to the Federal Government for any resulting loss, up to the amount of the payment(s) made on the basis of the incorrect number. If an agency determines, after appropriate investigation, that a loss has occurred because an RDFI transmitted an authorization or notification of change containing an incorrect account number, the agency may instruct the Service to direct a Federal Reserve Bank to debit the RDFI's account for the amount of the payment(s) made on the basis of the incorrect number. The agency shall notify the RDFI of the results of its investigation and provide the RDFI with a reasonable opportunity to respond before initiating such a debit.

* * * * *

Dated: December 9, 2014.

Margaret Marquette,
Chief Counsel, Bureau of the Fiscal Service.
[FR Doc. 2014-29198 Filed 12-11-14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0875]

Drawbridge Operation Regulation; Mississippi River, Clinton, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Clinton Railroad Drawbridge, across the Upper

Mississippi River, mile 518.0, at Clinton, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter when there is less impact on navigation; instead of scheduling work in the summer, when river traffic increases. This deviation allows the bridge to open on signal if at least 24-hours advance notice is given. It further allows the bridge to open on signal if at least 72-hours advance notice is given from January 5, 2015 to February 13, 2015.

DATES: This deviation is effective from 5 p.m., December 15, 2014 until 9 a.m., March 1, 2015.

ADDRESSES: The docket for this deviation, (USCG-2014-0875) is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, email Eric.Washburn@uscg.mil. If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad requested a temporary deviation for the Clinton Railroad Drawbridge, across the Upper Mississippi River, mile 518.0, at Clinton, Iowa to open on signal if at least 24-hours advance notice is given for 76 days from 5 p.m., December 15, 2014 to 9 a.m., March 1, 2015 for scheduled maintenance on the bridge. The deviation further allows the bridge to open on signal if at least 72-hours advance notice from 8 a.m. January 5, 2015 until 5 p.m. February 13, 2015.

The Clinton Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridge shall open on signal.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the

closure of Army Corps of Engineer's Lock No. 17 (Mile 437.1 UMR) and Lock No. 20 (Mile 343.2 UMR) from 7 a.m. January 5, 2015 until 12 p.m., March 6, 2015 will preclude any significant navigation demands for the drawspan opening. In addition, Army Corps Lock No. 12 (Mile 556.7 UMR) and Lock No. 13 (Mile 522.5 UMR) will be closed from 7:30 a.m., December 15, 2014 until 11 a.m. March 4, 2015.

The Clinton Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 18.7 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft and will not be significantly impacted. This temporary deviation has been coordinated with waterway users and will not be significantly impacted. No objections were received.

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

Dated: November 25, 2014.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2014-29212 Filed 12-11-14; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-TX-0002; FRL-9920-34-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Repeal of Lead Emission Rules for Stationary Sources in El Paso and Dallas County

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 State Implementation Plan (SIP) for Texas which repeals lead emission rules which cover stationary sources in El Paso and Dallas county that are no longer in existence. This action is being taken under section 110(k) and part D of the Clean Air Act (CAA).

DATES: This rule is effective on February 10, 2015 without further notice, unless EPA receives relevant adverse comment by January 12, 2015. If EPA receives such comment, EPA will publish a

timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No EPA-R06-OAR-2005-TX-0002, by one of the following methods:

- www.regulations.gov. Follow the on-line instructions.

- *Email:* Mr. Kenneth W. Boyce at boyce.kenneth@epa.gov.

- *Mail or Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2005-TX-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or email, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g.,

copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Boyce (6PD-L), Air Planning Section, telephone (214) 665-7259, fax (214) 665-6762, email: boyce.kenneth@epa.gov.

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

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I. Background

The lead rules contained at 30 Texas Administrative Code Chapter 113 were adopted in 1984 as a result of emissions from a primary lead smelter (ASARCO) located in El Paso County, and two secondary lead smelters (battery recycling facilities) located in Dallas County (RSR and Dixie Metals). Subsequently, the lead processes in all three facilities were shut down and the equipment dismantled. Under its Regulation Reform initiative, the Texas Natural Resource Conservation Commission repealed these lead rules which were adopted to control site specific sources of lead in Dallas and El Paso Counties which are no longer in existence.

II. EPA review

Texas' SIP revision to eliminate the lead rules was deemed complete by operation of law on August 5, 1999. These lead rules were adopted to control emissions from specific sources that are no longer in existence. A review of the emissions inventory for lead sources in Dallas and El Paso Counties confirms that there are no other operational primary or secondary lead smelters located within El Paso or Dallas counties. Therefore, it is no longer necessary for these rules to be included in the Texas SIP. Any new sources of lead in the future will have to demonstrate their operation will not cause violations of the more recent 2008 National Ambient Air Quality standard for lead before receiving a permit to construct. This Standard is much more stringent than the Standard that was in place in 1999. Therefore, as required by section 110(l) of the CAA, these revisions will not interfere with attainment or contribute to

nonattainment of any national ambient air quality standard and do not interfere with any other requirement of the CAA. Therefore, EPA is approving these revisions to the Texas SIP.

III. Final Action

In accordance with Section 110(a) and (l) and 40 CFR part 51, EPA is taking direct final action to approve the State of Texas' January 13, 1999 SIP revision submittal which repealed its lead emission rules which applied to operating stationary sources in both El Paso County and Dallas County that are no longer in existence.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments.

However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on February 10, 2015 without further notice unless we receive relevant adverse comment by January 12, 2015. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant 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.

IV. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 10, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead.

Dated: November 19, 2014.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart SS—Texas

§ 52.2270 [Amended]

■ 2. In § 52.2270(c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by removing the centered headings and entries for “Chapter 113 (Reg 3)—Control of Air Pollution From Toxic Materials”.

[FR Doc. 2014–29146 Filed 12–11–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket No. 10–44; FCC 14–179]

The Commission’s Rules of Practice and Procedure Relating to the Filing of Formal Complaints and Pole Attachment Complaints

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document amends procedural rules implemented by the Commission’s 2011 determination that docketing and electronic filing be utilized in proceedings involving “[n]ewly filed formal common carrier

complaints and newly filed pole attachment complaints before the Enforcement Bureau.” The rule changes also apply to future filings made in existing Section 208 formal complaints and pole attachment complaints. In addition, the amendments make a few procedural changes to existing Section 208 formal complaint and pole attachment complaint filing rules to create uniformity among them and ease of administration for parties and staff when initiating service of pleadings or filing confidential matters with the Commission. The rules further establish a single electronic inbox within Electronic Comment Filing System (ECFS) to handle the initial filing of the above-identified new complaints. Accepted complaints will receive a distinct ECFS docket number; rejected complaints will remain on ECFS but will be stored within the Inbox.

DATES: Effective January 12, 2015.

FOR FURTHER INFORMATION CONTACT:

Tracy Bridgham, Enforcement Bureau, Federal Communications Commission, *Tracy.Bridgham@fcc.gov*, (202) 418–0967.

SUPPLEMENTARY INFORMATION: This document, adopted on November 5, 2014 and released on November 12, 2014, GC Docket No. 10–44, FCC 14–179, revises several sections of 47 CFR part 1. The rule changes will facilitate and enhance public participation in Commission section 208 formal complaint and section 224 pole attachment complaint proceedings, thereby making the Commission’s decision-making process more efficient, modern, and transparent.

Regulatory Flexibility Act. The actions taken in this Order do not require notice and comment, and therefore fall outside the Regulatory Flexibility Act of 1980, 5 U.S.C. 601(2); 603(a), as amended. We nonetheless anticipate that the rules we adopt today will not have a significant economic impact on a substantial number of small entities. As described above, the rules relate to our internal procedures and do not impose new substantive responsibilities on regulated entities. There is no reason to believe that operation of the revised rules will impose significant costs on parties to Commission proceedings. To the contrary, we take today’s actions with the expectation that, overall, they will make dealings with the Commission quicker, easier, and less costly for entities of all sizes.

Paperwork Reduction Act. Although the rule sections affected by this proceeding have information collections associated with them, the Office of Management and Budget has

determined that, under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (codified at 44 U.S.C. 3501 *et seq.*), these changes are not substantive in nature and will not result in any new or modified information collections.

Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 208, 224, that the rules set forth *are adopted*, effective 30 days after the date of publication in the **Federal Register**.

It is further ordered, pursuant to sections 4(i), 4(j), 208, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 208, 224, and § 1.3 of the Commission's rules, 47 CFR 1.3, that, effective upon release of this Order, §§ 1.720, 1.721, 1.727, 1.731, 1.732, 1.733, 1.734, 1.735, 1.1403, 1.1404, and 1.1408 of the Commission's rules, 47 CFR 1.720, 1.721, 1.727, 1.731, 1.732, 1.733, 1.734, 1.735, 1.1403, 1.1404, 1.1408, are *waived* to the extent necessary to permit online electronic filing in accordance with the processes discussed in this Order. This waiver shall be effective ten days after release of this Order and until the effective date of the rule changes ordered in the previous paragraph.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure; Telecommunications. Federal Communications Commission. **Marlene H. Dortch**, Secretary.

Final rules

For the reasons discussed in this preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for 47 CFR part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), 309, 1403, 1404, 1451, and 1452.

■ 2. Section 1.720 is amended by revising paragraph (j) to read as follows:

§ 1.720 General pleading requirements.

* * * * *

(j) Pleadings shall identify the name, address, telephone number, and email address for either the filing party's attorney or, where a party is not represented by an attorney, the filing party.

■ 3. Section 1.721 is amended by revising paragraphs (a)(3) and (5) to read as follows:

§ 1.721 Format and content of complaints.

(a) * * *

(3) The name, address, telephone number, and email address of complainant's attorney, if represented by counsel;

* * * * *

(5) Assertions based on information and belief are expressly prohibited unless made in good faith and accompanied by an affidavit explaining the basis for the complainant's belief and why the complainant could not reasonably ascertain the facts from the defendant or any other source;

* * * * *

■ 4. Section 1.727 is revised to read as follows:

§ 1.727 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularity the grounds and authority therefor, and setting forth the relief or order sought.

(b) All dispositive motions shall contain proposed findings of fact and conclusions of law, with supporting legal analysis, relevant to the contents of the pleading. Motions to compel discovery must contain a certification by the moving party that a good faith attempt to resolve the dispute was made prior to filing the motion. All facts relied upon in motions must be supported by documentation or affidavits pursuant to the requirements of § 1.720(c), except for those facts of which official notice may be taken.

(c) Oppositions to motions may be filed and served within five business days after the motion is filed and served and not after. Oppositions shall be limited to the specific issues and allegations contained in such motion; when a motion is incorporated in an answer to a complaint, the opposition to such motion shall not address any issues presented in the answer that are not also specifically raised in the motion. Failure to oppose any motion may constitute grounds for granting of the motion.

(d) No reply may be filed to an opposition to a motion.

(e) Motions seeking an order that the allegations in the complaint be made more definite and certain are prohibited.

(f) Amendments or supplements to complaints to add new claims or requests for relief are prohibited. Parties are responsible, however, for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding as required under § 1.720(g).

■ 5. Section 1.731 is revised to read as follows:

§ 1.731 Confidentiality of information produced or exchanged.

(a) Any materials generated in the course of a formal complaint proceeding may be designated as proprietary by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating "Public Version." The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the proprietary information and clearly marks each page of the unredacted confidential version with a header stating "Confidential Version." The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.735(f)(1) through (3);

(b) Except as provided in paragraph (c) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent

necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(c) The Commission will entertain, subject to a proper showing under § 0.459 of this chapter, a party's request to further restrict individuals' access to proprietary information. Pursuant to § 0.459 of this chapter, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may not be submitted by means of the Commission's Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.

(d) The individuals identified above in paragraph (b)(1) through (3) shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(e) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (b)(1) through (3) and (c) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(f) Upon termination of the formal complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

■ 6. Section 1.732 is amended by removing paragraph (e) and redesignating paragraphs (f) through (h) as (e) through (g) and revising them to read as follows:

§ 1.732 Other Required Written Submissions.

* * * * *

(e) Initial briefs shall be no longer than twenty-five pages. Reply briefs shall be no longer than ten pages. Either on its own motion or upon proper motion by a party, the Commission staff may establish other page limits for briefs.

(f) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

(g) The parties shall submit a joint statement of stipulated facts, disputed facts, and key legal issues no later than two business days prior to the initial status conference, scheduled in accordance with the provisions of § 1.733(a).

■ 7. Section 1.733 is amended by revising paragraphs (f)(1) and (2) to read as follows:

§ 1.733 Status conference.

* * * * *

(f) * * *

(1) Submit a joint proposed order memorializing the oral rulings made during the conference to the Commission by midnight, Eastern Time, on the business day following the date of the status conference, or as otherwise directed by Commission staff. In the event the parties in attendance cannot reach agreement as to the rulings that were made, the joint proposed order shall include the rulings on which the parties agree, and each party's alternative proposed rulings for those rulings on which they cannot agree. Commission staff will review and make revisions, if necessary, prior to signing and filing the submission as part of the record. The proposed order shall be filed using the Commission's Electronic Comment Filing System; or

(2) Pursuant to the requirements of paragraph (e) of this section, submit to the Commission by midnight, Eastern Time, on the third business day following the status conference or as otherwise directed by Commission staff either:

* * * * *

■ 8. Section 1.734 is amended by removing paragraph (d) and revising paragraph (c) to read as follows:

§ 1.734 Specifications as to pleadings, briefs, and other documents; subscription.

* * * * *

(c) The original of all pleadings and other submissions filed by any party shall be signed by the party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, email address, and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party, in accordance with the requirements of § 1.52, shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed solely for purposes of delay or for any other improper purpose.

■ 9. Section 1.735 is revised to read as follows:

§ 1.735 Fee remittance; electronic filing; copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106 of this chapter) and, shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System, and, on the same day:

(1) If the complaint is filed against a carrier concerning matters within the responsibility of the International Bureau (see § 0.261 of this chapter), serve, by email, a copy on the Chief, Policy Division, International Bureau; and

(2) If a complaint is addressed against multiple defendants, pay a separate fee, in accordance with part 1, subpart G (see § 1.1106), for each additional defendant.

(c) The complainant shall serve the complaint by hand delivery on either the named defendant or one of the

named defendant's registered agents for service of process on the same date that the complaint is filed with the Commission in accordance with the requirements of paragraph (b) of this section.

(d) Upon receipt of the complaint by the Commission, the Commission shall promptly send, by email, to each defendant named in the complaint, notice of the filing of the complaint. The Commission shall send, by email, to each defendant named in the complaint, a copy of the complaint. The Commission shall additionally send, by email, to all parties, a schedule detailing the date the answer and any other applicable pleading will be due and the date, time, and location of the initial status conference.

(e) Parties shall provide hard copies of all submissions to staff in the Market Disputes Resolution Division of the Enforcement Bureau upon request.

(f) All subsequent pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be filed using the Commission's Electronic Comment Filing System. In addition, all pleadings and briefs filed in any formal complaint proceeding, as well as all letters, documents, or other written submissions, shall be served by the filing party on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of § 1.47(g). Service is deemed effective as follows:

(1) Service by hand delivery that is delivered to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by hand delivery that is delivered to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day;

(2) Service by overnight delivery will be deemed served the business day following the day it is accepted for overnight delivery by a reputable overnight delivery service; or

(3) Service by email that is fully transmitted to the office of the recipient by 5:30 p.m., local time of the recipient, on a business day will be deemed served that day. Service by email that is fully transmitted to the office of the recipient after 5:30 p.m., local time of the recipient, on a business day will be deemed served on the following business day.

(g) Supplemental complaint proceedings. Supplemental complaints filed pursuant to § 1.722 shall conform to the requirements set forth in this section, except that the complainant need not submit a filing fee, and the complainant may effect service pursuant to subsection (e) and (f) of this section rather than paragraph (c) of this section.

■ 10. Section 1.1403 is amended by revising paragraph (d) to read as follows:

§ 1.1403 Duty to provide access; modifications; notice of removal, increase or modification; petition for temporary stay; and cable operator notice.

* * * * *

(d) A cable television system operator or telecommunications carrier may file a "Petition for Temporary Stay" of the action contained in a notice received pursuant to paragraph (c) of this section within 15 days of receipt of such notice. Such submission shall not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of cable television service or telecommunication service, a copy of the notice, and certification of service as required by § 1.1404(b). The named respondent may file an answer within 7 days of the date the Petition for Temporary Stay was filed. No further filings under this section will be considered unless requested or authorized by the Commission and no extensions of time will be granted unless justified pursuant to § 1.46.

* * * * *

■ 11. Section 1.1404 is amended by revising paragraph (a) to read as follows:

§ 1.1404 Complaint.

(a) The complaint shall contain the name, address, telephone number, and email address of the complainant; name, address, telephone number, and email address of the respondent; and a verification (in accordance with the requirements of § 1.52), signed by the complainant or officer thereof if complainant is a corporation, showing complainant's direct interest in the matter complained of. Counsel for the complainant may sign the complaint. Complainants may join together to file a joint complaint. Complaints filed by associations shall specifically identify each utility, cable television system operator, or telecommunications carrier who is a party to the complaint and shall be accompanied by a document from each identified member certifying that the complaint is being filed on its behalf.

* * * * *

■ 12. Section 1.1408 is revised to read as follows:

§ 1.1408 Fee remittance; electronic filing; service; number of copies; form of pleadings; and proprietary materials.

(a) The complainant shall remit separately the correct fee either by check, wire transfer, or electronically, in accordance with part 1, subpart G (see § 1.1106) and, shall file an original copy of the complaint, using the Commission's Electronic Comment Filing System. The original of the response and reply, as well as all other written submissions, shall be filed with the Commission using the Commission's Electronic Comment Filing System. Service must be made in accordance with the requirements of § 1.735(b), (c), (e), and (f).

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of §§ 1.49, 1.50, and 1.52.

(c) Any materials generated in the course of a pole attachment complaint proceeding may be designated as proprietary by either party to the proceeding or a third party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(1) through (9). Any party asserting confidentiality for such materials must:

(1) Clearly mark each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality shall have the burden of demonstrating, by a preponderance of the evidence, that the materials designated as proprietary fall under the standards for nondisclosure enunciated in the FOIA.

(2) File with the Commission, using the Commission's Electronic Comment Filing System, a public version of the materials that redacts any proprietary information and clearly marks each page of the redacted public version with a header stating "Public Version." The redacted document shall be machine-readable whenever technically possible. Where the document to be filed electronically contains metadata that is confidential or protected from disclosure by a legal privilege (including, for example, the attorney-client privilege), the filer may remove such metadata from the document before filing it electronically.

(3) File with the Secretary's Office an unredacted hard copy version of the materials that contains the proprietary information and clearly marks each page of the unredacted confidential version

with a header stating “Confidential Version.” The unredacted version must be filed on the same day as the redacted version.

(4) Serve one hard copy of the filed unredacted materials and one hard copy of the filed redacted materials on the attorney of record for each party to the proceeding, or, where a party is not represented by an attorney, each party to the proceeding either by hand delivery, overnight delivery, or email, together with a proof of such service in accordance with the requirements of §§ 1.47(g) and 1.735(f)(1) through (3) of this chapter;

(d) Except as provided in paragraph (e) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(1) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(2) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(3) Consultants or expert witnesses retained by the parties;

(4) The Commission and its staff; and

(5) Court reporters and stenographers in accordance with the terms and conditions of this section.

(e) The Commission will entertain, subject to a proper showing under § 0.459 of this chapter, a party’s request to further restrict access to proprietary information. Pursuant to § 0.459 of this chapter, the other parties will have an opportunity to respond to such requests. Requests and responses to requests may *not* be submitted by means of the Commission’s Electronic Comment Filing System but instead must be filed under seal with the Office of the Secretary.

(f) The individuals identified in paragraphs (d)(1) through (3) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information shall sign a notarized statement affirmatively stating that the individual has personally reviewed the Commission’s rules and understands the limitations they impose on the signing party.

(g) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (d) and (e) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(h) Upon termination of the pole attachment complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

[FR Doc. 2014–28736 Filed 12–11–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229 and 697

[Docket No. 141002823–4999–02]

RIN 0648–BE57

Taking of Marine Mammals Incidental to Commercial Fishing Operations and Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan to modify the start date of the Massachusetts Restricted Area to begin on February 1, 2015, and to expand the Massachusetts Restricted Area by 912 square miles. In addition, this rule will revise the Federal lobster regulations to be consistent with the revised start date of the Massachusetts Restricted Area. Recent Federal lobster regulations closed the Outer Cape Lobster Management Area to lobster trap fishing from January 15 through March 15, which is consistent with the lobster trap haul-out period in the Atlantic States Marine Fisheries Commission’s Interstate Fishery Management Plan for American Lobster. This rule would adjust the Outer Cape Lobster

Management Area closure dates to February 1 through March 31.

DATES: Effective December 12, 2014.

ADDRESSES: Copies of the supporting documents for this action, as well as the Atlantic Large Whale Take Reduction Team meeting summaries and supporting documents, may be obtained from the Plan Web site (<http://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/index.html>) or by writing to Kate Swails, NMFS, Greater Atlantic Regional Fisheries Office, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS Greater Atlantic Regional Fisheries, 978–282–8481, Kate.Swails@noaa.gov; or, Kristy Long, NMFS Office of Protected Resources, 206–526–4792, Kristy.Long@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This final rule combines two regulatory modifications that are authorized under different statutes. Specifically, this action amends the regulations implementing: (1) The Atlantic Large Whale Plan (Plan) regulations found at 50 CFR part 229 under the authority of the MMPA; and (2) the Federal American lobster Fishery Management Plan regulations found at 50 CFR part 697 under the authority of the Atlantic Coastal Fisheries Cooperative Management Act.

NMFS published a final rule implementing an amendment to the Plan on June 27, 2014 (79 FR 36586) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. That amendment included gear modifications, gear setting requirements, a seasonal closure (Massachusetts Restricted Area) and gear marking for both the trap/pot and the gillnet fisheries. The Massachusetts Restricted Area is a seasonal closure effective January 1 through April 30 for all trap/pot fisheries. Trap/pot fisheries account for the largest number of vertical lines in the water column.

In September 2010, in consultation with the Atlantic Large Whale Take Reduction Team (Team), NMFS developed protocols for considering modifications or exemptions to the regulations implementing the Plan. Following these protocols, on August 18, 2014, the Massachusetts Division of Marine Fisheries (DMF) submitted a proposal to modify the Massachusetts Restricted Area and exempt several areas from the gear setting requirements to address safety and economic

concerns raised by Massachusetts fishermen.

Review of Massachusetts Restricted Area

The proposal submitted by DMF contains two components:

(1) Modify the Massachusetts Restricted Area (closure), which begins on January 1, 2015 by:

- Modifying the timing and size of the closure.

- Establishing gear stowage areas during a portion of the closure.

(2) Establish several exemption areas to the current minimum number of traps per trawl requirement, which take effect June 1, 2015.

- Exemption areas would include portions of Southern New England waters (Buzzards Bay, Vineyard Sound, and Nantucket Sound) as well as state waters north and east of Cape Cod.

Given the importance of addressing the closure before it begins on January 1, 2015, and the time needed to complete the analysis of the entire suite of requests contained in the entire DMF proposal, NMFS decided to address the modifications to the closure and the exemption of the minimum number of traps per trawl requirements separately.

Changes to the Plan

This action modifies the start date of the closure to begin on February 1, 2015 and expand the area by 912 square miles. This action responds to comments to improve the past action while balancing risk reduction considerations. Specifically, the action decreases the number of affected vessels and results in reductions in compliance costs while maintaining the same entanglement risk reduction as provided in the June 2014 amendment to the Plan.

At its October 1, 2014 meeting, the Team discussed the requested modifications to the closure, as well as the creation of the trap/pot storage areas. The discussion included a review of the merits and analysis of the DMF proposal utilizing NMFS's co-occurrence model. The model incorporates information on geographic and temporal variations in fishing effort and the distribution of fishing line, as well as whale sightings per unit of survey effort, and identifies areas and times at which whales and commercial fishing gear are likely to co-occur. The model's final product is a set of indicators that provide information on factors that contribute to the risk of entanglement at various locations and at different points in time. These indicators, in particular the number of vertical lines in an area and the area's

co-occurrence score, assumed to be related to the relative entanglement risk in different locations. They also provide a basis for comparing the impact of alternative management measures on the potential for entanglements to occur.

NMFS compared the impacts of the current and new closure areas for conservation benefit using its co-occurrence model and economic analysis. The methods and data sources used in this analysis are consistent with those applied in the Final Environmental Impact Statement (FEIS) for the 2014 Plan amendments referred to above. The changes to the closure would allow approximately 125 vessels to continue to fish during a lucrative time of year for the fishing industry and would require a slightly greater number of vessels to suspend activity from February through April. This is because the new closure area is larger than the current closure area, an increase of 912 square miles. On average, the new closure area offers a similar reduction in co-occurrence to that of the current closure (38.2%) while providing less of an economic burden. Therefore, this action minimizes potential economic impacts without increasing risk to large whales.

At the conclusion of the October 1, 2014, meeting, the Team, by consensus, recommended that we modify the Massachusetts Restricted Area as proposed by DMF. However, the Team recommended that NMFS not act on DMF's proposed trap/pot storage areas. The remainder of DMF's proposal will be analyzed and discussed with the Team during its January 2015 meeting. The Team will provide NMFS a recommendation at that time on whether to move forward with the remaining components of the DMF proposal.

Changes to American Lobster Regulations

On April 7, 2014, NMFS published a final rule (79 FR 19015) that implemented the Outer Cape Area lobster haul-out period. In that rule, NMFS acknowledged in the preamble that it might need to adjust the closure dates if Massachusetts ultimately requested a different time period (See Response to Comment 22, 78 FR 35217, June 12, 2013). Now that Massachusetts has done so, the original Outer Cape Area lobster closure dates would become outdated and may create unintended impacts to Federal lobster fishers. For example, if NMFS did not adjust the January 15 start date, Federal lobster fishers would have to remove their traps from the Outer Cape Area two weeks earlier than the February 1

start date that exists in the Massachusetts regulations and the Plan. Therefore, in this rule, NMFS changes the start date of the Outer Cape Lobster Management Area closure dates from January 15 to February 1. Further, NMFS adjusts the end of the Outer Cape Area haul-out period by two weeks from March 15 to March 31, to continue with a full two-month haul-out period as dictated by the Commission. NMFS considered extending the haul-out period to April 30, to be consistent with the Plan. However, the southwestern portion of the Outer Cape Area is not included in the Plan's revised closure area, and would be closed for an additional month longer than the Commission's two-month haul-out period. Accordingly, NMFS will simply shift the Outer Cape Area haul-out period dates ahead by two weeks. After March 31, lobster trap fishermen in the Massachusetts Restricted Area will be held to the more restrictive Plan dates through April 30.

Comments and Responses

NMFS published the proposed rule amending the Plan in the **Federal Register** on November 6, 2014 (79 FR 65918). Upon its publication, NMFS issued a press email announcing the rule; posted the proposed rule on the Plan Web site; and notified affected fishermen and interested parties via several NMFS email distribution outlets. The publication of the proposed rule was followed by a 15-day public comment period, which ended on November 21, 2014. NMFS received fourteen substantive comments via electronic submission. All comments received were thoroughly reviewed by NMFS. Comments were in full support of the action or in partial support of the action with some concerns. The comments addressed several topics, including adequacy of the model, need for enforcement of the closure, and confusion over changes to the Massachusetts Restricted Area closure vs the Outer Cape Lobster Management Area closure. The comments received are summarized below, followed by NMFS's responses.

Adequacy of Co-occurrence Model

Comment 1: Several commenters questioned the adequacy of the co-occurrence model and the data used to develop the model. They stated that the data are several years old, may be flawed, and may not accurately reflect the current fishing effort in the area.

Response: We believe the information in the model is accurate but does have some limitations. We previously provided model documentation

describing the fishing effort data upon which the model relies, including a detailed discussion of the models' limitations. We plan on updating the model with more current information as time allows for future rulemakings. The data used for this action are the same as the data used for the June 27, 2014 final rule implementing the most recent amendment to the Plan (79 FR 36586). This allows us to conduct a comparison between the effects of the new closure area versus the previously approved closure area.

Enforcement

Comment 2: One commenter stated that NMFS needs to do a better job enforcing/supporting the Endangered Species Act and not just rely on the Marine Mammal Protection Act measures to reduce entanglements with lobster gear.

Response: Although NMFS agrees that law enforcement is a critically important component to the success of its conservation measures, NMFS disagrees with the claim that it relies solely on the conservation measures implemented through the Marine Mammal Protection Act. NMFS has allocated funding for enforcement of take reduction plan regulations on an annual basis through its Endangered Species Act-based Joint Enforcement Agreements (JEA) with its state partners (Maine, New Hampshire, Massachusetts, Rhode Island, and New Jersey). In addition, over the past two years NMFS has also provided additional funding set aside for law enforcement to investigate potential "hot spots." Hot spots are those areas identified as areas of concern and in need of additional enforcement.

Comment 3: One commenter stated that there is a need for strict enforcement of the February 1 date for gear removal. The commenter stated that the Plan's requirements require robust monitoring and enforcement efforts.

Response: We agree that the efficacy of the Plan depends on strong monitoring and enforcement of the regulations. We work closely with the U.S. Coast Guard, NOAA Office of Law Enforcement and state partners through Joint Enforcement Agreements to enforce the regulations and we will continue to do so. We will also conduct numerous outreach efforts to ensure the industry knows of the impending closure and the requirements to remove gear.

Changes to Massachusetts Restricted Area vs Outer Cape Lobster Management Area

Comment 4: One commenter voiced confusion over the conflicting dates of the modified Massachusetts Restricted Area closure and the adjustment of the gear haul-out closure period for the Outer Cape Lobster Management Area.

Response: The February 1–March 31 gear haul-out period in NMFS's lobster regulations does not conflict with the February 1–April 30 modified Massachusetts Restricted Area closure period in NMFS's large whale Plan regulations. In short, the two closures pertain to two different, albeit mostly overlapping areas, which are being closed for two separate reasons. The different closure dates maintain the distinction in their purpose, *i.e.*, the February 1–March 31 closure benefits the lobster resource, while the February 1–April 30 closure benefits whales. Where the lobster and whale areas overlap, fishers will have to abide by both closures, including the whale closure during the month of April.

The final rule will adjust the Massachusetts Restricted Area closure area, consistent with the revised timing and area proposed by the Commonwealth of Massachusetts. The revised closure area is expanded by 912 square miles and includes most, but not all, of the Outer Cape Area. Under the June 2014 large whale Plan final rule, only the northern portion of the Outer Cape Area remained within the Massachusetts Restricted Area closure area. Additionally, this action revises the Massachusetts Restricted Area closure period to more effectively align with the co-occurrence model, by shifting the closure period from January 1–April 30, to February 1–April 30. Accordingly, we have also shifted the two-month Outer Cape Area gear haul-out period in the Federal lobster regulations to fall within the three-month Massachusetts Restricted Area closure period.

Under the Federal lobster regulations, the Outer Cape Area is subject to a gear haul-out period, which requires all Outer Cape Area lobster trap fishers to remove their trap gear from this Area from January 15–March 15 each year. These dates were adopted in the lobster regulations because they match the dates adopted for this purpose in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Lobster and are consistent with those dates currently in place by the Commonwealth of Massachusetts. The intent of the haul-out period is to facilitate the

enforcement of trap limits and is timed when lobster trap fishing activity in the area is at a relatively low level.

Before we adopted the gear haul-out period into the Federal lobster regulations, as recommended by the Commission, the Commonwealth of Massachusetts was considering shifting the two-month Outer Cape Area haul-out period in state waters from the original January 15–March 15 period, to February 1–March 31, to better address the needs of the Outer Cape fishery. Consequently, in the proposed rule for this measure, NMFS considered and sought comment on similarly shifting the haul-out dates should Massachusetts ultimately do so (see response to Comment 22, 78 FR 35217). By the time the final rule implementing the lobster management action published in the **Federal Register** (April 7, 2014, 79 FR 19015), Massachusetts had not changed the gear haul-out period, so NMFS implemented in that rule the dates that were in place at the time in the Massachusetts regulations (January 15–March 15), to be consistent with the Commonwealth and the Commission's Plan. At the time, the start and end dates of the two-month gear haul-out period fell within the initial four-month Massachusetts Restricted Area closure dates under consideration in the Plan proposed rule (January 1–April 30). So, the small portion of the Outer Cape Area that overlapped into the initial Massachusetts Restricted Area closure area would continue to be closed to lobster traps after the haul-out period ended, under the Plan, because the haul-out period would end before the Plan closure period ends.

Since the lobster gear haul-out regulations were implemented, the Commonwealth has come forward with a comprehensive revision to the Massachusetts Restricted Area closure area, which now includes all of the Outer Cape Area, with the exception of a small portion located west of 70 degrees north longitude, in Nantucket Sound. The Massachusetts proposal also shifts the closure dates for the Massachusetts Restricted Area closure to begin on February 1. Therefore, we have adjusted the lobster regulations governing the Outer Cape Area gear haul-out period, so that Outer Cape lobster trap fishers operating inside the affected area would not be impacted by the closure two weeks earlier due to the fact that the Outer Cape Area gear haul-out period is currently set for a January 15 closure. Additionally, we did not extend the full three-month closure date to the entire Outer Cape Area, because we did not want to unnecessarily impact trap fishers operating in the

western portion of the Outer Cape Area, which is outside of the modified Massachusetts Restricted Area closure area.

Upon receipt of the Massachusetts proposal, NMFS assessed the impacts associated with the revised closure area, but did not formally assess the potential impacts in the portion of the Outer Cape Area that falls outside of the revised closure area (that area west of 70 degrees north longitude). Additionally, because the initial assessment on the Outer Cape Area gear haul out-period included only a variable two-month period, NMFS did not have the information needed to justify aligning the entire Outer Cape Area gear haul-out period with the three-month closure period for the vertical line rule, particularly because it could potentially impact those fishers operating in April in the portion of the Outer Cape Area that falls outside the vertical line closure area. Regardless, this final rule revises the Outer Cape Area lobster trap gear haul-out period to fall within the Massachusetts Restricted Area closure period. Therefore, when the gear haul-out period ends on March 15, all traps/pots (including lobster traps) will remain prohibited in the Massachusetts Restricted area through April 30, under the Plan. Shifting the dates, but maintaining the length of the two-month gear haul-out period will prevent those fishermen fishing in the Outer Cape Area west of 70 degrees north longitude from being subject to a three-month closure, when not required under the Plan.

NEPA/ESA Analysis

Comment 5: One commenter was concerned with the analysis the Agency conducted for this action under the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA) saying that it is not legally sufficient. The commenter stressed that future changes to the Plan must be evaluated using a full and proper NEPA analysis and reinitiation of the ESA Section 7 consultation.

Response: We feel the analysis we conducted for this action is sufficient. After considering the proposed action, new information and new circumstances, we determined that it is not necessary to supplement the 2014 Plan Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) because: (1) the shift of the closure in time/area and its impacts are not substantially different from what was originally considered and analyzed; and (2) no new information or circumstances exist that are significantly different from when the

ROD was signed on June 20, 2014. The FEIS and ROD remain valid to support this action. NMFS has also determined that it is not necessary to supplement the American Lobster FMP 2014 FEIS and ROD because: (1) there are no additional impacts from shifting the closure period by two weeks; and (2) no new information or circumstances exist that are significantly different from when the ROD was signed on April 7, 2014. The FEIS and ROD remain valid to support this action. Also, NMFS believes that the changes to the rule amending the Plan do not constitute a modification to the operation of the Plan that would cause an effect to ESA-listed species or critical habitat not considered in the previous consultations. Therefore, the proposed measures do not meet the triggers for reinitiation of consultation. Should activities under this action change or new information become available that changes the basis for this determination, then consultation should be reinitiated.

Lack of Management Measures

Comment 6: One commenter was concerned that there seems to be a lack of policies for addressing climate change through adaptive management when protecting right whales. The commenter suggests instead of shifting the date of the closure to begin on February 1 the Agency should manage the area using Dynamic Area Management procedures instead of opening the whole area to fishing for the whole month of January.

Response: As stated in response to similar comments in the June 27, 2014 final rule, we acknowledge that it is challenging to manage resources in the face of changing environmental conditions. The Plan is an evolving Plan and should NMFS discover that conservation measures are no longer appropriate as a result of climate change and shifting baselines, we have the ability to make changes to the measures.

Comment 7: One commenter supported the closure but wanted the measures to extend to the gillnet fishery.

Response: As we have stated in response to comments on the June 27, 2014 final rule, including gillnets in the recent management measures was analyzed in the FEIS and rejected (See Chapter 3, Appendix 3–A of the May 2014 FEIS). The co-occurrence model shows that 99% of the vertical lines coastwide are from lobster trap/pot and other trap/pot fisheries. For this reason, we chose to focus this closure (and recent management measures) on trap/pot gear only.

Classification

The Office of Management and Budget (OMB) has determined that this action is not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this final rule. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

The Assistant Administrator finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness. The contents of this action serve to remove existing commercial fishing restrictions and to prevent negative economic impacts from otherwise occurring as the Massachusetts Restricted Area would have been effective beginning January 1, 2014. Delaying the effectiveness of this rule is contrary to the public interest, because any delay will prevent the additional fishery activities implemented by this rule, thereby reducing revenues, and providing no additional meaningful benefit to large whales. Accordingly, the 30-day delay in effectiveness is both unnecessary and contrary to the public interest, and as such, this rule will become effective immediately.

List of Subjects

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 697

Fisheries, fishing.

Dated: December 8, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR parts 229 and 697 are amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*;
§ 229.32(f) also issued under 16 U.S.C. 1531
et seq.

■ 2. In § 229.32, paragraph (c)(3) is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(c) * * *

(3) *Massachusetts Restricted Area*—(i) *Area*. The Massachusetts restricted area is bounded by the following points connected by straight lines in the order listed, and bounded on the west by the shoreline of Cape Cod, Massachusetts.

Point	N. lat.	W. long.
MRA1	42°12'	70°44'
MRA2	42°12'	70°30'
MRA3	42°30'	70°30'
MRA4	42°30'	69°45'
MRA5	41°56.5'	69°45'
MRA6	41°21.5'	69°16'
MRA7	41°15.3'	69°57.9'

Point	N. lat.	W. long.
MRA8	41°20.3'	70°00'
MRA9	41°40.2'	70°00'

(ii) *Closure*. From February 1 to April 30, it is prohibited to fish with, set, or possess trap/pot gear in this area unless stowed in accordance with § 229.2.

(iii) *Area-specific gear or vessel requirements*. From May 1 through January 31, no person or vessel may fish with or possess trap/pot gear in the Massachusetts Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in (c)(2) of this section, or unless the gear is stowed as specified in § 229.2.

* * * * *

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 3. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 4. In § 697.7, revise paragraph (c)(1)(xxx) introductory text to read as follows:

§ 697.7 Prohibitions.

* * * * *

(c) * * *

(1) * * *

(xxx) *Outer Cape Area seasonal closure*. The Federal waters of the Outer Cape Area shall be closed to lobster fishing with traps by Federal lobster permit holders from February 1 through March 31.

* * * * *

[FR Doc. 2014–29195 Filed 12–11–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 239

Friday, December 12, 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.

SMALL BUSINESS ADMINISTRATION

2 CFR Part 2700

13 CFR Parts 103, 124 and 134

RIN 3245-AG40

Agent Revocation and Suspension Procedures

AGENCY: Small Business Administration.
ACTION: Proposed rule; notice of extension of comment period.

SUMMARY: On October 16, 2014, the U.S. Small Business Administration (SBA or Agency) proposed detailed procedures for the suspension and revocation of an Agent's privilege to do business with the United States Small Business Administration (SBA). SBA provided a 60-day comment period ending on December 15, 2014. In this notice, SBA is extending the comment period an additional 60 days to February 14, 2015.

DATES: The comment period for the proposed rule published on October 16, 2014, at 79 FR 62060, is extended through February 14, 2015.

ADDRESSES: You may submit comments, identified by RIN: 3245-AG40 by any of the following methods:

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

Mail/Hand Delivery/Courier: Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 409 Third Street SW., 8th Floor, Washington, DC 20416.

SBA will post all comments to this proposed rule without change on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, you must submit such information to Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 409 Third Street SW., 8th Floor, Washington, DC 20416 or send an email to debra.mayer@sba.gov. Highlight the information that you consider to be CBI and explain why you

believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Debra L. Mayer, Chief, Supervision and Enforcement, Office of Credit Risk Management, 202-205-7577, email: debra.mayer@sba.gov.

SUPPLEMENTARY INFORMATION: In the proposed rule (79 FR 62060), SBA sought public comment on proposed detailed procedures for the suspension and revocation of an Agent's privilege to do business with the United States Small Business Administration (SBA) within a single Part of the Code of Federal Regulations; removing 8(a) program specific procedures for Agent suspension and revocation; clarifying existing and related regulations as to suspension, revocation, and debarment; and removing Office of Hearings and Appeals jurisdiction over Agent suspensions and revocations and government-wide debarment and suspension actions. The proposed rule would also conform SBA suspension and revocation procedures for Agents with general government-wide non-procurement suspension and debarment procedures. SBA provided a 60-day comment period ending on December 15, 2014.

SBA has received requests for an extension of the comment period from two trade associations that represent participants in SBA's business loan programs and one comment on the substance of the proposed rule. SBA believes that the Agency and affected parties will benefit from more public input before it finalizes any changes. Therefore, SBA is extending the comment period through February 14, 2015. This will also give more time to affected businesses and interested parties to review the proposed changes and prepare their comments to the proposed rule.

Dated: December 5, 2014.

Ann Marie Mehlum,

Associate Administrator, Office of Capital Access.

[FR Doc. 2014-29142 Filed 12-11-14; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2014-0870; Airspace Docket No. 14-AWP-7]

Proposed Establishment of Class E Airspace; Maxwell, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Maxwell VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Maxwell, CA, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Oakland Air Route Traffic Control Center (ARTCC). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before January 26, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2014-0870; Airspace Docket No. 14-AWP-7, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4563.

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 2014-0870 and Airspace Docket No. 14-AWP-7) and be submitted in triplicate to the Docket Management System (see “ADDRESSES” section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA-2014-0870 and Airspace Docket No. 14-AWP-07”. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Maxwell VORTAC navigation aid, Maxwell, CA. This action would contain aircraft while in IFR conditions under control of Oakland ARTCC by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, 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 E airspace designation listed in this document will be published subsequently in this Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

AWP CA E6 Maxwell, CA [New]

Maxwell VORTAC, CA
(Lat. 39°19'03" N., long. 122°13'18" W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 39°42'30" N., long. 124°25'58" W.; to lat. 39°40'00" N., long. 124°06'00" W.; to lat. 40°05'00" N., long. 120°00'00" W.; to lat. 39°33'00" N., long. 120°18'00" W.; to lat. 38°27'00" N., long. 123°23'00" W.; to lat. 38°59'30" N., long. 124°00'00" W.; thence to the point of beginning.

Issued in Seattle, Washington, on December 2, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014-29185 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2014-0871; Airspace Docket No. 14-AWP-8]

Proposed Establishment of Class E Airspace; Coaldale, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at the Coaldale VHF Omni-Directional Radio Range Tactical Air Navigation Aid (VORTAC), Coaldale, NV, to facilitate vectoring of Instrument Flight Rules (IFR) aircraft under control of Oakland Air Route Traffic Control Center (ARTCC). The FAA is proposing this action to enhance the safety and management of aircraft operations within the National Airspace System.

DATES: Comments must be received on or before January 26, 2015.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2014-0871; Airspace Docket No. 14-AWP-8, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Steve Haga, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203-4563.

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-2014-0871 and Airspace Docket No. 14-AWP-8) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2014-0871 and Airspace Docket No. 14-AWP-8". The

postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRM's

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by establishing Class E en route domestic airspace extending upward from 1,200 feet above the surface at the Coaldale VORTAC navigation aid, Coaldale, NV. This action would contain aircraft while in IFR conditions under control of Oakland ARTCCs by vectoring aircraft from en route airspace to terminal areas.

Class E airspace designations are published in paragraph 6006, 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 E airspace designation

listed in this document will be published subsequently in this Order.

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

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

- 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

AWP NV E6 Coaldale, NV [New]

Coaldale VORTAC, NV
(Lat. 38°00'12" N., long. 117°46'14" W.)

That airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 39°39'28" N., long. 117°59'55" W.; to lat. 37°55'11" N., long. 117°53'37" W.; to lat. 38°13'30" N., long. 117°16'30" W.; to lat. 38°05'00" N., long. 117°16'00" W.; to lat. 37°53'00" N., long. 117°05'41" W.; to lat. 37°33'00" N., long. 117°05'41" W.; to lat. 37°26'30" N., long. 117°04'33" W.; to lat. 37°22'00" N., long. 117°00'30" W.; to lat. 37°12'00" N., long. 117°20'00" W.; to lat. 37°12'02" N., long. 117°53'49" W.; to lat. 37°12'00" N., long. 118°35'00" W.; to lat. 36°08'00" N., long. 118°35'00" W.; to lat. 36°08'00" N., long. 118°52'00" W.; to lat. 37°47'57" N., long. 120°22'00" W.; to lat. 38°53'30" N., long. 119°49'00" W.; thence to the point of beginning.

Issued in Seattle, Washington, on December 2, 2014.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2014–29184 Filed 12–11–14; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 2014–07]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Copyright Office is conducting the sixth triennial rulemaking proceeding under the Digital Millennium Copyright Act (“DMCA”) concerning possible exemptions to the DMCA’s prohibition against circumvention of technological

measures that control access to copyrighted works. On September 17, 2014, the Office published a Notice of Inquiry requesting petitions for proposed exemptions, and it has received forty-four petitions in response. With this Notice of Proposed Rulemaking, the Office is initiating three rounds of public comment on exemptions proposed in the petitions. Interested parties are invited to make full legal and evidentiary submissions in support of or opposition to the proposed exemptions, in accordance with the requirements set forth below. The Office is providing a “long comment” form for this purpose. The Office is also offering members of the public the opportunity to express general support for or opposition to any of the proposals via a “short comment” form. Commenters should carefully review the legal and evidentiary standards for the granting of exemptions under the DMCA, which are set forth in the September Notice of Inquiry. Commenters should also review the guidance provided in this document regarding specific areas of legal and factual interest with respect to each proposed exemption or category of exemptions, and the types of evidence that commenters may wish to submit for the record. This document also provides information concerning the recommended format and content for submissions, including documentary and multimedia evidence.

DATES: Initial written comments (including documentary evidence) and multimedia evidence from proponents and other members of the public who support the adoption of a proposed exemption, as well as parties that neither support nor oppose an exemption but seek to share pertinent information about a proposal, are due February 6, 2015. Written response comments (including documentary evidence) and multimedia evidence from those who oppose the adoption of a proposed exemption are due March 27, 2015. Written reply comments from supporters of particular proposals and parties that neither support nor oppose a proposal are due May 1, 2015.

ADDRESSES: The Copyright Office strongly prefers that written comments be submitted electronically using the comment submission page on the Copyright Office Web site at <http://www.copyright.gov/1201/>. Commenters are required to provide separate submissions for each proposed class during each stage of the public comment period. Although a single comment may not encompass more than one proposed

class, the same party may submit comments on multiple classes.

As noted, the Office is providing two comment forms on its Web site: A long form for those who wish to provide a full legal and evidentiary basis for their position in support of or opposition to a proposed exemption, and a short form for those who wish briefly to express general support for or opposition to a proposed exemption. The formats and content of these forms are described in the **SUPPLEMENTARY INFORMATION** section below. Long form comments should be submitted together with any documentary evidence. To meet accessibility standards, written comments and all associated documentary evidence (but not multimedia evidence, as discussed below) must be uploaded in a single file in either Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter (and organization) should appear on both the submission form and the face of the comment.

Commenters submitting long form comments may also separately submit multimedia evidence, as further explained in the **SUPPLEMENTARY INFORMATION** section below. Commenters submitting multimedia evidence should so indicate on the first page of their written submission. Multimedia evidence should not be uploaded via the Web site; instead, it should be delivered to the Office, together with a hard copy of the written comment, on a CD-ROM, DVD-ROM, or flash drive in one of the acceptable file formats listed on the Copyright Office Web site at <http://copyright.gov/eco/help-file-types.html>. The disc or flash drive should be labeled with the name of the submitter and the number of the proposed class to which the evidence pertains. The file name of each file contained on the disc or flash drive should consist of the submitter’s name, followed by the proposed class number and exhibit number, in the following format: “Jane Smith Class 1 Ex. 1.” Multimedia evidence may be submitted either by U.S. mail addressed to Copyright Office, Office of General Counsel, P.O. Box 70400, Washington, DC 20024, or by hand delivery to Room LM–403 of the Copyright Office in the James Madison Memorial Building of the Library of Congress, 101 Independence Ave. SE., Washington, DC 20540. In either case, to ensure proper delivery, the package should be clearly labeled “Attention:

Office of General Counsel—Section 1201 Proceeding.”

All written comments and documentary evidence will be posted publicly on the Copyright Office Web site in the form in which they are received. Depending upon technological constraints and other factors, the Office may also post some or all multimedia evidence on its Web site, with the remainder made available for inspection and copying at the Office upon written email request to the Office of General Counsel using the contact information provided below. If a commenter cannot meet a particular submission requirement, the commenter should contact the Copyright Office using the contact information provided below.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, by email at jcharlesworth@loc.gov or by telephone at 202-707-8350; Sarang V. Damle, Special Advisor to the General Counsel, by email at sdam@loc.gov or by telephone at 202-707-8350; or Stephen Ruwe, Attorney-Advisor, by email at sruwe@loc.gov or by telephone at 202-707-8350.

SUPPLEMENTARY INFORMATION: On September 17, 2014, the Copyright Office published a Notice of Inquiry (“September Notice”) in the **Federal Register** to initiate the sixth triennial rulemaking proceeding under 17 U.S.C. 1201(a)(1) to determine whether there are any classes of copyrighted works for which noninfringing uses are, or in the next three years are likely to be, adversely affected by the prohibition on circumvention of technological protection measures (“TPMs”) that control access to copyrighted works (sometimes also referred to as “access controls”).¹ The September Notice invited interested parties to submit petitions for proposed exemptions that set forth the essential elements of the exemption.²

The Office received forty-four petitions in response to the September Notice, which are posted on the Copyright Office Web site.³ With this Notice of Proposed Rulemaking, the Office is initiating three rounds of public written comment regarding the proposed exemptions.

I. Written Comments

Persons wishing to address proposed exemptions in written comments should carefully review the September Notice to familiarize themselves with the substantive legal and evidentiary standards for the granting of an exemption under section 1201(a)(1).⁴ In addressing factual matters, commenters should be aware that the Office favors specific, “real-world” examples supported by evidence over speculative, hypothetical observations. For example, a proponent seeking to demonstrate that a TPM is having or is likely to have adverse effects should provide detailed evidence of actual noninfringing uses that are precluded by the TPM, rather than conclusory declarations or isolated harms. Likewise, an opponent seeking to establish, for instance, that alternative means of accessing the work obviate the need for an exemption should provide specific and detailed evidence of such alternatives rather than unsupported assertions.

Commenters’ legal analysis should explain why the proposal meets or fails to meet the criteria for an exemption under section 1201(a)(1), including, without limitation, why the uses sought are or are not noninfringing as a matter of law. The legal analysis should also identify and discuss statutory or other legal provisions that could impact the necessity for or scope of the proposed exemption (for example, the Unlocking Consumer Choice and Wireless Competition Act (“Unlocking Act”),⁵ or 17 U.S.C. 117). Legal assertions should be supported by statutory citations, relevant case law, and other pertinent authority.

The Office is accepting comments in two ways. First, commenters who wish to provide a legal and evidentiary basis for their position may submit comments in a long form format as set forth below. To assist participants, the Office has posted a recommended form for such longer submissions on its Web site at <http://copyright.gov/1201/>.

Second, for those commenters who wish only to briefly express general support for or opposition to a proposed exemption, the Office has provided a short form for single-page comments, also available at <http://copyright.gov/1201/>, which may be completed and uploaded to the Office’s Web site.

The deadlines for each round of submissions are set forth in the **DATES** section above. Commenting parties should be aware that rather than reserve time for potential extensions of time to

file comments, the Office has already established what it believes to be the most generous possible deadlines consistent with the goal of concluding the triennial proceeding in a timely fashion.

To ensure a clear and definite record for each of the proposals, as explained in the September Notice, both long form and short form commenters are required to provide *a separate submission for each proposed class* during each stage of the public comment period. Although a single comment may not address more than one proposed class, the same party may submit multiple written comments on different proposals. For example, a commenter may not submit a single comment addressing both Class 7 and Class 8, but may submit two comments addressing each separately. The Office acknowledges that the requirement of separate submissions may require commenters to repeat certain information across multiple submissions, but the Office believes that the administrative benefits for both participants and the Office of creating a self-contained, separate record for each proposal will be worth the modest amount of added effort.⁶

The *first round* of public comment is limited to submissions from the *proponents* (i.e., those parties who proposed exemptions during the petition phase) and *other members of the public who support* the adoption of a proposed exemption, as well as *any members of the public who neither support nor oppose* an exemption but seek only to share pertinent information about a specific proposal.⁷ Proponents of exemptions—as well as supporters—should present their complete affirmative case for an exemption during the initial round of public comment, including all legal and evidentiary support for the proposal. Those who neither support nor oppose an exemption but seek to offer relevant evidence in response to a proposal should also file comments in the initial round.

Members of the public who oppose an exemption should present the full legal and evidentiary basis for their opposition in the *second* round of public comment.

The *third* round of public comment will be limited to *proponents and supporters* of particular proposals, and *those who neither support nor oppose a proposal*, in either case who seek to *reply* to points made in the earlier

⁶ See 79 FR at 55692.

⁷ These submissions may suggest refinements to the proposed exemptions, but may not propose entirely new exemptions.

¹ 79 FR 55687 (Sept. 17, 2014).

² *Id.* at 55692–93.

³ See <http://copyright.gov/1201/2014/petitions/>. References to these petitions in this document are by party name followed by “Pet.” Where a single party has filed multiple petitions, the reference will include the party name and a short description of the relevant proposal (e.g., “EFF Jailbreaking Pet.”).

⁴ 79 FR at 55689–91.

⁵ Pub. L. 113–144, sec. 2(b)–(c), 128 Stat. 1751, 1751–52 (2014).

rounds of comments. Reply comments should not raise new issues, but should instead be limited to addressing arguments and evidence presented by others.

Parties seeking to make submissions who believe they cannot adhere to the guidelines set forth in this notice should contact the Office, using the contact information above, to discuss their concern.

Long Form Comment Guidelines

Commenters who wish to submit long form comments are strongly encouraged to use the long comment form template available on the Office's Web site at <http://copyright.gov/1201/>. Long form comments should be limited to 25 pages in length (which may be single-spaced but should be in at least 12-point type), not including any documentary evidence attached to the comment.

Proponents' initial comments should, at a minimum, address the below points in separately labeled sections, as indicated below and set forth on the long comment form template. Others who wish to provide a legal and/or evidentiary submission in support of or in opposition to an exemption should follow the same format, as should those submitting reply comments. While, as noted, proponents should complete each portion of the long form in making their initial submission, other commenters (including reply commenters) may note "N/A" in any substantive section of the template that they do not wish to complete.

- *Commenter Information.* Identify the commenter, and, if desired, provide a means for others to contact the submitter or an authorized representative of the submitter by email and/or telephone. (Parties should keep in mind that any private, confidential, or personally identifiable information appearing in their submissions will be accessible to the public.)

- *Proposed Class Addressed.* Identify the proposed exemption the comment addresses by the number and name of the class set forth in this Notice of Proposed Rulemaking (e.g., "Proposed Class 7: Audiovisual works—noncommercial remix videos).

- *Overview.* Provide a brief, general explanation of the circumvention activity sought to be exempted or opposed and why.

- *Technological Protection Measure(s) and Method(s) of Circumvention.* Describe the TPM(s) that control access to the work and method(s) of circumvention. The description should provide sufficient information to allow the Office to understand the nature and basic

operation of the relevant technologies, as well as how they are disabled or bypassed.

- *Asserted Noninfringing Use(s).* Explain the asserted noninfringing use(s) of copyrighted works said to be facilitated by the proposed exemption. Commenters should provide an evidentiary basis to support their arguments regarding noninfringing uses, including discussion or refutation of specific examples of such uses and, if available, relevant documentary and/or multimedia evidence. This section should identify all statutory provisions, case law, and/or other legal authority the commenter wishes the Office to consider in connection with the analysis of whether the asserted uses are noninfringing.

- *Adverse Effects.* Explain whether the inability to circumvent the TPM(s) at issue has or is likely to have adverse effects on the asserted noninfringing use(s). The adverse effects can be current, or may be adverse effects that are likely to occur during the next three years, or both. Commenters should also address potential alternatives that permit users to engage in the asserted noninfringing use(s) without the need for circumvention. Commenters should provide an evidentiary basis to support their arguments regarding asserted adverse effects, including discussion or refutation of specific examples of such uses and, if available, relevant documentary or multimedia evidence. This section should identify all statutory provisions, case law, and/or other legal authority the commenter wishes the Office to consider in connection with the analysis of the claimed adverse effects.

- *Statutory Factors.* Evaluate the proposed exemption in light of each of the statutory factors set forth in 17 U.S.C. 1201(a)(1)(C): (i) the availability for use of copyrighted works; (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes; (iii) the impact that the prohibition on the circumvention of TPMs applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research; (iv) the effect of circumvention of TPMs on the market for or value of copyrighted works; and (v) any other factor that may be appropriate for the Librarian to consider in evaluating the exemption. This section should identify all statutory provisions, case law, and/or other legal authority the commenter wishes the Office to consider in connection with the analysis of these factors.

- *Documentary evidence.* Commenters are encouraged to submit

documentary evidence to support or illustrate the information and arguments addressed in the written comments. As indicated in the **ADDRESSES** section above, such documentary evidence must be attached to the written comment (though it does not count towards the 25-page limit).

- *Multimedia evidence.* Commenters are also encouraged, when feasible, to submit multimedia evidence to support or illustrate relevant technologies or points made in written comments. Multimedia evidence must be submitted separately via mail or hand-delivered to the Office and must be contained on specified digital media, in an approved file format, and appropriately labeled, as described in the **ADDRESSES** section above. Where possible and permissible to post the multimedia submission on a publicly accessible Web site, commenters may wish to include a link to the materials in their comments (although providing such a link is not a substitute for the submission of a physical copy to the Office for inclusion in the official record). As noted above, the Office may post some or all multimedia evidence to its Web site, depending upon file types and sizes, overall volume, and other constraints. To the extent a multimedia submission is not made available on the Office's Web site, the Office will make it available for public inspection and copying at the Copyright Office upon written email request. Copying charges for multimedia files will be assessed at the applicable Office rate under 37 CFR 201.3 for copies of the relevant type. If there are unusual practical or other constraints that preclude the submission of multimedia evidence with the initial written comment, the commenter should contact the Office *at least 21 days before the applicable submission deadline* to discuss whether it would be appropriate to provide a live demonstration at the public hearing and, if so, how any such demonstration would be captured for the official record.

Short Form Comment Guidelines

- Commenters who wish to submit a brief statement in support of or opposition to a particular proposed exemption are strongly encouraged to use the short comment form template available at <http://www.copyright.gov/1201/>. After supplying the Commenter Information and noting the Proposed Class Addressed as described above, the commenter may offer a general statement of support or opposition. Short form comment submissions should not exceed one single-spaced typed page (in at least 12-point type).

II. Review and Classification of Proposed Exemptions

The Office has reviewed and classified the proposed exemptions set forth in the forty-four petitions received in response to its September Notice, in some cases combining overlapping or similar proposed exemptions, and in other cases subdividing proposals to allow for a more focused record, as detailed below.

At the outset, the Office observes that three of the petitions seek an exemption that cannot be granted as a matter of law, as each seeks to permit circumvention of any and all TPMs constituting “DRM”⁸ with respect to unspecified types of copyrighted works for the purpose of engaging in unidentified personal and/or consumer uses.⁹ As the Office explained in its September Notice, the DMCA provides that any exemptions adopted as part of this rulemaking must be defined based on “a particular class of works.”¹⁰ And, as legislative history elaborates, “the ‘particular class of copyrighted works’ [is intended to] be a narrow and focused subset of the broad categories of works . . . identified in Section 102 of the Copyright Act.”¹¹ That is because the purpose of the rulemaking is to “allow the enforceability of the prohibition against the act of circumvention to be selectively waived, for limited time periods, if necessary to prevent a diminution in the availability to individual users of a particular category of copyrighted materials.”¹²

In contrast, the three petitions at issue seek an exemption for all works in all media. Moreover, these broad petitions fail to identify “distinct” and “measurable” impacts on noninfringing uses as contemplated by the DMCA.¹³ Because it is apparent that the Office may not adopt the sweeping type of exemption proposed by these three petitions consistent with the standards

of section 1201(a)(1), the Office declines to put these proposals forward for public comment.¹⁴

The Office has studied the remaining forty-one proposals and categorized them into twenty-seven proposed classes of works. In some cases, overlapping proposals have been merged into a single proposed class. In other cases, individual proposals that encompass multiple proposed uses have been subdivided. For administrative convenience, similar or related classes have also been grouped into overarching categories; the Office notes, however, that it will be considering exemptions on a class-by-class basis.

The Office further notes that it has not put forward precise regulatory language for the proposed classes, because any specific language for exemptions that the Register ultimately recommends to the Librarian will necessarily depend on the full record developed during this rulemaking.¹⁵ Instead, each proposed class is briefly described in Part III below; additional information about the proposals can be found in the underlying petitions posted on the Office’s Web site. As explained in the September Notice, the proposed classes as described here “represent only a starting point for further consideration in the rulemaking proceeding, and will be subject to further refinement based on the record.”¹⁶

In addition, after examining the petitions, the Office has preliminarily identified some initial legal and factual areas of interest with respect to each proposed class. The Office, accordingly, offers guidance below concerning legal and factual issues that commenters may wish to address in connection with particular proposals, as well as particular types of evidence that they may wish to submit. The Office stresses, however, that this preliminary guidance is not exhaustive, and *commenters should consider and offer all legal argument and evidence they believe necessary* to create a complete record. In addition, the Office’s early observations are offered without prejudice to the Office’s ability to raise other questions or concerns at later stages of the proceeding.

III. The Proposed Classes

A. Audiovisual Works on DVD, Blu-Ray, and Downloaded/Streamed Video

Several petitions seek exemptions for circumvention of access controls protecting audiovisual works embodied on DVDs, on Blu-ray discs, and/or in

downloaded or streamed videos in connection with three general categories of uses—educational uses; derivative uses; and format and space-shifting. These proposals raise some shared concerns, including the impact of TPMs on the alleged noninfringing uses of audiovisual works and whether alternative methods of accessing the content, such as screen-capture technology, could alleviate potential adverse impacts. Nonetheless, the evidentiary support for these proposed exemptions is likely to vary according to the specific formats and proposed uses. For example, a film studies professor may have a different need to access higher-resolution material than a teacher displaying an excerpt of a copyrighted work to a kindergarten class, and distribution standards for commercial documentary films may require use of higher-resolution material than required for use in noncommercial remix videos. Accordingly, the Office has further subdivided the three general categories of uses into more specific individual classes to permit proponents to better focus their submissions.

1. Audiovisual Works—Educational Uses

Multiple petitions seek exemptions for educational uses of audiovisual works. The Office notes that prior rulemakings have granted exemptions relating to uses of motion picture excerpts for commentary, criticism, and educational uses by college and university faculty and staff and by kindergarten through twelfth-grade educators.¹⁷ The current petitions generally seek to readopt those previously granted exemptions, and some also seek to expand an exemption to accommodate additional technologies, such as Blu-ray discs, or new users, such as museums, libraries, or students and faculty participating in Massive Open Online Courses (“MOOCs”).

The Office has identified some legal and factual issues that appear common to all of the proposed classes relating to educational uses of audiovisual works. In addition to other more specific areas of concern, for each of these proposals, the Office encourages commenters, in the course of detailing how the proposed exemption meets the legal and evidentiary requirements of section 1201(a)(1), to also address—including through the submission of relevant evidence—the following:

⁸ “DRM,” or digital rights management, is content protection software intended to prevent unauthorized redistribution of copyrighted material. See, e.g., *In re Sony BMG Audio Compact Disc Litig.*, 429 F. Supp. 2d 1378, 1380 (J.P.M.L. 2006).

⁹ See Eldridge Alexander Pet. at 1 (asking the Office to “add an exemption to the DMCA that allows for the removal of DRM for personal, legal uses.”); Ed Grossheim Pet. at 1 (“If I purchase a product it should be mine to do with as I choose without violating copyright.”); Jeremy Putnam Pet. at 1 (“I ask that legal exceptions be made for consumers to remove DRM from all digital content without repercussion.”).

¹⁰ 17 U.S.C. 1201(a)(1)(B) (emphasis added); see also 79 FR at 55690–91.

¹¹ *Report of the H. Comm. on Commerce on the Digital Millennium Copyright Act of 1998*, H.R. Rep. No. 105–551, pt. 2, at 38 (1992) (emphasis added).

¹² *Id.* at 36 (emphases added).

¹³ See *id.* at 37; see also 17 U.S.C. 1201(a)(1)(C).

¹⁴ See 79 FR at 55693.

¹⁵ *Id.* at 55692.

¹⁶ *Id.* at 55693.

¹⁷ 37 CFR 201.40(b)(4)–(7) (2013). See 77 FR 65260, 65266–70 (Oct. 26, 2012) (discussing the most recent prior exemptions).

• Whether the proposed exemptions may be limited to “motion pictures” as defined under the Copyright Act¹⁸ as opposed to all “audiovisual works”¹⁹ (a broader category that encompasses, for example, video games).

• For each type of requested use, whether circumvention alternatives, such as licensing or screen-capture technology, obviate the need for an exemption.

• Specific examples illustrating the need for the exemption to extend beyond DVDs to other formats, such as Blu-ray discs and TPM-protected content distributed online.

(a) Proposed Class 1: Audiovisual Works—Educational Uses—Colleges and Universities

This proposed class would allow college and university faculty and students to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for purposes of criticism and comment. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by the Content Scramble System (“CSS”), Blu-ray discs protected by the Advanced Access Content System (“AACS”), and TPM-protected online distribution services.

Professor Peter Decherney, the College Art Association, the International Communication Association, and the Society for Cinema and Media Studies (collectively referred to here as “Joint Educators”) have filed a petition seeking adoption of a revised version of the previously granted exemptions to permit circumvention of TPMs on DVDs, Blu-ray discs, and videos acquired via online distribution services, for purposes of facilitating educational uses of motion picture excerpts at the college and university level.²⁰

¹⁸ “Motion pictures” are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.” 17 U.S.C. 101.

¹⁹ “Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.” *Id.*

²⁰ Joint Educators propose, in relevant part, the following regulatory language: “audiovisual works embodied in physical media (such as DVDs and Blu-Ray Discs) or obtained online (such as through online distribution services and streaming media) that are lawfully made and acquired and that are protected by various technological protection measures, where the circumvention is accomplished by college and university students or faculty (including teaching and research

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

• The proposed scope of the exemption, such as (a) whether it can be limited to uses requiring close analysis of the copyrighted work (such as in a film studies course), as opposed to general-purpose classroom uses, (b) whether it needs to extend to Blu-ray in addition to other formats, and (c) whether the exemption should be extended to students in addition to materials prepared by faculty.

• Any changed circumstances in the need for an exemption over the last three years, including whether any viable alternatives to circumvention have emerged or evolved during this period.

• Whether the previously granted exemption has had an adverse effect on the marketplace for the accessed copyrighted works.

(b) Proposed Class 2: Audiovisual Works—Educational Uses—Primary and Secondary Schools (K–12)

This proposed class would allow kindergarten through twelfth-grade educators and students to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for educational purposes. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Two submitters—Professor Renee Hobbs and the Library Copyright Alliance (“LCA”)—filed petitions seeking adoption of a revised version of the previously granted exemption to permit circumvention of TPMs on DVDs, Blu-ray discs, and videos acquired via online distribution services, for purposes of facilitating educational uses of motion picture excerpts by kindergarten through twelfth grade educators and students.²¹

assistants.” Joint Educators Pet. at 1. See 37 CFR 201.40(b)(4)–(7) (2013); 77 FR at 65266–70.

²¹ Hobbs proposes “an exemption that enables educators and students in grades K–12 . . . to ‘rip’ encrypted or copy-protected lawfully accessed audiovisual works used for educational purposes.” Hobbs Pet. at 1. LCA requests “renewal of the exemption granted in the 2012 rulemaking for motion picture excerpts. The exemption should be broadened to apply to all storage media, including Blu-Ray. Further, the exemption for educational purposes should be expanded to apply to students in kindergarten through twelfth grade. LCA also seeks simplification of the exemption so that it

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

• The proposed scope of the exemption, such as (a) whether it can be limited to uses requiring close analysis of the copyrighted work, as opposed to general-purpose classroom uses, (b) whether it needs to extend to Blu-ray in addition to other formats, and (c) whether it can be limited to materials prepared by faculty.

• Any changed circumstances in the need for an exemption over the last three years, including whether any viable alternatives to circumvention have emerged or evolved during this period.

• Whether the previously granted exemption has had an adverse effect on the marketplace for the accessed copyrighted works.

(c) Proposed Class 3: Audiovisual Works—Educational Uses—Massive Open Online Courses (“MOOCs”)

This proposed class would allow students and faculty participating in Massive Open Online Courses (“MOOCs”) to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for purposes of criticism and comment. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

The Joint Educators petition requests that any exemption for college and university faculty and staff include those participating in MOOCs, a type of distance education which has become increasingly popular over the last few years.²²

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the

could be readily understood by the authors, filmmakers, students, and educators it is intended to benefit.” LCA Motion Picture Pet. at 1. See 37 CFR 201.40(b)(4)–(7) (2013); 77 FR at 65266–70.

²² Joint Educators, in relevant part, propose the following regulatory language: “audiovisual works embodied in physical media (such as DVDs and Blu-Ray Discs) or obtained online (such as through online distribution services and streaming media) that are lawfully made and acquired and that are protected by various technological protection measures, where the circumvention is accomplished by . . . students and faculty participating in Massive Open Online Courses (MOOCs) for the purpose of criticism or comment.” Joint Educators Pet. at 1.

submission of relevant evidence—the following:

- The definition of a “MOOC” for purpose of the proposed exemption, with reference to the various distinctions among MOOCs in relation to the proposed exemption, including but not limited to (a) courses offered with free and open content versus courses that require course materials to be licensed by users, (b) courses requiring registration and/or identity verification versus courses without such requirements, (c) courses offered for free versus paid courses, and (d) whether the provider is a nonprofit or for-profit entity.

- How the proposed exemption might affect the market for or value of the accessed copyrighted works, including how access to materials resulting from circumvention of TPMs could be limited to the intended audience.

- Whether or how the exception in 17 U.S.C. 110(2) for distance education is relevant the proposed exemption.

- The proposed scope of the exemption (in light of the proposed definition of MOOC), including (a) whether the exemption can be limited to lower-resolution content, (b) whether it can be limited to uses requiring close analysis of the copyrighted work, and (c) whether it can be limited to materials prepared by faculty.

(d) Proposed Class 4: Audiovisual Works—Educational Uses—Educational Programs Operated by Museums, libraries, or Nonprofits

This proposed class would allow educators and learners in libraries, museums and nonprofit organizations to circumvent access controls on lawfully made and acquired motion pictures and other audiovisual works for educational purposes. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Professor Hobbs has proposed that any exemption for kindergarten through twelfth-grade educators and students include “educators and learners” in libraries, museums, and nonprofit organizations.²³

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the

²³ Hobbs proposes that the Register recommend “an exemption that enables . . . educators and learners in libraries, museum and nonprofit organizations to ‘rip’ encrypted or copy-protected lawfully accessed audiovisual works used for educational purposes.” Hobbs Pet. at 1.

submission of relevant evidence—the following:

- The proposed scope of the exemption, such as (a) whether the exemption can be limited to video production, film, and media studies and/or other close analysis of copyrighted works, (b) whether it can be limited to lower-resolution media, (c) the people who would be entitled to use the exemption, including an explanation of who would be included in the proposed categories of “educators” and “learners,” (d) whether the exemption can be limited to prepared presentations by museums, libraries and non-profit entities, and (e) whether the exemption can be limited to use and display within physical spaces as opposed to online use and display.

- How the proposed exemption might affect the market for or value of the accessed copyrighted works, including how access to materials resulting from circumvention of TPMs could be limited to the intended users and intended uses.

2. Audiovisual Works—Derivative Uses

Multiple petitions seek exemptions for derivative uses of audiovisual works, including for use in multimedia e-books, in filmmaking, and in non-commercial remix videos. The Office notes that prior rulemakings have granted exemptions relating to uses of motion picture excerpts in noncommercial videos, documentary films, and nonfiction multimedia e-books offering film analysis.²⁴ The current petitions generally seek to readopt the most recent previously granted exemption while expanding its contours to encompass additional technologies or types of uses.

The Office has identified some legal and factual issues that appear common to all of the proposed classes relating to derivative uses of audiovisual works. In addition to other more specific areas of concern, for each of these proposals, the Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Whether circumvention alternatives, such as licensing or screen-capture technology, would be suitable for each type of requested use.

- Specific examples illustrating the need for the exemption to extend beyond DVDs to other formats, such as Blu-ray discs and TPM-protected content distributed online.

²⁴ See 37 CFR 201.40(b)(4)–(7) (2013); 77 FR at 65266–70.

(a) Proposed Class 5: Audiovisual Works—Derivative Uses—Multimedia E-Books

This proposed class would allow circumvention of access controls on lawfully made and acquired motion pictures used in connection with multimedia e-book authorship. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Authors Alliance and Professor Bobette Buster (collectively referred to here as “Authors Alliance”) seek adoption of a revised version of the previously granted exemption for multimedia e-books, to permit circumvention of TPMs on DVDs, Blu-ray discs, and videos acquired via online distribution services, for purposes of facilitating uses of motion picture excerpts in nonfiction multimedia e-books offering film analysis.²⁵

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Whether the exemption should be limited to multimedia e-books containing film analysis or whether a broader exemption is warranted.

- Whether and how the need for an exemption has increased over the last three years due to “new authorship tools, sophisticated digital distribution networks, and widespread consumer adoption of e-book readers.”²⁶

- Any changed circumstances in the need for an exemption over the last three years, including whether any viable alternatives to circumvention have emerged or evolved during this period.

- Whether the previously granted exemption has had an adverse effect on the marketplace for the accessed copyrighted works.

(b) Proposed Class 6: Audiovisual Works—Derivative Uses—Filmmaking Uses

This proposed class would allow circumvention of access controls on

²⁵ Authors Alliance requests an exemption “that permits authors of multimedia e-books to circumvent Content Scramble System (“CSS”) on DVDs, Advanced Access Content System (“AACS”) on Blu-ray discs, and encryption and authentication protocols on digitally transmitted video in order to make fair use of motion picture content in their e-books.” Authors Alliance Pet. at 2. See 37 CFR 201.40(b)(4)–(7) (2013); 77 FR at 65266–70.

²⁶ See Authors Alliance Pet. at 2.

lawfully made and acquired motion pictures for filmmaking purposes. This exemption has been requested for audiovisual material made available in all formats, including DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

International Documentary Association, Film Independent, Kartemquin Educational Films, Inc., and National Alliance for Media Arts and Culture (collectively referred to here as “IDA”) seek adoption of a revised version of the previously granted exemption to permit circumvention of TPMs on DVDs, Blu-ray discs, and videos acquired via online distribution services, for purposes of facilitating uses of motion picture excerpts in documentary films.²⁷

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Whether the proposed exemption should extend to commercial uses in fictional (*i.e.*, nondocumentary) films, including whether such uses could supplant derivative markets for the copyrighted works used.
- Whether the exemption can be limited to use of only short portions or clips of motion pictures or, if not, the basis for a broader exemption.
- Specific examples of whether access to Blu-ray content or other high-resolution content is necessary to meet applicable distribution standards for documentary and/or fictional filmmaking.
- Any changed circumstances in the need for an exemption over the last three years, including whether any viable alternatives to circumvention have emerged or evolved during this period.
- Whether the previously granted exemption has had an adverse effect on the marketplace for the accessed copyrighted works.

(c) Proposed Class 7: Audiovisual Works—Derivative Uses—Noncommercial Remix Videos

This proposed class would allow circumvention of access controls on lawfully made and acquired audiovisual

²⁷ IDA requests an exemption for filmmakers who seek to make fair use in their filmmaking of copyrighted motion pictures protected by TPMs on DVDs, Blu-Ray discs, and digitally transmitted video, such as streaming video, digital downloads, or transmissions captured on digital video recorders. IDA Pet. at 2–3. See 37 CFR 201.40(b)(4)–(7) (2013); 77 FR at 65266–70.

works for the sole purpose of extracting clips for inclusion in noncommercial videos that do not infringe copyright. This exemption has been requested for audiovisual material made available on DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Electronic Frontier Foundation (“EFF”) and Organization for Transformative Works (“OTW”) jointly seek adoption of a revised version of the previously granted exemption to permit circumvention of TPMs on DVDs, Blu-ray discs, or videos acquired via online distribution services, for purposes of facilitating uses of motion picture excerpts in noncommercial remix videos.²⁸

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The proposed scope of the exemption, including whether the exemption can be limited to: (a) “Motion pictures” as defined under the Copyright Act rather than extending to all “audiovisual works,” (b) uses of short portions or clips of motion pictures or audiovisual works, (c) uses for purposes of criticism, comment, or education, as opposed to other “noninfringing” or “fair” uses, (d) “noncommercial videos” as opposed to “primarily noncommercial videos,” (e) with respect to works distributed online, those works that are not readily available on DVD and/or Blu-ray disc, and (f) with respect to Blu-ray discs, those works or content that are not readily available on DVD.
- Any changed circumstances in the need for an exemption over the last three years, including whether any viable alternatives to circumvention have emerged or evolved during this period.
- Whether the previously granted exemption has had an adverse effect on

²⁸ EFF/OTW filed two petitions which relate to this class; one for DVD and Blu-ray discs, and one for online content. The respective petitions seek exemptions for “[a]udiovisual works on DVDs and Blu-Ray discs that are lawfully made and acquired and that are protected by Digital Rights Management schemes, where circumvention is undertaken for the sole purpose of extracting clips for inclusion in noncommercial videos that do not infringe copyright” and “[a]udiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken solely for the purpose of extracting clips for inclusion in noncommercial videos that do not infringe copyright.” See EFF/OTW Disc Remix Pet. at 1; EFF/OTW Online Remix Pet. at 1. See 37 CFR 201.40(b)(4)–(7) (2013); 77 FR at 65266–70.

the marketplace for the accessed copyrighted works.

3. Proposed Class 8: Audiovisual Works—Space-Shifting and Format-Shifting

This proposed class would allow circumvention of access controls on lawfully made and acquired audiovisual works for the purpose of noncommercial space-shifting or format-shifting. This exemption has been requested for audiovisual material made available on DVDs protected by CSS, Blu-ray discs protected by AACS, and TPM-protected online distribution services.

Public Knowledge filed a petition seeking an exemption permitting circumvention of TPMs on DVDs, Blu-ray discs, and videos acquired via online distribution services for space-shifting or format-shifting for personal use.²⁹ The Office notes that in the 2006 and 2012 triennial rulemakings, the Librarian rejected proposed exemptions for space-shifting or format-shifting, finding that the proponents had failed to establish under applicable law that space-shifting is a noninfringing use.³⁰

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Legal and factual bases that establish that space-shifting and format-shifting are noninfringing fair uses.
- The potential adverse effects likely to be suffered over the next three years in the absence of the requested exemption.
- Evidentiary support for the contention that the DVD is becoming obsolete and incompatible with currently produced computing devices, and any contention that the same concern also applies to Blu-ray discs or downloaded video files.

²⁹ Public Knowledge proposes “an exemption for digital rights management-encrypted motion pictures and other audiovisual works on lawfully made and lawfully acquired DVDs, Blu-ray discs (‘BDs’), and downloaded files, when circumvention is accomplished for the purpose of noncommercial space shifting of the contained audiovisual content.” Public Knowledge Space-Shifting Pet. at 1. Relatedly, in addition, in the context of a general objection to digital rights management technology, Alpheus Madsen has requested an exemption to allow circumvention of CSS for purposes of playing DVDs on the Linux Operating System. See Madsen Pet. at 1.

³⁰ See 77 FR at 65276–77; 71 FR 68472, 68478 (Nov. 27, 2006). The Librarian also previously declined to adopt an exemption to allow motion pictures on DVDs to be played on the Linux operating system. See 68 FR 62011, 62017 (Oct. 31, 2003).

- The specific TPMs sought to be circumvented, including whether they are access or copy controls.

- Whether the proposed exemption can be limited to “motion pictures” as defined under the Copyright Act rather than extending to all “audiovisual works.”

- Whether viable alternatives to circumvention exist, such as screen-capture technology, external drives, alternative playback devices, online subscription services, etc.

B. Literary Works Distributed Electronically

1. Proposed Class 9: Literary Works Distributed Electronically—Assistive Technologies

This proposed class would allow circumvention of access controls on lawfully made and acquired literary works distributed electronically for purposes of accessibility for persons who are print disabled. This exemption has been requested for literary works distributed electronically, including e-books, digital textbooks, and PDF articles.

The American Foundation for the Blind (“AFB”) and the American Council of the Blind (“ACB”) have jointly requested renewal of an exemption allowing accessibility for persons who are print disabled.³¹ The AFB/ACB petition notes that granting such an exemption has historically been relatively uncontroversial and that no one appeared at the 2012 triennial rulemaking hearing to oppose this exemption.³²

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific evidence relating to whether and the extent to which the prohibition on circumvention has or is likely to have an adverse effect on the ability of persons who are blind, visually impaired, or print disabled to engage in noninfringing uses, such as by providing a significant representative sample of titles across various e-book formats that are otherwise inaccessible.
- Any changed circumstances in the need for an exemption over the last

³¹ AFB/ACB request an exemption to allow “people who are blind, visually impaired, or print disabled, as well as the authorized entities that serve them, to circumvent technological protection measures . . . that prevent or interfere with the use of assistive technologies with electronically distributed literary works.” AFB/ACB Pet. at 2. See 37 CFR 201.40 (2013); 77 FR at 65262–63.

³² AFB/ACB Pet. at 5.

three years, including whether previous similar exemptions have improved accessibility for persons who are blind, visually impaired, or print disabled.

- Whether the previously granted exemption has had an adverse effect on the marketplace for the accessed copyrighted works and whether the market has evolved to enhance accessibility.

- How accessibility software interacts with TPMs and e-book technology to improve accessibility for persons who are blind, visually impaired, or print disabled.

- To what extent the “anti-copying encryptions” mentioned in the petition can be described as access controls within the meaning of 1201(a)(1).

2. Proposed Class 10: Literary Works Distributed Electronically—Space-Shifting and Format-Shifting

This proposed class would allow circumvention of access controls on lawfully made and acquired literary works distributed electronically for the purpose of noncommercial space-shifting or format-shifting. This exemption has been requested for literary works distributed electronically in e-books.

Christopher Meadows has requested an exemption to allow space-shifting and format-shifting of lawfully purchased e-books.³³ As noted above, in previous rulemakings, upon recommendation by the Register, the Librarian declined to adopt an exemption for purposes of space-shifting and format-shifting due to the lack of legal precedent establishing that space-shifting and format-shifting are noninfringing uses.³⁴

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Legal and factual bases that establish that space-shifting and format-shifting are noninfringing fair uses.
- Existing alternatives in the market, if any, that may ameliorate potential adverse effects, such as the extent to which people can purchase material in DRM-free formats.

³³ Meadows proposes that “[c]onsumers should be legally permitted to remove DRM from electronic books that they have purchased in order to back them up, read them on other e-book platforms, or otherwise make section 107 fair use of the material.” Meadows Pet. at 1.

³⁴ See 77 FR at 65276–77; 68 FR at 62015–17; 71 FR at 68478. The Register also declined to recommend, and the Librarian declined to adopt, an exemption for creating back-up copies. See 71 FR at 68479.

- Evidentiary support for the concern that e-books distributed by vendors that have gone out of business will become, or have become, unreadable due to TPMs.

- Whether allowing an exemption could harm the market for e-books, including e-book subscription and lending services.

C. Software/firmware That Enable Devices To Connect to a Wireless Network That Offers Telecommunications and/or Information Services (“Unlocking”)

The Office has received several petitions seeking exemptions permitting the circumvention of access controls on computer programs that enable wireless telephone handsets (*i.e.*, cellphones) and other wireless devices to connect to a mobile wireless communications network, for purpose of allowing the device to connect to an alternate network. This process is commonly known as “unlocking.” Consistent with the Unlocking Act,³⁵ the Office will be considering whether to grant an exemption for wireless telephone handsets and whether to “extend” any exemption for wireless telephone handsets to “any other category of wireless devices.”³⁶

A few petitions address multiple types of wireless devices. As the Office indicated in its September Notice, however, “[t]he evaluation of whether an exemption would be appropriate under section 1201(a)(1)(C) is likely to be different for different types of wireless devices, requiring distinct legal and evidentiary showings.”³⁷ For instance, in past rulemakings, determining the existence of a noninfringing use has involved asking whether the software is owned or licensed by the owner of the wireless device.³⁸ The answer to that question may vary for different types of devices. In addition, the marketplace for cellphones and that for, *e.g.*, tablet computing devices may be quite different with respect to carrier subsidies, service commitments, availability of unlocked devices, and other factors. These differences necessarily will impact the factual and legal analysis. Accordingly, the Office has categorized the petitions into the five proposed classes below, with Proposed Classes 11 through 13 each covering a specific type of device, Proposed Class 14 generally covering

³⁵ Pub. L. 113–144, sec. 2(b), 128 Stat. at 1751; see also 79 FR at 55688 (explaining the Unlocking Act).

³⁶ 70 FR at 55689.

³⁷ *Id.*

³⁸ See, *e.g.*, 77 FR at 65265.

“wearable” wireless devices, and Proposed Class 15 representing a broad exemption for all “consumer machines.” While Proposed Classes 14 and 15 appear challenging because of the wide range of devices they purport to cover, the Office hopes to encourage the creation of an adequate administrative record for as many types of devices as possible within the unlocking category.

The Office has identified some legal and factual issues that appear common to all of the proposed classes relating to unlocking. In addition to other more specific areas of concern, for each of these proposals, the Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to also address—including through the submission of relevant evidence—the following:

- Whether an owner of a device at issue in the class also owns the firmware and/or software that runs the device for purposes of 17 U.S.C. 117, which gives software owners certain rights to copy and adapt such programs. In addition, the Office is interested in the relevance, if any, to the section 117 analysis of section 2(c)(2) of the Unlocking Act, which provides that the current cellphone unlocking exemption and any future unlocking exemptions may be initiated “by the *owner of any such handset or other device.*”³⁹

- The technical details of how each type of locking mechanism operates—e.g., service provider code locks, system operator code locks, band order locks, and subscriber identity module locks—and how those locks are circumvented. In particular, the Office is interested in determining with precision the instances in which unlocking merely involves changing underlying variables relied upon by the device firmware, and those in which unlocking requires copying or rewriting the firmware itself.

- The Office understands that the unlocking exemption is aimed at permitting a device to connect to an alternative mobile wireless telecommunications or data network, such as CDMA, GSM, HSPA+, LTE, or other similar networks.⁴⁰ The petitions use differing terminology to refer to these networks, including “wireless

communications networks,” “wireless telecommunications networks,” “wireless networks that offer telecommunications and/or information services.” The Office invites discussion on what terminology most accurately describes the networks to which the proposed unlocking exemptions would apply.

1. Proposed Class 11: Unlocking—Wireless Telephone Handsets

This proposed class would allow the unlocking of wireless telephone handsets. “Wireless telephone handsets” includes all mobile telephones including feature phones, smart phones, and “phablets” that are used for two-way voice communications.

Five parties—Consumers Union,⁴¹ the Competitive Carriers Association (“CCA”),⁴² the Institute of Scrap Recycling Industries (“ISRI”),⁴³ Pymatuning Communications

⁴¹ Consumers Union’s proposed regulatory language reads as follows: “Computer programs, in the form of firmware or software, that enable a mobile wireless communications device to connect to a wireless communications network, when circumvention is initiated by—(1) the owner of the device, (2) another person at the direction of the owner, (3) a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person, solely in order to enable the device to connect to other wireless communications networks, subject to the connection to any such other wireless communications network being authorized by the operator of such network. The term ‘mobile wireless communications device’ means (1) a wireless telephone handset, or (2) a hand-held mobile wireless device used for any of the same wireless communications functions, and using equivalent technology, as a wireless telephone handset.” Consumers Union Pet. at 3.

⁴² CCA’s proposed regulatory language reads as follows: “Computer programs, in the form of firmware, software, or data used by firmware or software, that enable wireless handsets to connect to a wireless network that offers telecommunications and/or information services, when circumvention is initiated by the owner of the device, or by another person at the direction of the owner of the device, in order to connect to a wireless network that offers telecommunications and/or information services, and access to the network is authorized by the operator of the network.” CCA Cellphone Unlocking Pet. at 1–2.

⁴³ ISRI’s proposed regulatory language reads as follows: “Computer programs, in the form of firmware or software, that enable wireless telephone handsets to connect to a wireless telecommunications network, when circumvention, including individual and bulk circumvention for used devices, is initiated by the owner of any such handset, by another person at the direction of the owner, or by a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person, solely in order to enable such owner, family member of such owner, or subsequent owner or purchaser of such handset to connect to a wireless telecommunications network when such connection is authorized by the operator of such network.” ISRI Cellphone Unlocking Pet. at 1.

(“Pymatuning”),⁴⁴ and the Rural Wireless Association (“RWA”)⁴⁵—seek, in essence, renewal of the unlocking exemption for wireless telephone handsets (as reinstated by the Unlocking Act) for another three-year period. Two of the petitions vary in their particulars, however. Pymatuning’s proposal is limited to “used” handsets, but does not define that term. ISRI asks that the exemption specifically allow both “individual and bulk circumvention.”

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The current cellphone unlocking policies for all significant wireless carriers, including (a) whether those carriers are adhering to mobile wireless device unlocking guidelines issued by CTIA-The Wireless Association, (b) whether, under those policies, a consumer’s completion of the term of a service contract, or payment of early termination fees, affects his or her ability to unlock a cellphone, and (c) the extent to which those policies obviate the need for an exemption.

- The extent to which unlocked mobile phones are available for purchase, and whether the availability of such phones is a viable alternative to circumvention.

- Whether the exemption should be limited to “used” handsets, and what would qualify a handset as “used.”

- The practice and market effects of “bulk circumvention” (or unlocking), and whether the exemption should address “bulk circumvention.”

- Any changed circumstances in the need for an exemption over the last three years, including whether any

⁴⁴ Pymatuning’s proposed regulatory language reads as follows: “Computer programs, in the form of firmware or software, that enable used wireless telephone handsets and other used wireless telecommunications devices to connect to a wireless telecommunications network, when circumvention is

initiated by the owner of the copy of the computer program solely in order to connect to a wireless telecommunications network and access to the network is authorized by the operator of the network.” Pymatuning Pet. at 2.

⁴⁵ RWA’s proposal would “allow for the circumvention of the technological measures that control access to Wireless Telephone Handset software and firmware to allow the owner of a lawfully acquired handset, or a person designated by the owner of the lawfully acquired handset, to modify the device’s software and firmware so that the wireless device may be used on a technologically compatible wireless network of the customer’s choosing when the connection to the network is authorized by the operator of the network.” See RWA Cellphone Unlocking Pet. at 1–2.

³⁹ Pub. L. 113–144, sec. 2(c)(2), 128 Stat. at 1752 (emphasis added); see also 37 CFR 201.40(c).

⁴⁰ The Office does not understand the concept of “unlocking” to be relevant to other types of wireless communications, such as those using the IEEE 802.11 standard employed in Wi-Fi routers, the Bluetooth standard, or the ANT wireless network technology, though it invites comment on that issue to the extent the Office may misunderstand the proposals.

viable alternatives to circumvention have emerged or evolved during this period.

- Whether the previously granted exemption has had an adverse effect on the marketplace for the accessed copyrighted works.

2. Proposed Class 12: Unlocking—All-Purpose Tablet Computers

This proposed class would allow the unlocking of all-purpose tablet computers. This class would encompass devices such as the Apple iPad, Microsoft Surface, Amazon Kindle Fire, and Samsung Galaxy Tab, but would exclude specialized devices such as dedicated e-book readers and dedicated handheld gaming devices.

The Office received several petitions—from CCA,⁴⁶ ISRI,⁴⁷ and RWA⁴⁸—that specifically seek an exemption to allow the unlocking of all-purpose tablet computers. Two other petitions—from Consumers Union⁴⁹ and Pymatuning⁵⁰—seek tablet

⁴⁶CCA's proposed regulatory language reads as follows: "Computer programs, in the form of firmware or software, or data used by firmware or software, that enable all-purpose tablet computers to connect to a wireless network that offers telecommunications and/or information services, when circumvention is initiated by the owner of the device, or by another person at the direction of the owner of the device, in order to connect to a wireless network that offers telecommunications and/or information services, and access to the network is authorized by the operator of the network." CCA Tablet Unlocking Pet. at 1–2.

⁴⁷ISRI's proposed regulatory language reads as follows: "Computer programs, in the form of firmware or software, that enable all-purpose tablet computers to connect to a wireless telecommunications network, when circumvention, including individual and bulk circumvention for used devices, is initiated by the owner of any such tablet, by another person at the direction of the owner, or by a provider of a commercial mobile radio service or a commercial mobile data service at the direction of such owner or other person, solely in order to enable such owner, family member of such owner, or subsequent owner or purchaser of such tablet to connect to a wireless telecommunications network when such connection is authorized by the operator of such network." ISRI Tablet Unlocking Pet. at 1.

⁴⁸RWA's proposal would "allow for the circumvention of the technological measures that control access to all purpose tablet computer ('Tablet') software and firmware to allow the owner of a lawfully acquired Tablet, or a person designated by the owner of the lawfully acquired Tablet, to modify the device's software and firmware so that the wireless device may be used on a technologically compatible wireless network of the customer's choosing, and when the connection to the network is authorized by the operator of the network." See RWA Tablet Unlocking Pet. at 1–2.

⁴⁹Consumers Union Pet. at 2–3 ("Consumers Union's proposed exemption accordingly includes all hand-held mobile wireless devices that are used for essentially the same functions and in the same manner as wireless telephone handsets, including tablets.").

⁵⁰Pymatuning Pet. at 2 (stating that because "the justifications underlying the [Unlocking] Act also apply to all portable computers, tablets and other

exemptions as part of their cellphone unlocking petitions. Again, Pymatuning's proposal is limited to "used" tablets, but does not define that term, and ISRI asks that the exemption specifically allow both "individual and bulk circumvention."

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The definition of "all-purpose tablet computer" that would govern the proposed exemption.
- The marketplace for tablets with mobile data connections, including (a) any relevant differences between the marketplace for cellphones and that for tablets, (b) the extent to which wireless carriers subsidize consumer purchases of tablets, and require service commitments in return, and (c) the tablet unlocking policies for all significant wireless carriers, including the extent to which those policies obviate the need for an exemption.

- The extent to which unlocked tablets are available for purchase, and whether the availability of such tablets is a viable alternative to circumvention.

- Whether the exemption should be limited to "used" tablets, and what would qualify a tablet as "used."

- The practice and market effects of "bulk circumvention" (or unlocking), and whether the exemption for tablets should address "bulk circumvention."

3. Proposed Class 13: Unlocking—Mobile Connectivity Devices

This proposed class would allow the unlocking of mobile connectivity devices. "Mobile connectivity devices" are devices that allow users to connect to a mobile data network through either a direct connection or the creation of a local Wi-Fi network created by the device. The category includes mobile hotspots and removable wireless broadband modems.

types of devices that communicate via wireless telecommunications networks, and that are often locked much the same as wireless telephone handsets, Pymatuning requests that the scope of 'handsets' be clarified to include all such wireless telecommunications devices.").

Two petitions—from CCA⁵¹ and RWA⁵²—seek an exemption to allow the unlocking of mobile connectivity devices such as mobile hotspots and aircards.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The marketplace for mobile connectivity devices, including (a) any relevant differences between the marketplace for cellphones and that for mobile connectivity devices, (b) the extent to which wireless carriers subsidize consumer purchases of such devices, and require service commitments in return, and (c) the unlocking policies for all significant wireless carriers with respect to mobile connectivity devices.

- The extent to which unlocked mobile connectivity devices are available for purchase, and whether the availability of such mobile connectivity devices is a viable alternative to circumvention.

4. Proposed Class 14: Unlocking—Wearable Computing Devices

This proposed class would allow the unlocking of wearable wireless devices. "Wearable wireless devices" include all wireless devices that are designed to be worn on the body, including smart watches, fitness devices, and health monitoring devices.

⁵¹CCA's proposed regulatory language reads as follows: "Computer programs, in the form of firmware or software, or data used by firmware or software, that enable mobile hotspots and MiFi devices to connect to a wireless network that offers telecommunications and/or information services, when circumvention is initiated by the owner of the device, or by another person at the direction of the owner of the device, in order to connect to a wireless network that offers telecommunications and/or information services, and access to the network is authorized by the operator of the network." CCA Mobile Hotspot and MiFi Device Unlocking Pet., at 2.

⁵²RWA filed two petitions, one addressed to mobile broadband wireless modems, and the other addressed to mobile hotspots. See RWA Mobile Broadband Wireless Unlocking Pet. at 1–2 (seeking exemption "to allow for the circumvention of the technological measures that control access to the software and firmware of mobile broadband wireless modems, which are also known as wireless air cards ('Air Card'), to allow the owner of a lawfully acquired Air Card, or a person designated by the owner of the lawfully acquired Air Card, to modify the Air Card's software and firmware so that the device may be used on a technologically compatible wireless network of the customer's choosing, and when the connection to the network is authorized by the operator of the network"); RWA Mobile Hotspot Unlocking Pet. at 1–2 (same, except that it seeks to circumvent access controls on "Mobile Wireless Personal Hotspot ('Mobile Hotspot') software and firmware").

CCA⁵³ and RWA⁵⁴ both propose an exemption to permit unlocking of wearable mobile wireless devices, a broad category that would include smart watches, fitness devices, health monitoring devices, and perhaps devices such as Google Glass.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The specific types of devices that would fall under the proposed exemption.
- The Office's understanding is that most smart watches, and most if not all fitness and health monitoring devices, do not employ mobile telecommunications or data networks (e.g., HSPA+ or LTE networks) for wireless connections, but instead use either Wi-Fi to connect to a local wireless network, or Bluetooth or ANT technologies to connect to a smartphone or computer. The Office is interested in the extent to which there are wearable wireless devices that directly connect with mobile telecommunications or data networks—and what those devices are—or whether the exemption seeks to permit circumvention of access controls on devices that use Wi-Fi, Bluetooth, or ANT technologies.
- The marketplace for wearable computing devices, including (a) the extent to which wireless carriers subsidize consumer purchases of such devices, and require service commitments in return, and (b) the unlocking policies for all significant wireless carriers with respect to wearable computing devices.
- The extent to which unlocked devices are available for purchase, and whether the availability of such devices is a viable alternative to circumvention.

⁵³CCA addressed what it called “consumer wearables” in the course of its broad catch-all proposal, the remainder of which is addressed in Proposed Class 15. See CCA Connected Wearables and Consumer Machines Unlocking Pet. at 1–2.

⁵⁴RWA's proposed exemption would “allow for the circumvention of the technological measures that control access to wearable mobile wireless device (‘Wearable Wireless Device’) software and firmware to allow the owner of a lawfully acquired Wearable Wireless Device, or a person designated by the owner of the lawfully acquired Wearable Wireless Device, to modify the device's software and firmware so that the Wearable Wireless Device may be used on a technologically compatible wireless network of the customer's choosing, and when the connection to the network is authorized by the operator of the network.” RWA Wearable Wireless Device Unlocking Pet. at 1–2. RWA explains that “[a] Wearable Wireless Device is a wearable Internet-connected, voice and touch screen enabled, mobile wireless computing device that is designed to be worn on the body, including but not limited to a smart watch.” *Id.* at 2 n.3.

5. Proposed Class 15: Unlocking—consumer machines

This proposed class would allow the unlocking of all wireless “consumer machines,” including smart meters, appliances, and precision-guided commercial equipment.

CCA has proposed a broad, open-ended exemption for all “consumer machines”—or “the ‘Internet of Things’”—which would encompass a diverse range of devices and equipment.⁵⁵ At least as currently framed, it appears that it may be difficult to build an adequate administrative record for this exemption in light of the fact-bound analysis required by section 1201(a)(1). For example, CCA's proposal refers to “precision-guided commercial equipment” but provides no explanation as to the kind of equipment to which it refers. The Office invites commenters to provide targeted argument and evidence that would allow the Office to narrow this category appropriately.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The extent to which devices understood to be in this class use mobile telecommunications or data networks (e.g., HSPA+ or LTE networks) for wireless connections, rather than Wi-Fi or Bluetooth, or some other technology, and whether parties are seeking to circumvent access controls on devices that use such other technologies.
- The extent to which consumers, rather than the device manufacturer or some other entity, select and/or pay for the mobile wireless connection for a smart meter, an appliance, or a piece of precision-guided commercial equipment.
- Specific examples demonstrating adverse effects stemming from a

⁵⁵In relevant part, CCA proposes the following regulatory language: “Computer programs, in the form of firmware or software, or data used by firmware or software, that enable . . . consumer machines to connect to a wireless network that offers telecommunications and/or information services, when circumvention is initiated by the owner of the device, or by another person at the direction of the owner of the device, in order to connect to a wireless network that offers telecommunications and/or information services, and access to the network is authorized by the operator of the network.” CCA Connected Wearables and Consumer Machines Unlocking Pet. at 2. CCA states that the “consumer machines” category encompasses “smart meters, connected appliances, connected precision-guided commercial equipment, among others.” *Id.* at 1.

consumer's inability to choose the mobile wireless communications provider used by a smart meter, an appliance, or a piece of precision-guided commercial equipment.

D. Software That Restricts the Use of Lawfully Obtained Software (“Jailbreaking”)

The Office received several petitions for exemptions to allow users to circumvent TPMs protecting computer programs in devices such as cellphones, all-purpose tablets, and smart TVs and that prevent users from running certain software on, or removing preinstalled software from, these devices. This type of circumvention is commonly referred to as the “jailbreaking” or “rooting” of a device, and has been the subject of proposed classes in the last triennial rulemaking and earlier proceedings.⁵⁶ The Office has categorized the proposals into Proposed Classes 16 through 20, with each class covering a different type of device.

The Office has identified some legal and factual issues that appear common to all of the proposed classes relating to jailbreaking. In addition to other more specific areas of concern, for each of these proposals, the Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to also address—including through the submission of relevant evidence—the following:

- The extent to which consumers may legally purchase devices that do not contain the complained-of access controls, and whether the availability of such devices eliminates the need for an exemption.
- Whether jailbreaking the device facilitates infringing uses, including access to or consumption of infringing content. The Office is particularly interested in specific examples of noninfringing versus infringing uses, and any available evidence regarding the relative volume of lawful versus pirated content installed on or consumed via jailbroken devices, as well as whether there is a practical way to segregate lawful from unlawful uses.

1. Proposed Class 16: Jailbreaking—Wireless Telephone Handsets

This proposed class would permit the jailbreaking of wireless telephone handsets to allow the devices to run lawfully acquired software that is otherwise prevented from running, or to

⁵⁶See, e.g., 77 FR at 65263–64 (wireless telephone handsets); *id.* at 65272–76 (video game consoles); *id.* at 65274–75 (personal computing devices).

remove unwanted preinstalled software from the device.

EFF seeks re-adoption of an existing exemption allowing the jailbreaking of wireless telephone handsets to allow those devices to interoperate with lawfully obtained software and to allow users to remove unwanted preinstalled software from the device.⁵⁷

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Whether the previously granted exemption has had an adverse effect on the marketplace for wireless telephone handsets or the applications that run on them.

- Specific examples of the following: (a) The manner in which access controls are being used to prevent installation of software that competes with software offered by the device manufacturer, and (b) “unwanted software installed by the manufacturer” that “consumes energy, shortens the device’s battery life, or sends personal information to advertisers” that cannot be uninstalled.⁵⁸

2. Proposed Class 17: Jailbreaking—All-Purpose Mobile Computing Devices

This proposed class would permit the jailbreaking of all-purpose mobile computing devices to allow the devices to run lawfully acquired software that is otherwise prevented from running, or to remove unwanted preinstalled software from the device. The category “all-purpose mobile computing device” includes all-purpose non-phone devices (such as the Apple iPod touch) and all-purpose tablets (such as the Apple iPad or the Google Nexus). The category does not include specialized devices such as e-book readers or handheld gaming devices, or laptop or desktop computers.

⁵⁷ EFF’s petition encompassed wireless telephone handsets and other all-purpose mobile computing devices. See EFF Jailbreaking Pet. at 1 (suggesting an exemption for “[c]omputer programs that enable mobile computing devices, such as telephone handsets and tablets, to execute lawfully obtained software, where circumvention is accomplished for the sole purposes of enabling interoperability of such software with computer programs of the device, or removing software from the device”). Proposed Class 16 encompasses EFF’s proposal with respect to wireless telephone handsets, and Proposed Class 17 encompasses the remainder of EFF’s proposal. See 37 CFR 201.40(b)(2) (2013); see also 77 FR at 65263–64.

⁵⁸ EFF Jailbreaking Pet. at 4.

EFF⁵⁹ and Maneesh Pangasa⁶⁰ seek to extend any exemption allowing the jailbreaking of wireless telephone handsets⁶¹ to other all-purpose mobile computing devices, including non-phone handheld devices and all-purpose tablets. In the 2012 triennial rulemaking, the Librarian rejected a jailbreaking exemption for tablets because “the record lacked a sufficient basis to develop an appropriate definition for the ‘tablet’ category of devices, a necessary predicate to extending the exemption beyond smartphones.”⁶² The Librarian acknowledged, however, that “[i]n future rulemakings, as mobile computing technology evolves, such a definition may be more attainable.”⁶³

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The specific types of devices that would be encompassed by the exemption.

- Whether there are any relevant differences between wireless telephone handsets and other all-purpose computing devices, such as non-phone handheld computing devices and tablets, for purposes of analyzing the proposed exemption.

- Although the EFF’s proposed exemption encompasses all-purpose mobile computing devices, it specifically excludes laptop and desktop computers.⁶⁴ The Office is interested in the rationale for that exclusion, and how any exemption would distinguish between those devices that would fall within the

⁵⁹ EFF’s petition seeks, in relevant part, the following proposed class: “Computer programs that enable mobile computing devices, such as . . . tablets, to execute lawfully obtained software, where circumvention is accomplished for the sole purposes of enabling interoperability of such software with computer programs on the device, or removing software from the device.” EFF Jailbreaking Pet. at 1.

⁶⁰ Mr. Pangasa’s tablet jailbreaking petition encompasses two distinct proposals. Pangasa Tablet Jailbreaking Pet. at 1–4. The Office has consolidated the portion of Mr. Pangasa’s petition addressing jailbreaking of general purpose tablets with the EFF’s proposal in Proposed Class 17. See *id.* at 1 (“I would like to request an exemption to the Digital Millennium Copyright Act for jail-breaking or rooting tablets like the Apple iPad Air & iPad Mini, Amazon’s Kindle Fire HD, Microsoft Surface line of tablets (particularly the RT version to install hacks that permit running desktop applications on RT devices.”). Mr. Pangasa’s proposal with respect to e-book readers is made part of Proposed Class 18.

⁶¹ See 37 CFR 201.40(b)(2) (2013).

⁶² See 77 FR at 65264.

⁶³ *Id.*

⁶⁴ See EFF Jailbreaking Pet. at 2.

exemption and those that would fall outside it.

- Specific examples of the following: (a) The manner in which access controls are being used to prevent installation of software that competes with software offered by the device manufacturer, and (b) “unwanted software installed by the manufacturer” that “consumes energy, shortens the device’s battery life, or sends personal information to advertisers” that cannot be uninstalled.⁶⁵

3. Proposed Class 18: Jailbreaking—Dedicated E-Book Readers

This proposed class would permit the jailbreaking of dedicated e-book readers to allow those devices to run lawfully acquired software that is otherwise prevented from running.

Maneesh Pangasa filed a petition that, in relevant part, seeks an exemption to allow jailbreaking of dedicated e-book readers such as Amazon’s Kindle Paperwhite and Barnes and Noble’s Nook.⁶⁶ Mr. Pangasa provided only a limited explanation of the noninfringing uses that would be facilitated by jailbreaking e-book readers, or of the adverse effects caused by the relevant access controls. In part, it appears his concern may be related to the inability to format-shift or space-shift e-books, a topic that is addressed in Proposed Class 10. Mr. Pangasa also makes a passing reference to enabling “universal access functionality”; the Office notes that e-book accessibility concerns are addressed in Proposed Class 9. Reading the petition generously, Mr. Pangasa does appear to raise a concern that dedicated e-readers may not be able to run lawfully acquired third-party applications. Accordingly, the Office has elected to put forward this proposed class for further comment.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The TPMs that are included with dedicated e-book readers, and how they prevent access to the e-book reader’s firmware or software.

- Specific examples of noninfringing uses that are facilitated by the jailbreaking of a dedicated e-book reader, other than enabling accessibility for persons who are print disabled.

⁶⁵ *Id.* at 4.

⁶⁶ See Pangasa Tablet Jailbreaking Pet. at 2–4 (“I therefore request an exemption to the Digital Millennium Copyright Act be granted extending the protections for (class #5) mobile phones to include . . . dedicated e-readers like the Amazon Kindle.”).

- Whether allowing an exemption could harm the market for e-books, including e-book subscription and lending services.

4. Proposed Class 19: Jailbreaking—Video Game Consoles

This proposed class would permit the jailbreaking of home video game consoles. Asserted noninfringing uses include installing alternative operating systems, running lawfully acquired applications, preventing the reporting of personal usage information to the manufacturer, and removing region locks. The requested exemption would apply both to older and currently marketed game consoles.

Maneesh Pangasa has proposed an exemption to permit circumvention of home video game consoles for an assortment of asserted noninfringing uses, including installing alternative operating systems and removing region locks.⁶⁷ In the 2012 triennial rulemaking, the Librarian rejected a proposed class seeking an exemption for jailbreaking of video game consoles.⁶⁸ Among other things, the Librarian concluded based on the evidentiary record that the jailbreaking of video game consoles “leads to a higher level of infringing activity.”⁶⁹ At the same time, the Librarian determined that there was insufficient evidence of adverse impacts on noninfringing uses, because the asserted noninfringing uses were not substantial, and there were alternative devices that allowed users to engage in those uses.⁷⁰

Particularly in light of those earlier conclusions, the Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- The nature of the specific TPMs at issue and how they operate, and the particular acts of circumvention required for the jailbreaking of video game consoles as sought in the proposal (including any significant differences among platforms).
- The relationship between the ability to jailbreak consoles and the dissemination and consumption of pirated content, including any practical

means to limit the exemption to facilitate noninfringing rather than infringing conduct.

- Specific evidence regarding the adverse impact of access controls in video game consoles on noninfringing uses, including an explanation of why it is necessary to employ the console for particular uses rather than an alternative device such as a general-purpose computer.

- Whether allowing an exemption could harm the market for video game consoles or video games.

- Whether the Librarian’s analysis should distinguish between current-generation game consoles and older game consoles and, if so, how.

5. Proposed Class 20: Jailbreaking—Smart TVs

This proposed class would permit the jailbreaking of computer-embedded televisions (“smart TVs”). Asserted noninfringing uses include accessing lawfully acquired media on external devices, installing user-supplied licensed applications, enabling the operating system to interoperate with local networks and external peripherals, and enabling interoperability with external devices, and improving the TV’s accessibility features (*e.g.*, for hearing-impaired viewers). The TPMs at issue include firmware encryption and administrative access controls that prevent access to the TV’s operating system.

The Software Freedom Conservancy (“SFC”) has proposed an exemption to permit circumvention of TPMs that protect access to firmware and software on “smart TVs.”⁷¹ It asserts that although modern smart TVs are “full-featured computers,” manufacturers limit their capabilities in a number of ways. For instance, SFC asserts that while smart TVs are internet enabled, they are “limited to accessing only services chosen by the manufacturer.”⁷² In addition, SFC asserts that many TVs have USB ports that “can only be used to install manufacturer-supplied updates and connect to manufacturer-sanctioned devices.”⁷³

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to

address—including through the submission of relevant evidence—the following:

- The specific TPMs on smart TVs, how they operate, and methods of circumventing such access controls.

- Specific examples of noninfringing uses that would be facilitated by circumvention.

- What users seek to do with jailbroken smart TVs, including specific examples of the following: (a) User-supplied software that users wish to install, (b) external hardware users are prevented from connecting absent circumvention, (c) improvements to accessibility for hearing-impaired users that would be facilitated by jailbreaking, and (d) external storage devices through which users seek to access media.

- The reasons smart TV manufacturers limit end users’ ability to install third-party applications and/or restrict interoperability with external devices.

- The role of any licensing arrangements between smart TV manufacturers and content or application providers and the extent to which the TPMs at issue protect open-source software.

E. Vehicle Software

Several petitions seek exemptions to permit circumvention of TPMs on software that is embedded in vehicles. The Office has initially consolidated these proposals into the two classes below based on the asserted noninfringing uses and may further refine the two proposed classes based on the record as it develops.

The Office has identified certain areas of inquiry that appear to be common to both of these proposed classes. In addition to other more specific areas of concern, for each of these proposals, the Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to also address—including through the submission of relevant evidence—the following:

- The computers and TPMs used in connection with different types of vehicles, including personal automobiles, commercial motor vehicles, and agricultural machinery, and how they operate.

- Whether the proposed exemption is warranted for all types of motorized land vehicles—including personal automobiles, commercial motor vehicles, and agricultural machinery—and whether and how the analysis may differ for each type of vehicle.

⁶⁷ Mr. Pangasa seeks an exemption “for jailbreaking or rooting home video game consoles like Nintendo’s Wii U, Sony’s PlayStation 4, Microsoft’s Xbox One and home media devices like Apple TV which may in future gain the ability to natively play video games.” Pangasa Video Game Console Jailbreaking Pet. at 1.

⁶⁸ 77 FR at 65272–74.

⁶⁹ *Id.* at 65274.

⁷⁰ *Id.*

⁷¹ SFC’s proposal would “permit owners of computer-embedded televisions (‘Smart TVs’) to circumvent firmware encryption and administrative access controls that control access to the TVs’ operating systems, for the purpose of accessing lawfully-acquired media, installing licensed applications, and enabling interoperability with external devices.” SFC Pet. at 1.

⁷² *Id.* at 3.

⁷³ *Id.*

1. Proposed Class 21: Vehicle Software—Diagnosis, Repair, or Modification

This proposed class would allow circumvention of TPMs protecting computer programs that control the functioning of a motorized land vehicle, including personal automobiles, commercial motor vehicles, and agricultural machinery, for purposes of lawful diagnosis and repair, or aftermarket personalization, modification, or other improvement. Under the exemption as proposed, circumvention would be allowed when undertaken by or on behalf of the lawful owner of the vehicle.

EFF has proposed an exemption to allow the circumvention of TPMs on computer programs that are embedded in vehicles for purposes of personalization, modification, or other improvement and would apply to all motorized land vehicles.⁷⁴ The Intellectual Property & Technology Law Clinic of the University of Southern California Gould School of Law (“U.S.C. Law”) has proposed a similar exemption for agricultural machinery specifically.⁷⁵ EFF explains that “[v]ehicle owners expect to be able to repair and tinker with their vehicles[,]” but TPMs on vehicle software “block such legitimate activities, forcing vehicle owners to choose between breaking the law or tinkering and repairing their vehicles.”⁷⁶ U.S.C. Law similarly observes that farmers specifically require unfettered access to this vehicle software “to make any significant modifications to the efficiency and/or functionality of . . . their increasingly sophisticated agricultural machinery”⁷⁷ and to “obtain vital diagnostic information.”⁷⁸

⁷⁴ EFF’s proposed regulatory language reads as follows: “Lawfully-obtained computer programs that control or are intended to control the functioning of a motorized land vehicle, including firmware and firmware updates, where circumvention is undertaken by or on behalf of the lawful owner of such a vehicle for the purpose of lawful aftermarket personalization, improvement, or repair.” EFF Vehicle Software Repair Pet. at 1.

⁷⁵ U.S.C. Law filed two petitions relating agricultural machinery software. The first seeks an exemption to “allow[] farmers to circumvent . . . TPMs for the purpose of modifying their own agricultural machinery to improve efficiency and/or functionality.” U.S.C. Law Vehicle Software Modification Pet. at 1. The second seeks an exemption to “allow[] farmers to circumvent . . . TPMs for the purpose of diagnosing and/or repairing their own agricultural machinery.” U.S.C. Law Vehicle Software Repair Pet. at 1. At least at this stage of the rulemaking, the Office believes that the two petitions are similar enough that they may be addressed as part of the same proposed class.

⁷⁶ EFF Vehicle Software Repair Pet. at 5.

⁷⁷ U.S.C. Law Vehicle Software Modification Pet. at 2.

⁷⁸ U.S.C. Law Vehicle Software Repair Pet. at 1.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific examples of the adverse effects of the TPMs, including how they prevent vehicle owners or others from engaging in lawful diagnosis, repair, or modification activities.
- With respect to *each* of the proposed uses—diagnosis, repair, and modification—(a) the extent to which any of the asserted noninfringing activities merely requires examination or changing of variables or codes relied upon by the vehicle software, or instead requires copying or rewriting of the vehicle software, and (b) whether vehicle owners can properly be considered “owners” of the vehicle software.
- The applicability (or not) of the statutory exemption for reverse engineering in 17 U.S.C. 1201(f) to the proposed uses.
- Whether a third party—rather than the owner of the vehicle—may lawfully offer or engage in the proposed circumvention activities with respect to that vehicle pursuant to an exemption granted under 17 U.S.C. 1201(a)(1).

2. Proposed Class 22: Vehicle Software—Security and Safety Research

This proposed class would allow circumvention of TPMs protecting computer programs that control the functioning of a motorized land vehicle for the purpose of researching the security or safety of such vehicles. Under the exemption as proposed, circumvention would be allowed when undertaken by or on behalf of the lawful owner of the vehicle.

EFF seeks an exemption that would permit circumvention of TPMs on computer programs that are embedded in vehicles for purposes of researching the security or safety of that vehicle.⁷⁹ According to EFF, TPMs on vehicle software prevent researchers from “discover[ing] programming errors that endanger passengers” or “errors that would allow a remote attacker to take control of a vehicle’s functions.”⁸⁰ Thus, separate and apart from Proposed Class 21, EFF seeks a specific exemption

⁷⁹ EFF’s proposed regulatory language reads as follows: “Lawfully-obtained computer programs that control or are intended to control the functioning of a motorized land vehicle, including firmware and firmware updates, where circumvention is undertaken by or on behalf of the lawful owner of such a vehicle for the purpose of researching the security or safety of such vehicles.” EFF Vehicle Software Security Pet. at 1.

⁸⁰ EFF Vehicle Software Security Pet. at 2.

to permit vehicle safety and security research.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific examples of the adverse effects of the TPMs, including how they prevent vehicle owners or others from engaging in lawful safety and security research activities.
- With respect to the proposed uses, (a) the extent to which any of the asserted noninfringing activities merely requires examination or changing of variables or codes relied upon by the vehicle software, or instead requires copying or rewriting of the vehicle software, and (b) whether vehicle owners can properly be considered “owners” of the vehicle software.
- Whether granting the exemption could have negative repercussions with respect to the safety or security of vehicles, for example, by making it easier for wrongdoers to access a vehicle’s software.
- The applicability (or not) of the statutory exemptions for reverse engineering in 17 U.S.C. 1201(f) and encryption research in 17 U.S.C. 1201(g) to the proposed uses.
- Whether a third party—rather than the owner of the vehicle—may lawfully offer or engage in the proposed circumvention activities with respect to that vehicle pursuant to an exemption granted under 17 U.S.C. 1201(a)(1).

F. Abandoned Software

1. Proposed Class 23: Abandoned Software—Video Games Requiring Server Communication

This proposed class would allow circumvention of TPMs on lawfully acquired video games consisting of communication with a developer-operated server for the purpose of either authentication or to enable multiplayer matchmaking, where developer support for those server communications has ended. This exception would not apply to video games whose audiovisual content is primarily stored on the developer’s server, such as massive multiplayer online role-playing games.

EFF has proposed an exemption to permit circumvention of TPMs on video games that require communication with a server to “enable core functionality”—that is, either “single-player or multiplayer play”—where the developer no longer supports the requisite server

or services.⁸¹ EFF claims that an exemption allowing video game owners to circumvent relevant authentication and multiplayer TPMs is necessary to “serve player communities that wish to continue playing their purchased games, as well as archivists, historians, and other academic researchers who preserve and study videogames.”⁸²

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific descriptions of the TPMs and methods of circumvention involved.

- Specific examples of video games that would be covered by this proposed class, including games that can no longer be played at all and games for which single-player play remains possible but cannot be played in multiplayer mode.

- Whether the exemption would threaten the current market for video games (a) by allowing users of unlawfully acquired video games to similarly bypass server checks, (b) by contributing to the circumvention of client-server protocols for non-abandoned video games, or (c) by threatening the market for older video games or discouraging the market for backward compatibility of video games.

- The standard for determining when developer support has ended, including whether that standard should have a notice or grace period for developers before the exemption can be used.

- The proposed scope of an exemption, including (a) whether the exemption should differ with respect to games that cannot be played at all because developer support has ended, and those for which only multiplayer support has ended, (b) whether it should exclude video games that are hosted on or played through a remote server, and (c) whether it should be limited to libraries, archivists, historians, or other academic researchers who preserve or study video games.

- Whether the exemption should differ with respect to video games that are made for personal computers, those

⁸¹ EFF’s proposed regulatory language reads as follows: “Literary works in the form of computer programs, where circumvention is undertaken for the purpose of restoring access to single-player or multiplayer video gaming on consoles, personal computers or personal handheld gaming devices when the developer and its agents have ceased to support such gaming.” EFF Abandoned Video Games Pet. at 1.

⁸² *Id.* at 1–2.

made for consoles, and those made for handheld devices.

2. Proposed Class 24: Abandoned Software—Music Recording Software

This proposed class would allow circumvention of access controls consisting of the PACE content protection system, which restricts access to the full functionality of lawfully acquired Ensoniq PARIS music recording software.

In three similar petitions, Richard Kelley, James McCloskey, and Michael Yanoska have proposed an exemption to permit circumvention of a TPM called PACE that protects access to a specific hardware and software system used for music production called Ensoniq PARIS.⁸³ The petitions explain that, when PARIS is installed on a new computer or the hosting computer is modified in some way, the PACE access control requires the user to enter a response code, but these codes soon will no longer be available. Petitioners assert that an exemption will allow for both continued use of the PARIS system and access to existing sound recording files saved using that system, which would otherwise be unrecoverable.

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific evidence that response codes will no longer be provided to Ensoniq PARIS owners.

- The applicability (or not) of 17 U.S.C. 117 to the maintenance or repair of the hardware and software comprising Ensoniq PARIS or the PACE protection system.

- Whether any portions of the Ensoniq PARIS hardware or software will remain functional without the

⁸³ Mr. Kelley alone proposed specific regulatory language as follows: “(1) Obsolete software/hardware combinations protected by a software based copy protection mechanism (software dongle) when the manufacturer is unable (because of no longer being in business) or unwilling to provide access via this system to those who are otherwise entitled access; (2) Obsolete software/hardware combinations protected by a software based copy protection mechanism (software dongle) that prevents the hardware and software from running on current operating systems or current hardware by those otherwise entitled to access to the software and hardware.” Kelley Pet. at 1; *see also* McCloskey Pet. at 1 (seeking “a minor broadening of a previous exemption, namely ‘Computer programs protected by dongles that prevent access due to malfunction or damage and which are obsolete’”); Yanoska Pet. at 1 (seeking exemption to allow “[e]limination of the PACE control on recording software that was created and sold over 15 years ago (which is no longer sold or supported by the creating company)”).

ability to circumvent the PACE access control.

- Whether the proposed circumvention could impact others, if any, who use the PACE protection system, including federal agencies and state and local law enforcement personnel who apparently rely upon services from Intelligent Devices, the current proprietor of the PACE access control system.

G. Miscellaneous

1. Proposed Class 25: Software—Security Research

This proposed class would allow researchers to circumvent access controls in relation to computer programs, databases, and devices for purposes of good-faith testing, identifying, disclosing, and fixing of malfunctions, security flaws, or vulnerabilities.

Two submissions—by Professor Matthew D. Green,⁸⁴ and by a group of academic security researchers comprising Professors Steven M. Bellovin, Matt Blaze, Edward W. Felten, J. Alex Halderman, and Nadia Heninger (“Security Researchers”)⁸⁵—seek exemptions for researchers performing good-faith security research. According to the submissions, an exemption is needed to identify, disclose, and fix malfunctions, security flaws, and/or vulnerabilities across a wide range of systems and devices. Petitioners seek to circumvent TPMs in medical devices; car components; supervisory control and data acquisition (“SCADA”)

⁸⁴ Professor Green’s proposed regulatory language reads as follows: “Computer programs and software, a subcategory of literary works, accessible on personal computers and personal devices and protected by technological protection measures (‘TPMs’) that control access to lawfully obtained works when circumvention is accomplished for the purposes of good faith testing, investigating, or correcting security flaws and vulnerabilities, commentary, criticism, scholarship, or teaching.” Green Pet. at 1.

⁸⁵ Security Researchers’ proposed regulatory language reads as follows: “Literary works, including computer programs and databases, protected by access control mechanisms that potentially expose the public to risk of harm due to malfunction, security flaws or vulnerabilities when (a) circumvention is accomplished for the purposes of good faith testing for, investigating, or correcting such malfunction, security flaws or vulnerabilities in a technological protection measures or the underlying work it protects; OR (b) circumvention was part of the testing or investigation into a malfunction, security flaw or vulnerability that resulted in the public dissemination of security research when (1) a copyright holder fails to comply with the standards set forth in ISO 29147 and 30111; or (2) the finder of the malfunction, security flaw or vulnerability reports the malfunction, security flaw or vulnerability to the copyright holder by providing the information set forth in Form A* in advance of or concurrently with public dissemination of the security research.” Security Researchers Pet. at 1.

systems; and other critical infrastructure, such as the computer code that controls nuclear power plants, smartgrids, and industrial control systems; smartphones that operate critical applications, such as pacemaker applications; internet-enabled consumer goods in the home; and transit systems.⁸⁶ According to petitioners, the exemptions codified in subsection (f) of 17 U.S.C. 1201 for reverse engineering, subsection (g) for encryption research, subsection (i) for protection of personally identifying information, and subsection (j) for security testing do not sufficiently capture the breadth of the research they seek to facilitate, and suffer from “ambiguities . . . and burdensome requirements to qualify for those exemptions.”⁸⁷ As a result, the petitioners say that they have “chosen not to perform specific acts of security research that they believe would have prevented harms to and benefited [the] safety of human persons.”⁸⁸

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific examples of the types of noninfringing uses that are, or in the next three years, are likely to be adversely affected by a prohibition on circumvention, including the security risks sought to be avoided.
- The specific TPMs sought to be circumvented in connection with particular classes of works and the methods for circumventing those access controls, including the environment (academic or otherwise) in which the circumvention would be accomplished.
- Specific examples of acts of security research that have been foregone or delayed due to the current lack of the proposed exemption.
- Whether granting the exemption could have negative repercussions with respect to the safety or security of the works that are subject to research, for example, by making it easier for wrongdoers to access sensitive applications or databases.
- Any industry standards that the Office should consider in evaluating

⁸⁶ See Security Researchers Pet. at 2.

⁸⁷ Green Pet. at 4; see also Security Researchers Pet. at 2.

⁸⁸ Security Researchers Pet. at 3. The Office notes that prior exemptions granted in 2006 and 2010 addressed circumvention for investigation or security purposes for the more limited categories of compact discs or video games accessible on personal computers. See 37 CFR 201.40(b)(6) (2007) (compact discs); 37 CFR 201.40(b)(4) (2011) (video games); 71 FR at 68477; 75 FR 43825, 43832 (July 27, 2010).

this request, such as the ISO 29147 and ISO 30111 security guidelines, including an explanation of how these standards may relate to the proposed exemption.

2. Proposed Class 26: Software—3D Printers

This proposed class would allow circumvention of TPMs on firmware or software in 3D printers to allow use of non-manufacturer-approved feedstock in the printer.

Public Knowledge seeks an exemption to circumvent TPMs on computer programs used in 3D printers to allow use of non-manufacturer-approved feedstock in such printers.⁸⁹

The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific examples of 3D printers that include the complained-of access controls, including a description of the applicable TPMs, how they operate, and methods of circumvention.
- The extent to which there are available for purchase 3D printers that do not include such access controls, and whether the existence of such printers obviates the need for an exemption.

3. Proposed Class 27: Software—Networked Medical Devices

The proposed class would allow circumvention of TPMs protecting computer programs in medical devices designed for attachment to or implantation in patients and in their corresponding monitoring devices, as well as the outputs generated through those programs. As proposed, the exemption would be limited to cases where circumvention is at the direction of a patient seeking access to information generated by his or her own device, or at the direction of those conducting research into the safety, security, and effectiveness of such devices. The proposal would cover devices such as pacemakers, implantable cardioverter defibrillators, insulin pumps, and continuous glucose monitors.

This proposal, filed by a coalition of medical device patients and researchers (“Medical Device Research Coalition”), seeks an exemption to allow circumvention of TPMs in the firmware

⁸⁹ Public Knowledge “seeks an exemption for users of 3D printers that are protected by control technologies when circumvention is accomplished solely for the purpose of using non-manufacturer approved feedstock in the printer.” Public Knowledge 3D Printer Pet. at 2.

or software of medical devices and their corresponding monitoring systems at patient direction or for purposes of safety, security, or effectiveness research.⁹⁰ According to the petition, “[m]any medical device manufacturers use measures to control access” to medical device software, including password systems and encryption of outputs.⁹¹ The Office encourages commenters, in the course of detailing how the proposed exemption meets the requirements of section 1201(a)(1), to address—including through the submission of relevant evidence—the following:

- Specific examples demonstrating the noninfringing uses and adverse effects of the TPMs, including how patients seeking access to information generated by their own devices, and/or those seeking to conduct research into the safety, security, and effectiveness of such devices, are prevented from engaging in lawful activities because of the TPMs.
- Whether the exemption should distinguish among different users (researchers, patients, healthcare providers at the direction of the device-user patient, etc.) and/or the proposed use (examining output of devices, research into safety, security, and effectiveness of devices, etc.).
- Whether the outputs generated by the medical device programs constitute copyright-protected materials.
- Whether granting the exemption could have negative repercussions with respect to the safety or security of the relevant medical devices, for example, by making it easier for wrongdoers to access such medical devices’ software or outputs.
- The relevance of the statutory exemptions for reverse engineering in 17 U.S.C. 1201(f) and for encryption research in 17 U.S.C. 1201(g) to the proposed uses.
- Whether a third party—rather than the owner of the device—may lawfully offer or engage in the proposed circumvention activities with respect to that device pursuant to an exemption granted under 17 U.S.C. 1201(a)(1).

⁹⁰ The Medical Device Research Coalition’s proposed regulatory language reads as follows: “Computer programs, in the form of firmware or software, including the outputs generated by those programs, that are contained within or generated by medical devices and their corresponding monitoring systems, when such devices are designed for attachment to or implantation in patients, and where such circumvention is at the direction of a patient seeking access to information generated by his or her own device or at the direction of those conducting research into the safety, security, and effectiveness of such devices.” Medical Device Research Coalition Pet. at 1–2.

⁹¹ *Id.* at 2.

Dated: December 9, 2014.

Jacqueline C. Charlesworth,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2014-29237 Filed 12-11-14; 8:45 am]

BILLING CODE 1410-30-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2005-TX-0002; FRL-9920-33-Region 6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Repeal of Lead Emission Rules for Stationary Sources in El Paso and Dallas County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the State Implementation Plan (SIP) for Texas which repeals lead emission rules which cover stationary sources in El Paso and Dallas county that are no longer in existence. This action is being taken under section 110(k) and part D of the Clean Air Act.

DATES: Written comments should be received on or before January 12, 2015.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Boyce, (214) 665-7259, boyce.kenneth@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal repealing lead emission rules which cover stationary sources that are no longer operating in both El Paso County and Dallas County. We are taking this action as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the proposed approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action no further activity is contemplated. If EPA receives relevant adverse comments, the direct final rule

will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register** and the electronic docket found in the www.regulations.gov Web site (Docket ID No. EPA-R06-OAR-2005-TX-0002).

Dated: November 19, 2014.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2014-29144 Filed 12-11-14; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA-HQ-OAR-2012-0522; FRL-9920-39-OAR]

RIN 2060-AQ20

Phosphoric Acid Manufacturing and Phosphate Fertilizer Production RTR and Standards of Performance for Phosphate Processing; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking; extension of public comment period.

SUMMARY: On November 7, 2014, the Environmental Protection Agency (EPA) proposed amendments to the national emission standards for hazardous air pollutants for Phosphoric Acid Manufacturing and Phosphate Fertilizer Production source categories and to new source performance standards for several phosphate processing categories. The EPA is extending the deadline for written comments on the proposed amendments by 30 days to January 21, 2015. The EPA received requests for an extension from The Fertilizer Institute, several phosphate facilities and a testing company that supports the industry. The Fertilizer Institute has requested the extension in order to allow more time to review the proposed rule and associated emissions data, risk assessment and technology review.

DATES: *Comments.* The public comment period for the proposed rule published in the **Federal Register** on November 7, 2014, (79 FR 66512) is being extended for 30 days to January 21, 2015.

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 for the addresses and detailed instructions.

Docket. The EPA has established a docket for this rulemaking under Docket ID Number EPA-HQ-OAR-2012-0522. 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 or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW., Washington, DC. 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 EPA Docket Center is (202) 566-1742.

World Wide Web. The EPA Web site for this rulemaking is at <http://www.epa.gov/ttn/atw/phosph/phosphpg.html>.

FOR FURTHER INFORMATION CONTACT: Ms. Tina Ndoh, Sector Policies and Programs Division (D243-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2750; fax number: (919) 541-5450; and email address: Ndoh.Tina@epa.gov.

SUPPLEMENTARY INFORMATION:

Comment Period

After considering requests received from industry to extend the public comment period, the EPA has decided to extend the public comment period for an additional 30 days. Therefore, the public comment period will end on January 21, 2015, rather than December 22, 2014. This extension will help ensure that the public has sufficient time to review the proposed rule and the supporting technical documents and data available in the docket.

Dated: December 5, 2014.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2014-29193 Filed 12-11-14; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services****42 CFR Part 416, 418, 482, 483, and 485**

[CMS-3302-P]

RIN 0938-AS29

Medicare and Medicaid Program; Revisions to Certain Patient's Rights Conditions of Participation and Conditions for Coverage

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the applicable conditions of participation (CoPs) for providers, conditions for coverage (CfCs) for suppliers, and requirements for long-term care facilities, to ensure that certain requirements are consistent with the Supreme Court decision in *United States v. Windsor*, 570 U.S.12, 133 S.Ct. 2675 (2013), and HHS policy. Specifically, we propose to revise certain definitions and patient's rights provisions, in order to ensure that same-sex spouses in legally-valid marriages are recognized and afforded equal rights in Medicare and Medicaid participating facilities.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 10, 2015.

ADDRESSES: In commenting, please refer to file code CMS-3302-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3302-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3302-P, Mail

Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

- a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

- b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ronisha Davis, (410) 786-6882.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard,

Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

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I. Background*A. United States v. Windsor Decision*

In *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013), the Supreme Court held that section 3 of the Defense of Marriage Act (DOMA) is unconstitutional because it violates the Fifth Amendment (*See Windsor*, 133 S. Ct. 2675, 2695). Section 3 of DOMA, provided that in determining the meaning of any Act of the Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' meant only a legal union between one man and one woman as husband and wife, and the word 'spouse' could refer only to a person of the opposite sex who was a husband or a wife (1 U.S.C. 7).

The Supreme Court concluded that this section, by prohibiting Federal recognition of same-sex marriages that were lawfully entered into or recognized under state law, "undermines both the public and private significance of state-sanctioned same-sex marriages" and found that "no legitimate purpose" overcomes section 3's "purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect" (*Windsor*, 133 S. Ct. at 2694-95). Following the Supreme Court's opinion in *Windsor*, the Federal government is permitted to recognize the validity of same-sex marriages when administering Federal statutes and programs. And HHS has adopted a policy of treating same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible.

This proposed rule would revise certain conditions of participation (CoPs) for providers, conditions for coverage (CfCs) for suppliers, and requirements for long-term care facilities to ensure that the requirements at issue are consistent with the *Windsor* decision and HHS policy to treat same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible. As discussed in detail below, we propose to revise certain definitions and patient's rights provisions to ensure that legally married same-sex spouses are recognized and afforded equal rights in Medicare and Medicaid participating facilities. For all Medicare and Medicaid provider and supplier types, we have conducted a review of the Code of Federal Regulations (CFR) for instances in which our regulations draw on state law for purposes of defining "representative", "spouse", and similar terms in which reference to a spousal relationship is explicit or implied. We have identified 9 provisions that we believe should be revised in light of the *Windsor* decision and HHS policy. Currently, these provisions could be interpreted to support the denial of Federal rights and privileges to a same-sex spouse if the state of residence does not recognize same-sex marriages. If we do not make these revisions, our regulations would not afford equal treatment in Medicare and Medicaid participating facilities to same-sex spouses whose marriages were lawfully celebrated in jurisdictions that recognize same-sex marriage. In light of the *Windsor* decision and HHS policy, we believe that it is appropriate to revise these CoPs, CfCs, and requirements to ensure that these valid same-sex marriages are treated on the same terms as opposite-sex marriages in these Federal programs. The applicable provisions are located in the CoPs and CfCs for Ambulatory Surgical Centers (ASCs), Hospices, Hospitals, Long-Term Care (LTC) facilities, and Community and Mental Health Centers (CMHCs). We note that we did not find any regulations that we believe require amendment to achieve our policy goals for equal treatment within the CoPs and CfCs for the other provider and supplier types; therefore they are not included in this regulation. However, we want to emphasize that the *Windsor* decision and HHS policy affect all provider and supplier types. In addition, on December 12, 2014, CMS issued guidance to state survey agencies regarding the impact of the Supreme Court's decision in *United States v. Windsor* on how references to terms

such as "spouse", "marriage", "family", and "representative" should be interpreted in our regulations and the associated guidance concerning current CoPs, CfCs, and requirements except where the applicable regulation specifically requires application or interpretation in accordance with state law. With respect to those regulations that did not explicitly bar such an interpretation, we have taken the approach in our guidance that such terms include a same-sex spouse, regardless of where the couple resides or the jurisdiction in which the provider or supplier providing health care services to the individual is located, if the same-sex marriage was lawful where entered into and, if the marriage was celebrated in a foreign jurisdiction, it would be recognized in at least one state.

We also note that on September 27, 2013 and May 30, 2014, we issued *Windsor*-related guidance regarding Medicaid eligibility determinations (SHO #13-006, available at <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-13-006.pdf> and SHO #14-005, available at <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SMD-14-005.pdf>) on the implications of the *Windsor* decision for state flexibility regarding the recognition of same-sex marriages in determining eligibility for Medicaid and the Children's Health Insurance Program (CHIP). We note that Medicaid eligibility and CoP/CfC policies addressed in this proposed rule are administered by different statutes and are administered by state Medicaid agencies and CMS, respectively.

This proposed rule addresses certain regulations governing Medicare and Medicaid participating providers and suppliers where current regulations look to state law in a matter that implicates (or may implicate) a marital relationship. Our goal is to provide equal treatment to spouses, regardless of their sex, whenever the marriage was valid in the jurisdiction in which it was entered into, without regard to whether the marriage is also recognized in the state of residence or the jurisdiction in which the health care provider or supplier is located, and where the Medicare program explicitly or impliedly provides for specific treatment of spouses.

B. Statutory and Regulatory Authority

Various sections of the Social Security Act (the Act) define the various terms that the Medicare program employs with respect to each provider and supplier type and list the requirements that each provider and supplier must

meet to be eligible for Medicare and Medicaid participation. Each statutory provision also specifies that the Secretary of Health and Human Services (the Secretary) may establish other requirements as the Secretary finds necessary in the interest of the health and safety of patients, although the exact wording of such authority may differ slightly among different provider and supplier types.

Given the desire to expedite the proposed changes and the common rationale for each proposed change, we believe the most prudent course of action is to publish these proposed revisions concerning the different providers and suppliers at issue in a single proposed rule. The following are the statutory authorities for the regulatory revisions we are proposing:

- Ambulatory Surgical Centers (ASCs)—section 1832(a)(2)(F)(i) of the Act.
- Hospices—section 1861(dd)(2)(G) of the Act.
- Hospitals—section 1861(e)(9) of the Act.
- Long-Term Care (LTC) Facilities: Skilled Nursing Facilities (SNFs)—section 1819(d)(4)(B) of the Act, Nursing Facilities (NFs)—section 1919(d)(4)(B) of the Act.
- Community Mental Health Centers (CMHCs)—section 1861(ff)(3)(B)(iv) of the Act, section 1913(c)(1) of the Public Health Service Act (42 U.S.C. 201 *et seq.*).

II. Provisions of the Proposed Regulations

Consistent with the U.S. Supreme Court's holding in *United States v. Windsor* and HHS policy, for purposes of the CoPs and CfCs at issue, we are proposing to recognize marriages between individuals of the same sex who were lawfully married under the law of the state, territory, or foreign jurisdiction where the marriage was entered into ("celebration rule") (assuming at least one state would recognize the marriage), regardless of where the couple resides or the jurisdiction in which the provider or supplier providing health care services to the individual is located, regardless of any state law to the contrary. We are proposing revisions to provisions throughout the CoPs and CfCs that draw on state-law definitions of "representative", "spouse," or similar terms that can implicate a spousal relationship. These revisions would promote equality and ensure the recognition of the validity of same-sex marriages when administering the patient rights and services at issue.

Below, we describe each of the proposed revisions.

A. Ambulatory Surgical Centers Condition for Coverage—Patient Rights (§ 416.50)

Section 416.50 sets forth the requirements that an ASC must follow when informing a patient or a patient's representative or surrogate of the patient's rights. Current regulations at § 416.50(e)(3) look to state law to determine a patient's legal representative or surrogate in situations where a state court has not adjudged a patient incompetent. We propose to add language at paragraph (e)(3) that would establish the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

B. Hospice Care (42 CFR Part 418)

1. Definitions (§ 418.3)

Section 418.3 sets forth the definition of "representative" when used throughout Part 418 as related to hospice care. Currently, the definition provides that a representative is an individual who has the authority under state law (whether by statute or pursuant to an appointment by the courts of the state) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated; in addition, the term may include a guardian under the regulatory definition. We propose to revise the definition of "representative" to provide that a same-sex spouse in a marriage that was valid in the jurisdiction in which it was celebrated must be treated as a "spouse" wherever state law authorizes a "spouse" to be a representative, but a court has not appointed a specific representative. We intend for the hospice to use a celebration rule in recognizing the same-sex spouse of a patient, regardless of whether the law in the jurisdiction where the patient or spouse resides or where the hospice is located recognizes the same-sex spouse.

2. Condition of Participation: Patient's Rights (§ 418.52(b)(3))

Section 418.52 sets forth the requirements for a hospice to inform a patient of his or her rights. Current regulations at § 418.52(b)(3) require a hospice to allow a patient's legal representative to exercise the patient's rights to the extent allowed by state law, if the patient has not been adjudged

incompetent by a state court. Regulations at § 418.52(b)(3) refer to a representative "designated by the patient in accordance with state law." We propose to add at paragraph (b)(3), language that establishes the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

C. Conditions of Participation for Hospitals (Part 482)

1. Condition of Participation: Patient's Rights (482.13)

Regulations at § 482.13 set forth the requirements that a hospital must meet to protect and promote each patient's rights. Sections 482.13(a)(1) and § 482.13(b)(2), respectively, require a hospital to "inform each patient, or, when appropriate, the patient's representative (as allowed under state law), of the patient's rights, in advance of furnishing or discontinuing care," and afford the patient "the right to make informed decisions regarding his or her care." We propose to add at § 482.13(a)(1) and § 482.13(b)(2) the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage is valid in the jurisdiction in which it was celebrated.

2. Condition of Participation: Laboratory Services (§ 482.27)

Regulations at § 482.27 require that a hospital must maintain, or have available, adequate laboratory services to meet the needs of its patients. Regulations at § 482.27(b) require hospitals to screen blood and blood products for potentially infectious diseases (specifically, the HIV virus and Hepatitis C virus) and to notify donors and patients as necessary. Section 482.27(b)(10) addresses notification both when the patient has been adjudged incompetent by a state court and when the patient is competent. In the case of a patient who is adjudged incompetent by a state court, the physician or hospital must notify a "legal representative designated in accordance with state law." When the patient is competent, but state law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or patient's legal representative or relative. We propose to add at § 482.27(b)(10) the requirement that the same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage is valid in the

jurisdiction in which it was celebrated. This requirement would apply when state law designates or identifies a "spouse" as a legal representative in case of either competency or incompetency.

D. Requirements for States and Long-Term Care (LTC) Facilities (42 CFR Part 483)

1. Resident Rights (§ 483.10)

Regulations at § 483.10 give residents the right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside a facility. The regulations also require LTC facilities to protect and promote the rights of each resident. Under § 483.10(a)(4), when a resident has not been adjudged incompetent, any "legal surrogate designated in accordance with state law" may exercise such rights to the extent provided by state law. We propose to add language to § 483.10(a)(4) that would establish a requirement that, the same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

2. Preadmission Screening and Resident Review (PASRR) Evaluation Criteria (§ 483.128)

Regulations at § 483.128 set forth the criteria for a PASRR (currently abbreviated as PASARR in the regulations) evaluation. Section 483.128(c) specifies who must participate in the evaluation process, and paragraph (c)(2) requires that the individual's legal representative must participate, if one has been designated under state law. At § 483.128(c)(2), we propose to clarify that a same-sex spouse would be recognized and treated the same as an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

In addition, regulations at § 483.128(k) require that for both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, a legal representative designated under state law. We propose a similar revision here to provide that, a same-sex spouse would be recognized and treated the same as an opposite-sex spouse if the same-sex marriage was valid in the jurisdiction in which it was celebrated.

E. Conditions of Participation: Community Mental Health Centers (CMHCs) (Part 485, Subpart J)

1. Definitions (§ 485.902)

Regulations at § 485.902 set forth the definition of “representative” when used throughout Part 485, subpart J as related to care in CMHCs. We propose to revise the definition of “representative” to provide that the same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

2. Condition of Participation: Client Rights (485.910(b)(3))

Regulations at § 485.910 require CMHCs to inform a client of his or her rights and protect and promote the exercise of these client rights. Section 485.910(b)(3) requires that, in the case of a client who has not been adjudged incompetent by the State court, “any legal representative designated by the client in accordance with state law” may exercise the client’s rights to the extent allowed under state law. We propose to add to this provision the requirement that the same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was lawful in the jurisdiction in which it was celebrated.

III. Collection of Information Requirements

This document does not impose any new information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements, as defined under the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 35). However, it does make reference to existing information collection requirements; specifically, this document references disclosure requirements contained in § 482.13(a)(1) and § 482.27(b)(10). These requirements are already accounted for in the ICR associated with OMB control number 0938–0328. We are in the process of reinstating the ICR under 0938–0328 and will complete that process under notice and comment periods separate from those associated with this notice of proposed rulemaking.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed

with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than \$7.0 million to \$35.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because

we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately \$141 million. This rule will have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 416

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant programs—health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 416—AMBULATORY SURGICAL SERVICES

■ 1. The authority citation for Part 416 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 416.50 paragraph (e)(3) is revised to read as follows:

§ 416.50 Condition for coverage: Patient's rights.

* * * * *

(e) * * *

(3) If a State court has not adjudged a patient incompetent, any legal representative or surrogate designated by the patient may exercise the patient's rights to the extent allowed by state law regarding the scope of legal representation. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

PART 418—HOSPICE CARE

■ 3. The authority citation for Part 418 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 4. Section 418.3 is amended by revising the definition of "representative" to read as follows:

§ 418.3 Definitions.

* * * * *

Representative means an individual who has the authority under State law (whether by statute or pursuant to an appointment by the courts of the State) to authorize or terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill patient who is mentally or physically incapacitated. This may include a legal guardian. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. If a state court has appointed a representative, that person is the representative for these purposes.

* * * * *

■ 5. In § 418.52, paragraph (b)(3) is revised to read as follows:

§ 418.52 Condition of participation: Patient's rights.

* * * * *

(b) * * *

(3) If a state court has not adjudged a patient incompetent, any legal representative designated by the patient

in accordance with state law may exercise the patient's rights to the extent allowed by state law. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 6. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 7. In 482.13, revise paragraph (a)(1) and (b)(2) to read as follows:

§ 482.13 Condition of participation: Patient's rights.

* * * * *

(a) * * *

(1) A hospital must inform each patient, or when appropriate, the patient's representative (as allowed under State law), of the patient's rights, in advance of furnishing or discontinuing patient care whenever possible. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

(b) * * *

(2) The patient or his or her representative (as allowed under State law) has the right to make informed decisions regarding his or her care. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment. This right must not be construed as a mechanism to demand the provision of treatment or services deemed medically unnecessary or inappropriate.

* * * * *

■ 8. In 482.27, paragraph (b)(10) is revised to read as follows:

§ 482.27 Condition of participation: Laboratory services.

* * * * *

(b) * * *

(10) *Notification to legal representative or relative.* If the patient has been adjudged incompetent by a State court, the physician or hospital must notify a legal representative designated in accordance with State

law. If the patient is competent, but State law permits a legal representative or relative to receive the information on the patient's behalf, the physician or hospital must notify the patient or his or her legal representative or relative. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated. For possible HIV infectious transfusion beneficiaries that are deceased, the physician or hospital must inform the deceased patient's legal representative or relative. If the patient is a minor, the parents or legal guardian must be notified.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 9. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102, 1128I and 1871 of the Social Security Act (42 U.S.C. 1302, 1320a-7j, and 1395hh).

■ 10. In § 483.10, paragraph (a)(4) is revised to read as follows:

§ 483.10 Resident's rights.

* * * * *

(a) * * *

(4) In the case of a resident who has not been adjudged incompetent by the state court, any legal-surrogate designated in accordance with state law may exercise the resident's rights to the extent provided by state law. The same-sex spouse of a resident must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

■ 11. In § 483.128, paragraphs (c)(2) and (k) are revised to read as follows:

§ 483.128 PASARR evaluation criteria.

* * * * *

(c) * * *

(2) The individual's legal representative, if one has been designated under state law. The same-sex spouse of a patient must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated; and

* * * * *

(k) *Interpretation of findings to individual.* For both categorical and individualized determinations, findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designated under state law. The same-sex spouse of a resident

must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

■ 12. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

■ 13. Section 485.902 is amended by revising the definition of “representative” to read as follows:

§ 485.902 Definitions.

* * * * *

Representative means an individual who has the authority under State law to authorize or terminate medical care on behalf of a client who is mentally or physically incapacitated. This includes a legal guardian. The same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

■ 14. In § 485.910, paragraph (b)(3) is revised to read as follows:

§ 485.910 Condition of participation: Client rights.

* * * * *

(b) * * *

(3) If the State court has not adjudged a client incompetent, any legal representative designated by the client

is accordance with State law may exercise the client’s rights to the extent allowed under State law. The same-sex spouse of a client must be afforded treatment equal to that afforded to an opposite-sex spouse if the marriage was valid in the jurisdiction in which it was celebrated.

* * * * *

Dated: June 12, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 18, 2014.

Sylvia M. Burwell,

Secretary, Department of Health and Human Services.

[FR Doc. 2014–28268 Filed 12–11–14; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register

Vol. 79, No. 239

Friday, December 12, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0078]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Biological Control Agent for Asian Citrus Psyllid in the Contiguous United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact relative to the release of *Diaphorencyrtus aligarhensis* for the biological control of the Asian citrus psyllid, *Diaphorina citri*, in the contiguous United States. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A Wager-Pagé, Assistant Director, Pest Permitting Branch, Registration, Identification, Permitting, and Plant Safeguarding, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2323.

SUPPLEMENTARY INFORMATION: The Asian citrus psyllid (*Diaphorina citri*; ACP), can cause economic damage to citrus in groves and nurseries by direct feeding. Both adults and nymphs feed on young foliage, depleting the sap and causing galling or curling of leaves. High populations feeding on a citrus shoot can kill the growing tip.

ACP's primary threat to citrus, however, is not as a direct plant pest, but as an efficient vector of the bacterial pathogen that causes citrus greening. Also known as Huanglongbing (HLB),

citrus greening is considered to be one of the most serious citrus diseases in the world. HLB is a bacterial disease, caused by strains of the bacterial pathogen “*Candidatus Liberibacter asiaticus*,” that attacks the vascular system of host plants. The pathogen is phloem-limited, inhabiting the food-conducting tissue of the host plant, and causes yellow shoots, blotchy mottling and chlorosis, reduced foliage, and tip dieback of citrus plants. HLB greatly reduces production, destroys the economic value of the fruit, and can kill trees. Once infected, there is no cure for a tree with HLB. In areas of the world where the disease is endemic, citrus trees decline and die within a few years and may never produce usable fruit.

ACP is currently present in Alabama, American Samoa, Florida, Georgia, Guam, Hawaii, Louisiana, Mississippi, the Northern Mariana Islands, Puerto Rico, Texas, the U.S. Virgin Islands, and portions of Arizona, California, and South Carolina.

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a parasitic wasp, *Diaphorencyrtus aligarhensis*, to reduce the severity of infestations of ACP in the United States and retard the spread of HLB.

On September 18, 2014, we published in the **Federal Register** (79 FR 56050, Docket No. APHIS–2014–0078) a notice¹ in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of this biological control agent into the contiguous United States.

We solicited comments on the EA for 30 days ending October 20, 2014. We received 16 comments by that date. They were from an organization representing State departments of agriculture, an agricultural commission, an organization engaged in citrus research, an advocacy group for organic farming, citrus producers, pesticide applicators, and private citizens.

One commenter stated her opposition to the proposed release of *D. aligarhensis*, but did not provide any substantive information or specific concerns.

¹ To view the notice, the comments we received, the EA, or the FONSI, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0078>.

Another commenter stated that the EA had failed to take into consideration the possibility that *D. aligarhensis* will parasitize non-target insects. However, as another commenter pointed out, the EA did in fact analyze such possible parasitization.

The remaining commenters supported the proposed release.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *D. aligarhensis* into the contiguous United States for use as a biological control agent for ACP. The finding, which is based on the EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Regulations.gov Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead to (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 5th day of December 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–29113 Filed 12–11–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Forest Service****Information Collection: Good Neighbor Agreement With State Cooperators**

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Forest Service is correcting a notice that appeared in the *Federal Register* on December 9, 2014, (79 FR 73026). This correction replaces the link listed for the Good Neighbor Agreement instruments and associated administrative forms for this new information collection request. It does not change the date comments must be received by.

DATES: Comments must be received in writing on or before February 9, 2015 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Jake Donnay, Legislative Affairs, USDA Forest Service, 1400 Independence Ave. SW., Mailstop 1130, Washington, DC 20250-1130. Comments also may be submitted via facsimile to 202-205-1225 or by email to: jacobsdonnay@fs.fed.us.

All comments, including names and addresses when provided, will be placed in the record and available for public viewing and copying. The public may inspect comments received at U.S. Department of Agriculture, Forest Service, 201 14th Street SW., 4th floor, 4CE, Washington, DC, during normal business hours. Visitors are encouraged to call ahead to 202-205-1637 to facilitate entry. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to jacobsdonnay@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Jake Donnay, Legislative Affairs at USDA Forest Service, 202-205-1617. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: In the *Federal Register* of December 9, 2014, in FR Doc. 2014-28746, on page 73026, in column 3, the paragraph before the heading "Estimate of Annual Burden" replace www.fs.fed.us.gov/farbill/gna.shtml with the following <http://www.fs.fed.us/farbill/gna.shtml>.

Dated: December 10, 2014.

Brian Ferebee,

Acting Associate Deputy Chief, National Forest System.

[FR Doc. 2014-29263 Filed 12-10-14; 4:15 pm]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE**Forest Service****Northern Research Station, Timber & Watershed Laboratory, RWU NRS-01, West Virginia, Fernow Experimental Forest 2016 to 2020**

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS9) to document the analysis and disclose environmental impacts of proposed actions needed to continue long-term research on the Fernow Experimental Forest. To continue long-term research on the Fernow Experimental Forest, the USDA Forest Service proposes to harvest timber, use prescribed fire, and apply fertilizer to specific areas of the experimental forest. Also, to maintain the integrity of the experimental forest for long-term research we will continue the following management activities: Applying gravel to road surfaces as needed; replacing culverts on skid roads and haul roads as needed; maintaining water bars on skid roads; maintaining ditches and culverts; seeding decks and landings; using herbicides to control the spread of Japanese stiltgrass and other invasive species such as tree-of-heaven as needed; removing hazard trees from along the roads; and maintaining openings used for weather stations. The purpose of the research is to evaluate the effectiveness of silvicultural tools on central Appalachian forests, to better understand ecological dynamics within these forest ecosystems, and to develop management tools, practices, and guidelines for central Appalachian forests.

The 4,700-acre Fernow Experimental Forest is situated with the boundary of eth Monongahela National Forest in Tucker County, West Virginia and is managed by the Northern Research Station of eth USDA Forest Service. These proposed research activities are in compliance with the 2006 revised in 2011 Monongahela National Forest Plan, which provides overall guidance for management of the area, including direction for management of the Fernow Experimental Forest.

DATES: Comments concerning the scope of the analysis must be received by January 26, 2015. The draft environmental impact statement is expected September 2015 and the final environmental impact statement is expected November 2015.

ADDRESSES: Send written comments to USDA Forest Service, Northern Research Station, Timber & Watershed Laboratory, Attn: Fernow EIS, P.O. Box 404, Parsons, WV 26287. Comments may also be sent via email to mailto:fs-fernow@fs.fed.us, or via facsimile to 304-478-8692.

FOR FURTHER INFORMATION CONTACT: Tom Schuler, Northern Research Station, Timber & Watershed Laboratory, P.O. Box 404, Parsons, WV 26287, 304-478-2000, tschuler@fs.fed.us.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Purpose and Need for Action**

The purpose of the proposed actions is to continue ongoing research studies on the FEF and to maintain the integrity of the FEF for long-term research. The need for these specific proposed actions is found in the various study plans that set up the harvest methods and timing for harvests. Some studies include experiments that were designed to last 80 years or more. These data represent some of the most complete, continuous long-term records on ecosystem processes in the world. We want to continue these experiments as designed, and continue to gather information about the effects of various silvicultural practices on forest ecosystems in the central Appalachians. We will use these data to provide information on basic ecosystem processes in unmanaged and managed forests, on species diversity of plants and animals, and on other ecological parameters. Research results from the FEF are used to guide management on private and public lands in the central Appalachian region.

The FEF has many partners and collaborators who rely on the existing studies as a framework for basic research, and for innovative studies. Therefore, it is important that we manage the FEF to ensure availability for collaborative research, and to ensure safety for all visitors to the FEF. Management activities include: Applying gravel to road surfaces as needed; replacing culverts on skid roads and haul roads as needed; maintaining water bars on skid roads; maintaining

ditches and culverts; seeding decks and landings; using herbicides to control the spread of Japanese stiltgrass and other invasive species such as tree-of-heaven as needed; removing hazard trees from along the roads; and maintaining openings used for weather stations.

Proposed Action

The proposed activities planned for 2015 through 2020 include the following silvicultural treatments in existing research studies: Diameter-limit harvest on 173 acres; single-tree selection on 150 acres; 24 acres of patch clearcuts (each patch is 0.4 acre) within 169 acres; and prescribed fire treatment on 391 acres. Other treatments include annual fertilization of 89 acres with ammonium sulfate fertilizer (and additions of dolomitic lime to 2 of those acres), treatments of invasive non-native plants, and maintenance of roads, decks, and other infrastructure.

Responsible Official

The responsible official for the decision will be the Project Leader or Acting Project Leader for RWU NRS-01, "Ecological and Economic Sustainability of the Appalachian Forest in an Era of Globalization".

Nature of Decision To Be Made

The responsible official will decide if the proposed action will be implemented as described, as modified by an alternative, or not at all. If the proposed action is implemented, what mitigation measures and monitoring requirements will the Forest Service implement.

Preliminary Issues

Preliminary issues to address in the EIS include:

- Adverse effects of logging and prescribed fire to habitat and individuals listed as federally endangered or threatened
- a decrease in soil productivity from erosion following timber harvests and prescribed fires
- increased sediment input to streams from timber harvests and prescribed fires
- increases in stream acidity and adverse effects to trout populations from the addition of ammonium sulfate fertilizer to a watershed

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Letters describing the proposed action were sent to interested people and agencies on December 5, 2014. The project is listed on the Monongahela National Forest Schedule

of Proposed Actions at http://www.fs.fed.us/nepa/project_content.php?project=45791.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: December 8, 2014.

Thomas M. Schuler,

Project Leader, NRS-01.

[FR Doc. 2014-29162 Filed 12-11-14; 8:45 am]

BILLING CODE 3410-11-P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Thursday, December 18, 2014, 9:00 a.m.–11:30 a.m. EST.

PLACE: Cohen Building, Room 3321, 330 Independence Ave. SW, Washington, DC 20237.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (Board) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of its October 30, 2014 meeting, a resolution honoring the 65th anniversary of Voice of America's Ukrainian Service, and a resolution honoring the fifth anniversary of Radio Free Europe/Radio Liberty's Radio Mashaal. The Board will receive a presentation providing an overview of the International Broadcasting Bureau.

This meeting will also be available for public observation via streamed Webcast, both live and on-demand, on the agency's public Web site at www.bbg.gov. Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Members of the public seeking to attend the meeting in person must register at <http://bbgboardmeetingdecember2014>.

eventbrite.com by 12:00 p.m. (EST) on December 17. For more information, please contact BBG Public Affairs at (202) 203-4400 or by email at pubaff@bbg.gov.

CONTACT PERSON FOR MORE INFORMATION:

Persons interested in obtaining more information should contact Oanh Tran at (202) 203-4545.

Oanh Tran,

Director of Board Operations.

[FR Doc. 2014-29290 Filed 12-10-14; 4:15 pm]

BILLING CODE 8610-01-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 American Fisheries Act Reports.

OMB Control Number: 0648-0401.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 8.

Average Hours per Response: Chinook Salmon Incentive Plan Agreement (IPA), 40 hours; Non-Chinook Salmon Intercooperative Agreement (ICA) revisions, 1 hour; Chinook Salmon IPA Annual Report, Non-Chinook ICA Annual Report, American Fisheries Act (AFA) Annual Cooperative Report, AFA Annual Cooperative Catch Report and AFA Cooperative Contract, 8 hours each; AFA Catcher Vessel Intercooperative Agreement and AFA Catcher Vessel Intercooperative Agreement Annual Report, 40 hours each.

Burden Hours: 345.

Needs and Uses: This request is for revision and extension of a currently approved information collection. Two new voluntary reports have been added, and one report removed.

On October 21, 1998, the President signed into law The American Fisheries Act, 16 U.S.C. 1851 (AFA). The AFA established a limited access program for the inshore sector of the BSAI pollock fishery that is based on the formation of fishery cooperatives around each inshore pollock processor. NMFS issues a single pollock allocation to each cooperative and the cooperative may

make sub-allocations of pollock to each individual vessel owner in the cooperative.

◆ With respect to the fisheries off Alaska, the AFA Program is a suite of management measures that fall into four general regulatory categories:

◆ Limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors (50 CFR 679.64).

◆ Govern the formation and operation of fishery cooperatives in the BSAI pollock fishery, including filing of cooperative contracts (50 CFR 679.61 and 679.62).

◆ Protection of other fisheries from spillover effects from the AFA (50 CFR 679.64).

◆ Govern catch measurement and monitoring in the BSAI pollock fishery, including filing of annual reports and completing and submitting inshore catcher vessel pollock cooperative catch reports (50 CFR 679.63).

Affected Public: Business or other for-profit organizations.

Frequency: Annually, on occasion.

Respondent's Obligation: Required to obtain or retain benefits, voluntary.

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: December 8, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014-29098 Filed 12-11-14; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Innovative Technologies and Manufacturing Loan Guarantee Program

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before February 10, 2015.

ADDRESSES: Direct all written comments to EDA, Innovative Technologies and Manufacturing Loan Guarantee Program, U.S. Department of Commerce, Room 71004, 1401 Constitution Avenue NW., Washington, DC 20230 (or via the Internet to EDA at LGPForms@eda.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to EDA at LGPForms@eda.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Economic Development Administration (EDA) is to lead the Federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance.

Form ED-1919 Borrower's Information Form

Form ED-1919 is part of the application process. The purpose of this form is to collect identifying information about the applicant, loan request, indebtedness, information about the principals, information about current or previous government financing, and certain other disclosures. The information also facilitates background checks as authorized by EDA regulations.

Form ED-1920 Lender's Application

Form ED-1920 is part of the application process. The purpose of this form is to collect identifying information regarding the lender, loan terms, use of proceeds, and other information such as the innovation qualification, as well as eligibility information regarding the applicant and use of proceeds. This entire form is to be completed, signed and dated by the Lender prior to submission of the loan guarantee request to EDA.

Form ED-172 Account Transcripts

Form ED-172 is part of the application process. The purpose of this form is to collect current loan transaction data when the EDA loan proceeds are used for refinancing.

Form ED-912 Statement of Personal History

Form ED-912 is part of the application process. The purpose of this form is to collect identifying information about the applicant that will allow EDA to perform a background check when necessary. This form is only required when the applicant has a criminal offense record that warrants further research into the borrower's character.

Form ED-413 Personal Financial Statement

Form ED-413 is part of the application process. The purpose of this form is to collect personal financial information such as assets, liabilities, stocks, and real estate for any person providing a guarantee on the loan.

Form ED-1050 Settlement Sheet

Form ED-1050 is part of the closing and disbursement process. The purpose of this form is to collect transaction data from the lender at initial funds disbursement and serve as a notification to EDA when the loan is being disbursed. This form also serves as an agreement that all disbursements be used for eligible purposes outlined in 13 CFR 311.

Form ED-159 Fee Disclosure and Compensation Agreement

Form ED-159 is part of the closing and disbursement process. The purpose of this form is to collect transactional data from the lender or borrower for any fees paid to an agent, advisor, attorney, broker, or other third party for services in connection with EDA ITM in excess of the regular lending process. This form also serves as an agreement that the borrower may not be charged unreasonably high fees, not be charged based on application decision, nor be charged for services unrelated to EDA ITM.

Form ED-1502 Quarterly Report

Form ED-1502 is part of the servicing process. The purpose of this form is to collect monthly transactional data from the lender in order for EDA to track principal and interest (P&I) payments between the borrower and lender. This form is to be submitted by the lender to EDA with an on-going servicing fee.

Form ED-2237 Approval Action Modification Form

Form ED-2237 is part of the servicing process. The purpose of this form is to notify EDA in the event of a modification to the loan that does not change EDA's risk level. This form also serves as an application form for

modifications to a loan that change EDA's risk level, in which case the lender will need approval from EDA before the modification can be made.

Form ED-1149 Transcript of Account

Form ED-1149 is part of the termination process. The purpose of this form is to collect transactional data from the lender on the current status of the loan at the time the lender requests for EDA to purchase the guarantee.

II. Method of Collection

Paper and electronic submissions.

III. Data

OMB Control Number: 0610-XXXX.

Form Number(s): ED-1919, ED-1920, ED-172, ED-912, ED-413, ED-1050, ED-159, ED-1502, ED-2237, ED-1149.

Type of Review: New information collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents:

ED-1919: 100, ED-1920: 100, ED-172: 10, ED-912: 10, ED-413: 50, ED-1050: 40, ED-159: 5, ED-1502: 180, ED-2237: 30, ED-1149: 6.

Estimated Time per Response: ED-1919: 9 minutes, ED-1920: 24 minutes, ED-172: 10 minutes, ED-912: 15 minutes, ED-413: 90 minutes, ED-1050: 15 minutes, ED-159: 5 minutes, ED-1502: 60 minutes, ED-2237: 5 minutes, ED-1149: 60 minutes.

Estimated Total Annual Burden

Hours: ED-1919: 15, ED-1920: 40, ED-172: 1.67, ED-912: 2.5, ED-413: 75, ED-1050: 10, ED-159: 0.42, ED-1502: 180, ED-2237: 2.5, ED-1149: 6.

Estimated Total Annual Cost to Public: \$0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014-29101 Filed 12-11-14; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD650

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS, has made a preliminary determination that an exempted fishing permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would exempt a commercial fishing vessel from mesh size requirements and butterfish possession limits to test experimental codend mesh configurations as a means to reduce juvenile butterfish bycatch in the directed butterfish fishery. Cornell University Cooperative Extension of Suffolk County, NY, will be conducting this research. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed exempted fishing permits.

DATES: Comments must be received on or before December 29, 2014.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email:* NMFS.GAR.EFP@noaa.gov. Include in the subject line "Comments on CCE Butterfish Selectivity EFP."
- *Mail:* John K. Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on CCE Butterfish Selectivity EFP."
- *Fax:* (978) 281-9135.

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, 978-282-8456, *shannah.jaburek@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Cornell Cooperative Extension (CCE)

submitted a complete application for an Exempted Fishing Permit (EFP) on October 3, 2014, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would exempt one vessel from the minimum mesh size and butterfish possession limit restrictions in the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The possession limit exemptions are necessary because the project is using a 3-inch (7.62-cm) mesh control codend used in the targeted longfin squid fishery, which triggers a butterfish possession limit of less than 2500 lb (1134 kg). They are using this as the control in order to retain smaller size butterfish to more effectively determine the ability of the two experimental codends to reduce the catch of small butterfish. Further, due to the number of replicates needed to test the experimental gear, CCE wants to be able to retain butterfish catch and avoid wasteful discarding.

CCE received funding from the Commercial Fisheries Research Foundation to conduct a study that would compare butterfish catch in otter trawls with different codend mesh configurations in an attempt to reduce the catch of juvenile butterfish. The net used in the study will be a 420 X 16-cm, 4 seam trawl with a 114-ft (34.75-m) cookie sweep suited for vessels with horsepower in the range of 700 hp to 755 hp. The codends will be compared using a trouser trawl configuration. One leg of the trawl will have a control 6-cm diamond mesh codend typical of the longfin squid fishery, and the other leg will have either an 8-cm square mesh codend, or an 8-cm diamond mesh turned 90 degrees (T-90). One vessel contracted by CCE will conduct five days of fishing, which is representative of normal commercial fishing trips for butterfish. Tow length would be limited to 30 min per tow, and researchers plan on conducting eight tows per day, with additional tows if time permits, with a minimum total of 40 tows (20 tows per experimental mesh). Within each day the sides of the codend will be switched to randomize sampling across both legs of the trouser trawl. Catch for each codend will be kept separate on deck and will be processed following standard NMFS survey methods. Total butterfish actual weight and a minimum of 200 random lengths will be recorded per codend per tow. Total weight of all species in each codend per tow will be obtained by either actual weight or sub-sampling. Researchers propose to conduct the trip during the period December 2014 through March 2015.

The participating vessel would fish under the EFP along the continental shelf from east of Hydrographers Canyon west to Toms Canyon, including Atlantic, Block, and Hudson Canyons along the 60 fathom shoal (all research to be done in statistical areas 616, 537, and 526). Exact locations will be determined by the captain based on knowledge of fishery and reported butterfly locations.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: December 9, 2014.

Emily H. Menashes,

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

[FR Doc. 2014-29189 Filed 12-11-14; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD658

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet in Seattle, WA. The meeting is open to the public.

DATES: The meeting will be held on January 15, 2015, from 9 a.m. until 12 noon.

ADDRESSES: The meeting will be held at the Fishermen's Terminal, Norby Conference Room, 3919 18th Avenue W, Seattle, WA 98199.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501-2252.

FOR FURTHER INFORMATION CONTACT: Dr. Diana Stram, Council Staff, (907) 271-2809 or Lance Farr, (206) 669-7163.

SUPPLEMENTARY INFORMATION: The Committee will discuss issues to recommend for the 10-year review of the Crab Rationalization Program.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271-2809 at least 7 working days prior to the meeting date.

Dated: December 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014-29168 Filed 12-11-14; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD657

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of Golden Crab Advisory Panel (AP) in Dania Beach, FL. See **SUPPLEMENTARY INFORMATION.**

DATES: The meeting will take place January 23, 2015. See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Fairfield Inn & Suites Fort Lauderdale Airport & Cruise Port, 2081 Griffin Road, Dania Beach, FL 33312; telephone: (954) 981-2700; fax: (954) 981-9125.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Members of the Golden Crab AP will meet from 10 a.m. until 5 p.m. on January 23, 2015. The AP members will discuss modifications to the Golden Crab Allowable Fishing Zones.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for

auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: December 9, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014-29167 Filed 12-11-14; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD641

National Invasive Lionfish Prevention and Management Plan

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

ACTION: Notice of availability of the National Invasive Lionfish Prevention and Management Plan; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of the National Invasive Lionfish Prevention and Management Plan (Plan). The Plan is available for public review and comment.

DATES: Comments must be received by January 26, 2015.

ADDRESSES: Electronic copies of the National Invasive Lionfish Prevention and Management Plan are available on the Aquatic Nuisance Species Task Force (ANSTF) Web site, <http://anstaskforce.gov>. To obtain a hard copy of the Plan or to submit comments, see Document Availability and Public Comment under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Margaret M. (Peg) Brady, NOAA Policy Liaison to the Aquatic Nuisance Species Task Force, 1315 East West Highway, SSMC 3, Rm. 15426 Silver Spring, MD 20910 Phone: 301-427-8655; Email: Peg.Brady@noaa.gov

SUPPLEMENTARY INFORMATION:

Introduction

The ANSTF is an intergovernmental organization dedicated to preventing and controlling aquatic nuisance species (ANS) and coordinating governmental efforts of the United States with the private sector and other North American interests. ANSTF was established by

Congress with the passage of the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) of 1990 (NANPCA, Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701–4741) and reauthorized with the passage of the National Invasive Species Act (NISA) of 1996 (NISA, Pub. L. 104–332, 110 Stat. 4073). Section 1201(d) of NANPCA designates the Undersecretary of Commerce for Oceans and Atmosphere and the Director of the U.S. Fish and Wildlife Service as the ANSTF co-chairpersons. The ANSTF's charter is authorized by the Federal Advisory Committee Act (FACA) of 1972. The charter provides the ANSTF with its core structure and ensures an open and public forum for its activities. To meet the challenges of developing and implementing a coordinated and complementary Federal program for ANS activities, the ANSTF members include 13 Federal agency representatives and 13 representatives from ex-officio member organizations. These members work in conjunction with Regional Panels and issue-specific committees to coordinate efforts amongst agencies as well as efforts of the private sector and other North American interests.

Background

NANPCA (as amended by NISA, 1996) establishes that the ANSTF is responsible for coordination of national efforts to prevent the introduction and spread of ANS. These responsibilities include the development of management plans for specific high-risk invasive species. Species management and control plans focus on tasks that are essential to minimize the impact to areas where the species have already invaded and prevent spread into additional habitats. The plans are developed through a cooperative process and undergo review by the ANS Task Force members and Regional Panels. Successful implementation of these plans requires the participation of states, regional, and tribal entities as well as federal agencies.

Two lionfish species (*Pterois volitans* and *Pterois miles*) have been introduced and are now invasive along the Atlantic coast, throughout the Caribbean, and most recently in the Gulf of Mexico. Native to the waters of the Indo-Pacific region, the lionfish was first documented in the waters of the United States in 1985. In response to the increasing range and density of these invasive species and their potential to impact ecology, economy, and human health, the ANSTF formed an Invasive Lionfish Control Ad-hoc Committee (Committee). The Committee was

charged with the development of a National Invasive Lionfish Prevention and Management Plan (Plan) which would serve as a guide to the ANSTF and other interested parties involved in management of lionfish and natural resources in U.S. waters. Specifically, implementation of the Plan would provide federal agencies and other stakeholders an opportunity to contribute through relevant programs and authorities to:

(1) Prevent the further introduction of additional invasive lionfish.

(2) Conduct risk assessments and research on high priority pathways and high risk marine invasive species.

(3) Promote public education and awareness on invasive lionfish.

(4) Participate in the development of early detection and rapid response frameworks and plans for marine environments.

(5) Monitor invasive lionfish populations accurately and reliably.

(6) Coordinate and control populations of invasive lionfish in a cost-effective and environmentally sound manner.

(7) Provide the mechanisms and venues for coordinated and collaborative research and management.

(8) Expand research efforts that focus on the biology, ecology, impact, and control of the species.

(9) Provide the guidance to restore native species and habitat conditions in ecosystems that have been invaded.

To achieve this vision, the Plan is structured by integrated management approaches that set forth the following Goals:

(1) Prevent the Spread of Invasive Lionfish.

(2) Coordinated Early Detection and Rapid Response.

(3) Control and Management of Invasive Lionfish.

(4) Assess Impacts of the Lionfish Invasion.

In addition to the above goals, the Plan offers a list of scientific literature on lionfish and recommendations for future research needs and outreach strategies to increase support for programs addressing the lionfish invasion. The Plan also includes an overview of the leadership, communication, and coordinating roles among partners involved in the Committee and implementation of the Plan. Finally, the Plan outlines the estimated yearly funding needs to address some of the major knowledge and management gaps with the lionfish invasion, at the time of the plan's drafting. The estimated funding is intended to be a living list, as needs may change as more is understood about

invasive lionfish and new ways to manage the invasion are discovered. The final Plan was submitted to the ANSTF on November 7, 2014. Distribution of the document for public comment is the final step before the ANSTF can consider the Plan for approval.

Document Availability

You may obtain copies of the National Invasive Lionfish Prevention and Management Plan by any one of the following methods:

- *Internet:* <http://anastaskforce.gov>.
- *Write:* Susan Pasko, National Oceanic and Atmospheric Administration, 1315 East West Highway, SSMC 3, Rm. 15719, Silver Spring, MD 20910; Telephone: (301) 427-8682; Email: Susan.Pasko@noaa.gov.

Request for Comments

Comments on the National Invasive Lionfish Prevention and Management Plan are invited. The ANSTF will review all submitted comments and make revisions, as appropriate, to the Plan before approval. You may submit a written comment by any one of the following methods:

- *Email:* Susan.Pasko@noaa.gov.
- *Mail or hand-delivery:* Susan Pasko, National Oceanic and Atmospheric Administration, 1315 East West Highway, SSMC 3, Rm. 15719, Silver Spring, MD 20910.

All comments received by ANSTF through NOAA are part of the public record and may be made publicly available at any time. All personal identifying information (e.g., name, address, phone number, etc.), confidential business information, or other sensitive information submitted voluntarily by the sender may be publicly accessible.

Dated: December 8, 2014.

Samuel D. Rauch III,

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

[FR Doc. 2014–29199 Filed 12–11–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Dates:* January 12, 2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Additions

On 10/10/2014 (79 FR 61296) and 11/7/2014 (79 FR 66363), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Laminating Pouch, Thermal

NSN: 9330-00-NIB-0003—3 Mil Thickness,

Letter size, 100/BX
NSN: 9330-00-NIB-0004—3 Mil Thickness,

Letter size, 25/BX
NSN: 9330-00-NIB-0005—3 Mil Thickness,

Letter size, 50/BX
NSN: 9330-00-NIB-0007—5 Mil Thickness,

Letter size, 100/BX
NPA: LC Industries, Inc., Durham, NC
Contracting activity: General Services Administration, Fort Worth, TX
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, Fort Worth, TX.

Services

Service Type/Location: Internal Mail and Messenger Service, U.S. Department of State, Harry S. Truman Building, 2201 C Street NW., Washington, DC

NPA: ServiceSource, Inc., Alexandria, VA
Contracting Activity: Department of State, Office of Acquisition Management—MA, Arlington, VA

Service Type/Location: Custodial Service, US Army Engineer District, Wilmington District, Engineer Repair Yard, 232 Battleship Road, Wilmington, NC

NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, NC.

Contracting Activity: Dept of the Army, W074 Endist Wilmington, Wilmington, NC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014-29171 Filed 12-11-14; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete products and services previously furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Comments must be received on or before:* 1/12/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202-4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons

an opportunity to submit comments on the proposed actions.

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

Bag, Protective

NSN: 6545-01-222-0684.

NPA: Mount Rogers Community Services Board, Wytheville, VA.

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Cover, Telescope Mounting

NSN: 6650-00-773-2030.

NPA: Huntsville Rehabilitation Foundation, Huntsville, AL.

Contracting Activity: Defense Logistics Agency Aviation, Richmond, VA.

Services

Service Type/Location: Grounds Maintenance Service, United States Postal Service: General Mail Facility, San Jose, CA.

NPA: VTF Services, Mountain View, CA (Deleted).

Contracting Activity: U.S. Postal Service, Washington, DC.

Service Type/Location: Janitorial/Custodial Service, U.S. Army Reserve Center: Rockford, 1130 Arthur Avenue, Rockford, IL.

NPA: Unknown.

Contracting Activity: Dept of the Army, W6QM MICC-ARCC North, Fort McCoy, WI.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014-29170 Filed 12-11-14; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., Friday, December 19, 2014.

PLACE: Three Lafayette Centre, 1155 21st Street NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, enforcement, and examinations matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's Web site at <http://www.cftc.gov>.

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202-418-5964.

Christopher J. Kirkpatrick,
Secretary of the Commission.

[FR Doc. 2014-29335 Filed 12-10-14; 4:15 pm]

BILLING CODE 6351-01-P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, December 17, 2014, 10:00 a.m.–12:00 p.m.

PLACE: CPSC's National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850.

STATUS: Commission Meeting—Open to the Public

MATTER TO BE CONSIDERED: Decisional Matter: Phthalates—NPR.

A live Web cast of the Meeting can be viewed at www.cpsc.gov/live.

Note: If there is a change in location of the meeting, we will post the location change on the CPSC Web site and on the CPSC Public Calendar as soon as possible, but no later than 24 hours before the meeting time. Please check our Web site for possible change in location.

CONTACT PERSON FOR MORE INFORMATION: Rockelle Hammond, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814, (301) 504-7923.

Dated: December 10, 2014.

Alberta E. Mills,
Acting Secretary.

[FR Doc. 2014-29316 Filed 12-10-14; 4:15 pm]

BILLING CODE 6355-01-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2014-ICCD-0140]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2015-16 National Teacher and Principal Survey (NTPS) Preliminary Activities

AGENCY: Institute of Education Sciences/ National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 12, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting Docket ID number ED-2014-ICCD-0140 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L-OM-2-2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, (202) 502-7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in

response to this notice will be considered public records.

Title of Collection: 2015-16 National Teacher and Principal Survey (NTPS) Preliminary Activities.

OMB Control Number: 1850-0598.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 5,620.

Total Estimated Number of Annual Burden Hours: 1,368.

Abstract: The National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance postsecondary education, was first implemented by the National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. The next major data collection will occur in 2016, with a field test collection in 2015. This submission is for the ninth cycle in the series, NPSAS:16, which will also serve as the base year study for the 2016 Baccalaureate and Beyond Longitudinal Study (B&B) which provides data on the various paths of recent college graduates into employment and additional education. The NPSAS:16 field test sample will include about 300 institutions (full-scale sample about 1,680) and about 4,500 students (126,000 full-scale). Institution contacting for the field test began in September 2014 and student data collection (interviews and institution record data) will be conducted from March through June 2015 (full-scale institution contacting will begin in October 2015 and student data will be collected January through October 2016). Packages to request clearance for the full-scale data collection effort (institution list collection, cognitive testing, student interview, and institution record collection) will be submitted beginning in 2015. This submission for the 2015 field test includes facsimiles of the student interview and student records abstraction instruments as well as student and institution contacting materials.

Dated: December 8, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014-29099 Filed 12-11-14; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY**[EPA-R06-OW-2014-0569; FRL-9920-30-Region-6]****Clean Water Act: Section 404(c) Exception Approval****AGENCY:** U.S. Environmental Protection Agency.**ACTION:** Notice of approval for exception to 1985 Clean Water Act (CWA) Section 404(c) Final Determination for the Bayou aux Carpes site.**SUMMARY:** This is a notice of the Environmental Protection Agency (EPA's) approval of coverage for the continued operation and maintenance of the portion of the Barataria to Alliance Transmission Line and an associated distribution line located in the Bayou aux Carpes CWA Section 404(c) site in Jefferson Parish, Louisiana, under an exception provided in the October 16, 1985, EPA Bayou aux Carpes Final Determination, as amended. This action covers discharges (approximately 1.35 cubic yards) to wetlands of dredged or fill material associated with ongoing activities by Entergy Louisiana, L.L.C. (Entergy) to provide electrical service to residential, commercial, military, industrial, and other facilities in nearby Plaquemines Parish, Louisiana.**DATE:** The effective date of this modification is December 2, 2014.**ADDRESS:** U.S. EPA Region 6, Ecosystem Protection Division, (6WQ-EC), Ross Avenue, Dallas, TX 75202-2733.**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara Keeler by phone at (214) 665-6698 or by email at keeler.barbara@epa.gov. Additional information and supporting documents are available at <http://www.regulations.gov> (Docket No. EPA-R06-OW-2014-0569).**SUPPLEMENTARY INFORMATION:** The Bayou aux Carpes CWA Section 404(c) site is located approximately ten miles south of New Orleans, Louisiana, on the West Bank of Jefferson Parish. The site includes about 3,000 acres of wetlands subject to federal jurisdiction under the CWA. The area is bounded on the north by the Estelle Pumping Station Outfall Canal, on the east by Bayou Barataria (Gulf Intracoastal Waterway), on the south by Bayou Barataria and Bayou des Familles, and on the west by State Highway 3134 and the "V-Levee." In 2009, most of the site was incorporated into the Barataria Unit of the Jean Lafitte National Historical Park and Preserve and the site remains subject to the CWA Section 404(c) restrictions.

Entergy petitioned EPA on August 18, 2014, for an exception to the October 16,

1985, EPA Final Determination for the Bayou aux Carpes site, issued under Section 404(c) of the CWA. An exception was provided in the original 1985 restriction for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline Company pipeline. Subsequently, the exception was extended to cover minor discharges from emergency maintenance and relocation of a portion of another existing pipeline operated by Shell Pipeline Corporation. Both the original exception and the subsequent extended coverage were allowed based on determinations that the proposed activities associated with these existing linear service utilities would be unlikely to result in unacceptable adverse effects to the Bayou aux Carpes CWA Section 404(c) site. This action approves coverage under the same exception for the work requested by Entergy, which will also entail minor temporary impacts to the subject wetlands.

The August 18, 2014, request by Entergy, and other background information are available at: <http://www.regulations.gov> (Docket No. EPA-R06-OW-2014-0569).**Background**

Section 404(c) of the CWA authorizes the EPA to prohibit, deny, restrict or withdraw the use of any defined area as a disposal site for dredged or fill material if the discharge will have unacceptable adverse effects on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. The U.S. Army Corps of Engineers (Corps) authorizes thousands of CWA Section 404 permits every year and the EPA works with the Corps and applicants to resolve environmental concerns. Since the passage of the CWA in 1972, the EPA has finalized Section 404(c) prohibitions or restrictions only 13 times. The use of this authority has typically involved major projects with unacceptable impacts on some of America's most ecologically valuable waters.

On November 15, 1985, EPA published a CWA Section 404(c) Final Determination (50 FR 47267) restricting, with three exceptions, future discharges of dredged or fill material to wetlands in the Bayou aux Carpes site. The CWA Section 404(c) action was based upon a thorough record of investigations, including field surveys, remote sensing and other technical analyses conducted by three EPA facilities, the U.S. Fish and Wildlife Service, the National Park Service and the Louisiana State

University Center for Wetland Resources.

The 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination included three exceptions. The first of the original three approved exceptions is for discharges associated with the completion of a specific design option for the Corps' Harvey Canal—Bayou Barataria Levee Project, which was never constructed. The second exception is for discharges associated with routine operation and maintenance of the Southern Natural Gas Pipeline. The third exception provides for possible future EPA approved habitat enhancement activities. The EPA determined that these three types of activities would be unlikely to result in unacceptable adverse effects to the aquatic environment, as long as they were performed in accordance with any specified conditions and complied with any permit conditions that might be imposed by the Corps through the CWA Section 404 permit process. A provision was also included to allow other interests to petition the EPA for reconsideration if, in the future, other activities were to be proposed for public benefit which would result in only minor impacts.

There has been only one major modification to the EPA's 1985 decision to restrict discharges into the wetlands of the Bayou aux Carpes site. The modification was granted to the Corps in 2009 in association with the construction of flood risk reduction upgrades following Hurricane Katrina. On November 4, 2008, the Corps requested that the Bayou aux Carpes CWA Section 404(c) designation be modified to allow construction of a floodwall along Bayou Barataria and tying it into the planned West Closure Complex, as part of the post-Hurricane Katrina upgrades known as the Greater New Orleans Hurricane and Storm Damage Risk Reduction System Project. This work was but a small part of the larger effort to reduce flood risks to the 250,000 people living on the west bank of the Mississippi River and to infrastructure supporting the greater New Orleans area by building a more resilient and reliable storm damage and risk reduction system, as directed by Congress.

In addition to that modification of the 1985 EPA Bayou aux Carpes CWA Section 404(c) Final Determination, the EPA has considered very few requests for coverage under the original exceptions. In 1992, Shell Pipeline Corporation requested permission to allow the discharge of dredged and fill material effecting approximately 0.43

acres of wetlands in the restricted site in connection with a proposed below ground pipeline relocation. This work was necessary to facilitate the enlargement of a federal hurricane protection levee and to remedy the emergency reconstruction of a leaking temporary by-pass pipeline segment. In addition, future routine operation and maintenance activities associated with this pipeline were requested to be excluded from the CWA Section 404(c) restriction. After notifying interested parties of the request via **Federal Register** publication and coordinating with the Corps and other agencies, the EPA granted the requests, publishing the decision at 57 FR 3757 (January 31, 1992). The EPA concluded that relocating the pipeline to non-wetlands was infeasible from the perspectives of engineering and public safety, the work would have only minimal and temporary effects on the wetlands at issue and the work was essentially the same as that envisioned under the second exception included in the 1985 Final Determination.

Over the years, additional requests for modifications have been the subject of initial analyses by the EPA. In each of those cases, however, the petitioners did not complete the analyses required for an agency decision.

Proposed Activities

The Barataria to Alliance Transmission Line was constructed in the 1960's by Entergy's predecessor, Louisiana Power & Light. Of the 74,012 foot total transmission line length, an 11,543 foot section and 15 towers are within the 120 foot right-of-way that runs through the southern portion of the Bayou aux Carpes CWA Section 404(c) site. The distribution line and 15 wooden single poles course through approximately 3,415 feet within a ten foot right-of-way section of the Bayou aux Carpes site.

On August 18, 2014, Entergy petitioned the EPA for an exception to cover anticipated temporary impacts to a total of 0.003 acres (approximately 1.35 cubic yards) of wetlands resulting from operation and maintenance activities for portions of an existing transmission line and portions of a distribution line located within the Bayou aux Carpes Section 404(c) area.

Entergy's request involves activities required for preventative maintenance and inspections as required by Federal Energy Regulatory Commission regulations, North American Electric Reliability Corporation regulations and Entergy's guidelines and procedures. The activities subject to the request are projected to temporarily effect no more

than 0.003 acres of the protected wetlands during the remaining 50–60 years of expected facility life.

Conclusion

Following receipt of the request by Entergy, the EPA conducted a technical review of the projected wetland impacts, considered the applicable programmatic requirements, coordinated with other resource agencies, and provided an opportunity for public review. We received no comments from the public and one statement of federal agency support for the proposed EPA action to approve the Entergy request, which came from the Jean Lafitte National Historical Park and Preserve.

As a result of our analyses, the EPA has approved the request by Entergy to perform limited operation and maintenance activities on the specified power lines located in the Bayou aux Carpes CWA Section 404(c) site in Jefferson Parish, Louisiana. The EPA has approved coverage for the continued operation and maintenance of these lines under an exception provided in the October 16, 1985 EPA Bayou aux Carpes Final Determination as amended.

The 1985 CWA Section 404(c) EPA decision to restrict the use of the Bayou aux Carpes site for the discharge of dredged or fill material included three exceptions. The second exception covered discharges associated with the routine operation and maintenance of portions of the Southern Natural Gas Pipeline that crossed the site. An exception was subsequently extended to Shell Pipeline Corporation in 1992 for work on another pipeline that predated the 1985 EPA restriction. We have now extended coverage under that same exception in the Final Determination as amended to Entergy for the purposes specified in the August 18, 2014 request. These activities are similar to those previously approved for the Southern Natural Gas pipeline and the Shell pipeline in that the electrical lines existed prior to the 1985 EPA decision and the maintenance work is expected to incur only minor and temporary wetland impacts.

This decision reflects a unique set of circumstances and does not have any bearing on any other CWA Section 404(c) determinations, amendments, or modification requests. Each CWA Section 404(c) designation represents a unique situation that responds to a specific set of parameters unlike any other.

This CWA Section 404(c) approval covers discharges expected to impact no more than a total of 0.003 acres of wetlands (approximately 1.35 cubic

yards) in the Bayou aux Carpes CWA Section 404(c) site from dredged or fill material associated with ongoing Entergy activities. The activities are restricted to those included in the August 18, 2014, request by Entergy to the EPA.

The approved work includes such routine maintenance as inspecting towers and lines for damage, replacing tower coatings, reapplying cathodic protection on foundations and anchors, cutting vegetation away from overhead lines, limited spot treatments with approved herbicides, and other emergency repairs including tower replacements in the same location. Entergy expects that any replacement of towers would be accomplished without discharging dredged or fill material, with the exception of tower structure #31. In that instance, special procedures should be employed whereby the old foundations would be left in place and the new foundations would be situated nearby. In all cases, the access to the site, the types of work and repair methods, and the kinds of vehicles and machinery to be used shall be designed so as to avoid and minimize wetland impacts and shall be in accordance with the methods specified in the August 18, 2014, Entergy request.

Entergy shall be the responsible entity for ensuring compliance with the terms of this approval. Entergy shall be responsible for ensuring that all employees and contractors working within the Bayou aux Carpes CWA Section 404(c) site understand the terms and extent of this approval. Any violation of the terms of this approval shall be reported by Entergy to the EPA by telephone immediately upon discovery, followed by a written report by Entergy describing the circumstances and ecological impacts. In this event, all related work activities shall cease until resolution is reached with the EPA.

Entergy shall notify Jean Lafitte National Historical Park and Preserve prior to each instance during which inspections (including aerial inspections) or operations and maintenance work is performed within the Bayou aux Carpes CWA Section 404(c) site. In each instance, Entergy shall employ the least damaging equipment and repair methods possible.

This approval does not cover any activities that would impact wetlands in the Bayou aux Carpes CWA Section 404(c) site associated with any alternatives for placing the currently out of service distribution line back into service or to remove the 3,415 foot-long distribution line and associated 15 wooden poles. Similarly, this approval does not cover the deactivation of the

transmission line or the removal of the 11,534 foot-long power line and 15 transmission structures within the Bayou aux Carpes CWA Section 404(c) site. Such activities should be specifically coordinated in advance with the EPA and Jean Lafitte National Historical Park and Preserve.

This approval does not provide authorization under Section 10 of the Rivers and Harbors Act of 1899 or Section 404 of the Clean Water Act for Entergy's proposed discharges. Entergy must obtain authorization from the Corps in order to proceed with any activities governed by these statutes at the Bayou aux Carpes CWA Section 404(c) site. Entergy shall also be responsible for obtaining all necessary permits and approvals from the National Park Service, Jean Lafitte National Historical Park and Preserve. In addition, Entergy shall be responsible for obtaining any other necessary permits, notices and approvals at all levels of government and for conducting all required regulatory coordination prior to implementing any of the work covered by this approval.

In the event that Entergy determines that the continued operation and maintenance activities covered by this exception will cause or are likely to cause unanticipated and unacceptable adverse impacts, it shall notify the EPA. Similarly, if the EPA determines that the continued operation and maintenance activities covered by this exception will cause or are likely to cause unanticipated and unacceptable adverse impacts, the EPA may reconsider this approval.

Dated: December 2, 2014.

Samuel Coleman,

Acting Regional Administrator.

[FR Doc. 2014-29192 Filed 12-11-14; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9018-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7146 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements
Filed 12/1/2014 Through 12/5/2014
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its

comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

EIS No. 20140347, Final EIS, FHWA, TN, SR-126 (Memorial Boulevard) Improvement Project from East Center Street to I-81, Review Period Ends: 01/12/2015, Contact: Theresa Claxton 615-781-5770.

EIS No. 20140348, Final EIS, FHWA, WI, Interstate 43 North-South Freeway Improvements, Contact: George Poirier 608-829-7500 Under MAP-21 Section 1319, FHWA has issued a single FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20140349, Final EIS, FHWA, MN, Trunk Highway 41 Minnesota River Crossing Tier I, Review Period Ends: 01/12/2015, Contact: Philip Forst 651-291-6100.

EIS No. 20140350, Final EIS, USFS, CO, Pawnee National Grassland Oil and Gas Leasing Analysis, Review Period Ends: 01/20/2015, Contact: Karen Roth 970-295-6621.

EIS No. 20140351, Final EIS, NPS, MO, Ozark National Scenic Riverways General Management Plan, Review Period Ends: 01/12/2015, Contact: Bill Black 573-323-4852.

EIS No. 20140352, Draft EIS, USFS, NV, Bordertown to California 120kV Transmission Line, Comment Period Ends: 01/26/2015, Contact: Marnie Bonesteel 775-352-1240.

EIS No. 20140353, Final EIS, NRC, MS, GENERIC—License Renewal of Nuclear Plants, Supplement 50, Regarding Grand Gulf Nuclear Station, Unit 1, Review Period Ends: 01/12/2015, Contact: David Drucker 301-415-6223.

EIS No. 20140354, Draft EIS, USACE, FL, South Central Palm Beach Island Comprehensive Shoreline Stabilization Project, Comment Period Ends: 01/26/2015, Contact: Garrett Lips 561-674-2421.

EIS No. 20140355, Draft Supplement, FAA, UT, Cal Black Memorial Airport, Comment Period Ends: 01/26/2015, Contact: Janell Barrilleaux 425-227-2611.

EIS No. 20140356, Draft EIS, USCG, MARAD, NY, Port Ambrose Project Deepwater Port Application, Comment Period Ends: 02/10/2015, Contact: Roddy C. Bachman 202-372-1451 The U.S. Coast Guard and the U.S. Department of Transportation's Maritime Administration are joint lead agencies for the above project.

EIS No. 20140357, Final EIS, APHIS, 00, Monsanto Petitions (10-188-01p and

12-185-01p) for Determinations of Nonregulated Status for Dicamba-Resistant Soybean and Cotton Varieties, Review Period Ends: 01/12/2015, Contact: Sid Abel 301-851-3896.

Amended Notices

EIS No. 20140328, Draft Supplement, USFS, NM, North Fork Wells of Eagle Creek, Comment Period Ends: 01/13/2015, Contact: David M. Warnack 575-257-4095.

Revision to FR Notice Published 11/14/2014; Extending Comment Period from 12/29/2014 to 01/13/2015

Dated: December 9, 2014.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014-29196 Filed 12-11-14; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Wednesday, December 17, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

2015 Meeting Dates

Election of Officers

Remarks by Chairman Goodman

Management and Administrative Matters

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary and Clerk, at (202)694-1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694-1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2014-29297 Filed 12-10-14; 4:15 pm]

BILLING CODE 6715-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Medicare & Medicaid Services**

[Document Identifiers CMS–10341, CMS–R–246 and CMS–10531]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 10, 2015.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–

05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov.
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

- CMS–10341 Affordable Care Act Information and Collection Requirements for Section 1115 Demonstration Projects
 CMS–R–246 Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey
 CMS–10531 Transcatheter Mitral Valve Repair (TMVR) National Coverage Decision (NCD)

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently

approved collection; *Title of Information Collection:* Affordable Care Act Information and Collection Requirements for Section 1115 Demonstration Projects; *Use:* This collection is necessary to ensure that states comply with regulatory and statutory requirements related to the development, implementation and evaluation of demonstration projects. States seeking waiver authority under Section 1115 are required to meet certain requirements for public notice, the evaluation of demonstration projects, and reports to the Secretary on the implementation of approved demonstrations. *Form Number:* CMS–10341 (OMB control number 0938–1162); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 37; *Total Annual Responses:* 130; *Total Annual Hours:* 13,910. (For policy questions regarding this collection contact Lane Terwilliger at 410–786–2059).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Advantage, Medicare Part D, and Medicare Fee-For-Service Consumer Assessment of Healthcare Providers and Systems (CAHPS) Survey; *Use:* The primary purpose of the Medicare consumer assessment of healthcare providers and systems (CAHPS) surveys is to provide information to Medicare beneficiaries to help them make more informed choices among health and prescription drug plans available to them. The surveys also provides data to help CMS and others monitor the quality and performance of Medicare health and prescription drug plans and identify areas to improve the quality of care and services provided to enrollees of these plans. *Form Number:* CMS–R–246 (OMB control number: 0938–0732); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 799,650; *Total Annual Responses:* 799,650; *Total Annual Hours:* 277,740 (For policy questions regarding this collection contact Sarah Gaillot at 410–786–4637).

3. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Transcatheter Mitral Valve Repair (TMVR) National Coverage Decision (NCD); *Use:* The data collection is required by the Centers for Medicare and Medicaid Services (CMS) National Coverage Determination (NCD) entitled, "Transcatheter Mitral Valve Repair (TMVR)". The TMVR device is only covered when specific conditions are met including that the heart team

and hospital are submitting data in a prospective, national, audited registry. The data includes patient, practitioner and facility level variables that predict outcomes such as all-cause mortality and quality of life.

We find that the Society of Thoracic Surgery/American College of Cardiology Transcatheter Valve Therapy (STS/ACC TVT) Registry, one registry overseen by the National Cardiovascular Data Registry, meets the requirements specified in the NCD on TMVR. The TVT Registry will support a national surveillance system to monitor the safety and efficacy of the TMVR technologies for the treatment of mitral regurgitation (MR). The data will also include the variables on the eight item Kansas City Cardiomyopathy Questionnaire (KCCQ-10) to assess health status, functioning and quality of life. In the KCCQ, an overall summary score can be derived from the physical function, symptoms (frequency and severity), social function and quality of life domains. For each domain, the validity, reproducibility, responsiveness and interpretability have been independently established. Scores are transformed to a range of 0–100, in which higher scores reflect better health status.

The conduct of the STS/ACC TVT Registry and the KCCQ-10 is pursuant to Section 1142 of the Social Security Act (the ACT) that describes the authority of the Agency for Healthcare Research and Quality (AHRQ). Under section 1142, research may be conducted and supported on the outcomes, effectiveness, and appropriateness of health care services and procedures to identify the manner in which disease, disorders, and other health conditions can be prevented, diagnosed, treated, and managed clinically. Section 1862(a)(1)(E) of the Act allows Medicare to cover under coverage with evidence development (CED) certain items or services for which the evidence is not adequate to support coverage under section

1862(a)(1)(A) and where additional data gathered in the context of a clinical setting would further clarify the impact of these items and services on the health of beneficiaries.

The data collected and analyzed in the TVT Registry will be used to determine if TMVR is reasonable and necessary (e.g., improves health outcomes) for Medicare beneficiaries under Section 1862(a)(1)(A) of the ACT. Furthermore, data from the Registry will assist the medical device industry and the Food and Drug Administration (FDA) in surveillance of the quality, safety and efficacy of new medical devices to treat mitral regurgitation. For purposes of the TMVR NCD, the TVT Registry has contracted with the Data Analytic Centers to conduct the analyses. In addition, data will be made available for research purposes under the terms of a data use agreement that only provides de-identified datasets. *Form Number:* CMS-10531(OMB Control Number: 0938-NEW); *Frequency:* Annually; *Affected Public:* Business or other for-profits; *Number of Respondents:* 4,000; *Total Annual Responses:* 16,000 *Total Annual Hours:* 5,600. (For policy questions regarding this collection contact Roya Lotfi at 410-786-4072.)

Dated: December 9, 2014.

Martique Jones,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014-29172 Filed 12-11-14; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Adoption and Foster Care Analysis Reporting System for title IV-B and title IV-E, AFCARS.

OMB No.: 0970-0422.

Description: The Adoption and Foster Care Analysis and Reporting System (AFCARS) is mandated by 42 U.S.C. 679. The regulation at 45 CFR part 1355 sets forth the requirements of the statute for the collection of uniform, reliable information on children who are under the responsibility of the State or Tribal title IV-B/IV-E agency for placement, care, and adoption. Effective October 1, 2009, section 479B(b) of the Act authorizes direct Federal funding of Indian Tribes, Tribal organizations, and Tribal consortia that choose to operate a foster care, adoption assistance and, at Tribal option, a kinship guardianship assistance program under title IV-E of the Act. The Federal regulations at 45 CFR 1355.40 were amended as part of an Interim Final Rule published January 6, 2012 to apply the same regulatory requirements for data collection and reporting to a Tribal title IV-E agency as are applied to a State title IV-E agency.

The data collected will inform State/Tribal/Federal policy decisions, program management, and responses to Congressional and Departmental inquiries. Specifically, the data are used for short/long-term budget projections, trend analysis, child and family service reviews, and to target areas for improved technical assistance. The data will provide information about foster care placements, adoptive parents, length of time in care, delays in termination of parental rights and placement for adoption.

Respondents: Title IV-E State and Tribal Child Welfare Agencies

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
AFCARS	72	2	1786	257,184

Estimated Total Annual Burden Hours: 257,184.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of

Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information

collection. Email address: infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this

document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-7285, Email: OIRA_SUBMISSION@OMB.EOP.GOV, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014-29206 Filed 12-11-14; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Generic Clearance for Grant Reviewer Application Form.

OMB No.: New.

Description: This notice announces that the Administration for Children and Families intends to submit the proposed Information Collection Request (Generic ICR): Generic Clearance for Grant Reviewer Application Form under the Paperwork Reduction (PRA) (44 U.S.C. 3501 *et seq.*). Comments on specific aspects for

the proposed information collection are being solicited.

This request is for approval of a plan for conducting more than one information collection that is very similar, voluntary, low-burden and uncontroversial. Information collections under this generic clearance will be in compliance with U.S. Department of Health and Humans Services' Grants Policy Directive 2.04 "Awarding Grants", and the Awarding Agency Grants Administration Manual, Chapter 2.04C "Objective Review of Grant Applications". These forms will be used to select reviewers who will participate in the grant review process for the purpose of selecting successful applications.

Respondents: Individuals.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average urden hours er response	Total burden hours
Grant Review Application Form	750	1	0.5	375

Estimated Total Annual Burden Hours: 375.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. Email address: infocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to

comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2014-29173 Filed 12-11-14; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, January 27, 2015 08:00 a.m. to January 28, 2015, 06:00 p.m., Bethesda North Marriott & Conference Center, Bethesda, MD 20852 which was published in the **Federal Register** on November 5, 2014, 79FR65678.

The meeting notice is amended to change the title of the meeting from "NCI Program Project Meeting II" to "NCI Program Project Meeting I". The meeting is closed to the public.

Dated: December 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-29159 Filed 12-11-14; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: December 17, 2014.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216,

MSC 7852, Bethesda, MD 20892, 301-435-1050, freundr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-29157 Filed 12-11-14; 8:45 am]

BILLING CODE 4140-01-P

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455-1761, kellya2@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-29156 Filed 12-11-14; 8:45 am]

BILLING CODE 4140-01-P

Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 9, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014-29158 Filed 12-11-14; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; Omnibus SEP-18.

Date: February 18, 2015.

Time: 12:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Wlodek Lopaczynski, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W608, Rockville, MD 20892, 240-276-6458, lopacw@mail.nih.gov.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/sep/sep.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399,

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Area: Gastroenterology and Toxicology Area Applications.

Date: January 12, 2015.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mushtaq A. Khan, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301-435-1778, khanm@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Animal/Biological Resource Facilities.

Date: January 14-15, 2015.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel; IMAT Biospecimen Science.

Date: February 18, 2015.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 6W032, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Donald L. Coppock, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892-9750, 240-276-6382, Donald.coppock@nih.gov.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/sep/sep.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention

Cancer Control, National Institutes of Health, HHS)

Dated: December 8, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29161 Filed 12–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID SBIR Phase II Clinical Trial Implementation Cooperative Agreement (U44).

Date: January 6, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 5601 Fishers Lane, Room 3G62, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Travis J. Taylor, Ph.D., Scientific Review Program DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, Rockville, MD 20852, 240–669–5082, Travis.Taylor@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 8, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–29160 Filed 12–11–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0007]

Critical Infrastructure Private Sector Clearance Program Request (CI PSCP)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; new information collection request: 1670–0013.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). DHS previously published this Information Collection Request (ICR) in the **Federal Register** on September 24, 2014, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until January 12, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and questions about this ICR should be forwarded to DHS/NPPD/IP/Attn: Cheryl Fenoli, 245 Murray Lane SW., Mail Stop 0607, Arlington, VA 20598–0609. Email requests should go to Cheryl Fenoli, Cheryl.Fenoli@hq.dhs.gov. Written comments should reach the contact person listed no later than January 12, 2015. Comments must be identified by “DHS–2014–0007” and may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.

- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

SUPPLEMENTARY INFORMATION: The CI PSCP sponsors clearances for private-sector partners who are responsible for critical infrastructure protection in accordance with Executive Order 13549. The PSCP requires individuals to complete a clearance request form that initiates the clearance process. Sector Specific Agencies (SSAs), NPPD/IP

Protective Security Advisors, Sector Liaisons, the National Infrastructure Coordinating Center, and other federal officials designated by NPPD/IP are authorized to submit nominations to the central PSCP point of contact, the PSCP Administrator. The clearance request form is signed by both the federal official who nominated the applicant and by the Assistant Secretary for IP prior to initiating the clearance process. Upon approval by the Assistant Secretary for IP, IP Security Office will contact the nominee to obtain the social security number, date and place of birth, and will then enter this data into e-QIP—Office of Personnel Management’s secure portal for investigation processing. Once the data is entered in e-QIP, the applicant can complete the online security questionnaire. An alternate mailing address is an optional field on the form and may be provided if the nominee chooses to have correspondences sent to a mailing address other than the company mailing address. The IP Security Office maintains all applicants’ information in the Master Roster, which contains all the information found on the clearance request form in addition to their clearance information (date granted, level of clearance, date non-disclosure agreements signed, and type/date of investigation). The Administrator of the Master Roster maintains the information so as to track clearance processing and investigation information and to have the most current contact information for the participants from each sector.

OMB 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.

Analysis

Agency: Department of Homeland Security, National Protection and

Programs Directorate, Office of Infrastructure Protection.

Title: Critical Infrastructure Private Sector Clearance Program Request.

OMB Number: 1670-0013.

Frequency: Once.

Affected Public: Designated private sector employees of critical infrastructure entities or organizations.

Number of Respondents: 500 respondents (estimate).

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 83.35.

Total Burden Cost (capital/startup): \$0.

Total Recordkeeping Burden: \$0.

Total Burden Cost (operating/maintaining): \$0.

Dated: December 8, 2014.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2014-29175 Filed 12-11-14; 8:45 am]

BILLING CODE 9110-9P-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2014-1020]

Guidance on Maritime Cybersecurity Standards

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Coast Guard announces a public meeting to be held in Washington, DC, to receive comments on the development of cybersecurity assessment methods for vessels and facilities regulated by the Coast Guard. This meeting will provide an opportunity for the public to comment on development of security assessment methods that assist vessel and facility owners and operators identify and address cybersecurity vulnerabilities that could cause or contribute to a Transportation Security Incident. The Coast Guard will consider these public comments in developing relevant guidance, which may include standards, guidelines, and best practices to protect maritime critical infrastructure.

DATES: The meeting will be held on Thursday, January 15, 2015 from 9:00 a.m. to 12:00 p.m. The deadline to reserve a seat is Monday, January 5, 2015. All written comments and related material must either be submitted to the online docket via <http://www.regulations.gov> on or before

January 29, 2015 or reach the Docket Management Facility by that date.

ADDRESSES: The public meeting will be held at the Department of Transportation Headquarters, Oklahoma Room, 1200 New Jersey Avenue SE., Washington, DC 20590; the building telephone number is 202-366-1035. The building is accessible by taxi, public transit, and privately-owned conveyance. However, public parking in the vicinity of the building is extremely limited. Meeting participants are encouraged to use mass transit.

Seating is limited, so please reserve a seat as soon as possible, but no later than January 5, 2015. To reserve a seat, please email Josephine.A.Long@uscg.mil with the participant's first and last name for all U.S. Citizens, and additionally, official title, date of birth, country of citizenship, and passport number with expiration date for non-U.S. Citizens. To gain entrance to the Department of Transportation Headquarters building, all meeting participants must present government-issued photo identification (e.g., state-issued driver's license). If a visitor does not have a photo ID, that person will not be permitted to enter the facility. All visitors and any items brought into the facility will be required to go through security screening each time they enter the building.

The Coast Guard will provide a live video feed of the meeting. To access the video feed, email a request to LT Josephine Long at Josephine.A.Long@uscg.mil no later than January 13, 2015.

The docket for this notice is available for inspection or copying at the Docket Management Facility (M-30, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, entering USCG-2014-1020 in the search box and following the instructions.

Written comments may also be submitted in response to this notice. All written comments and related material submitted before or after the meeting must either be submitted to the online docket via <http://www.regulations.gov> on or before January 29, 2015 or reach the Docket Management Facility by that date. You may submit written comments identified by docket number USCG-2014-1020 before or after the meeting using any one of the following methods:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>.
- (2) Fax: 202-372-1990.
- (3) Mail: Docket Management Facility (M-30), U.S. Department of

Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods.

The Coast Guard will post a video recording and written summary of the meeting to the docket.

FOR FURTHER INFORMATION CONTACT: If there are questions concerning this meeting, please call or email LT Josephine Long, Coast Guard at 202-372-1109 or via email at Josephine.A.Long@uscg.mil or LCDR Joshua Rose, Coast Guard; at 202-372-1106 or via email at Joshua.D.Rose@uscg.mil. If there are questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On February 12, 2013, the President signed Executive Order (E.O.) 13636 "Improving Critical Infrastructure Cybersecurity." The E.O. provided the national approach to protecting critical infrastructure cybersecurity and directed federal agencies to assess cyber risk to critical infrastructure. Pursuant to E.O. 13636, the National Institute of Standards and Technology (NIST) developed a voluntary Preliminary Cybersecurity Framework,¹ followed by the February 12, 2014 publication of a Framework for Improving Critical Infrastructure Cybersecurity² (Cybersecurity Framework). The Cybersecurity Framework serves to help industry stakeholders reduce their cyber risk and vulnerabilities. The Coast Guard encourages vessel and facility owners and operators to adopt the Cybersecurity Framework voluntarily to achieve a minimum standard of cybersecurity protection.

Section 7(d) of E.O. 13636 states that in developing the Cybersecurity Framework, the Director of NIST "shall engage in an open public review and comment process" and consult with stakeholders including owners and operators of critical infrastructure.

¹ The Preliminary Cybersecurity Framework is available for viewing online at <http://www.nist.gov/itl/upload/preliminary-cybersecurity-framework.pdf>.

² The Framework for Improving Critical Infrastructure Cybersecurity is available for viewing online at <http://www.nist.gov/cyberframework/upload/cybersecurity-framework-021214.pdf>.

Similarly, the Coast Guard will host this public meeting to engage the public and obtain comments to assist in the drafting of procedures to enable operators of vessels and facilities regulated pursuant to the Maritime Transportation Security Act of 2002 (MTSA) to identify and address cybersecurity risks that could result in a Transportation Security Incident (TSI).³ This may include standards, guidelines, and best practices to protect maritime critical infrastructure. The meeting will include the following topics:

(1) Identify: What cyber dependent systems perform vital functions that are addressed in MTSA requirements, such as access control, cargo control, and communications?

(2) Protect: What standards are suitable to ensure the integrity of these systems?

(3) Detect: What procedures are available to owners and operators to detect cyber intrusions that could compromise the integrity of vital systems or contribute to a TSI?

(4) Respond: What response and notification procedures can minimize the consequences of cyber events?

(5) Recover: What procedures can owners and operators take to promote rapid maritime transportation system recovery after a cyber incident?

In addition to the topics outlined above, the Coast Guard is posting several supplemental documents to the online docket for this notice. The supplemental documents provide additional background information that may be useful for the public to consider in formulating comments. We encourage individuals interested in participating in the public meeting and/or submitting comments to the docket to review the supplemental documents. To view the supplemental documents and other documents mentioned in this notice as available in the docket, please follow the instructions described above in the **ADDRESSES** section. If you do not have access to the Internet, you may view the docket online by visiting 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. The Coast Guard has an agreement with the Department of Transportation to use the Docket Management Facility.

³ A *Transportation Security Incident* is defined in 33 CFR 101.105 to mean a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The Coast Guard encourages the public to participate by submitting comments either in person at the meeting or in writing. The public may submit written comments to Coast Guard personnel at the meeting. The Coast Guard will post these comments to the online public docket. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Privacy Act

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

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Josephine Long at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority

This notice is issued under the authority of 5 U.S.C. 552(a).

Dated: December 3, 2014.

Andrew Tucci,
Chief, Office of Port & Facility Compliance,
U.S. Coast Guard.

[FR Doc. 2014-29205 Filed 12-11-14; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5750-N-50]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh

Street SW., Room 7266, Washington, DC 20410; telephone (202) 402-3970; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B-17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their

written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture*: Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720-8873; *GSA*: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501-0084; *NASA*: Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202) 358-1124; *Navy*: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374, (202) 685-9426 (These are not toll-free numbers).

Dated: December 5, 2014.

Brian P. Fitzmaurice,
*Director, Division of Community Assistance,
Office of Special Needs Assistance Programs.*

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 12/12/2014

Suitable/Available Properties

Building

Kentucky

Quicksand Plant Materials Center
176 Robinson Road
Quicksand KY 41339

Landholding Agency: GSA
Property Number: 54201440005

Status: Surplus

GSA Number: 4-A-KY-0630-AA

Directions: Landholding Agency: Agriculture;
Disposal Agency: GSA

Comments: 4 bldgs. totaling 7,674 sq. ft.;
office/classroom/storage; fair conditions;
sits on 4.01 acres; contact GSA for more
information.

Wisconsin

Luepke Way Garage

207 Luepke Way

Medford WI 54451

Landholding Agency: Agriculture

Property Number: 15201440005

Status: Unutilized

Comments: off-site removal only; no future
agency need; 96+ months vacant; 576 sq.
ft.; roof & siding in poor conditions; wood
structure; contact Agriculture for more
information.

Suitable/Unavailable Properties

Land

North Carolina

Marine Corps Installations E.-

Marine Corps Base Camp Lejeune

Hwy 24, Montford Point Landing Rd. & Hwy
17

Jacksonville NC

Landholding Agency: Navy

Property Number: 77201440022

Status: Underutilized

Directions: previously reported under HUD
property # 77200720051 under a larger
parcel

Comments: 3 acres Lejeune Memorial
gardens; contact Navy for more
information.

Unsuitable Properties

Building

California

Trailer 1718

4800 Oak Grove Drive

Pasadena CA 91109

Landholding Agency: NASA

Property Number: 71201440016

Status: Excess

Comments: public access denied and no
alternative method to gain access w/out
compromising national security.

Reasons: Secured Area.

Florida

4 Building

Naval Air Station

Pensacola FL 32509

Landholding Agency: Navy
Property Number: 77201440020

Status: Unutilized

Directions: 2472; 2421; 856; 2403

Comments: public access denied and no
alternative w/out compromising national
security.

Reasons: Secured Area.

2 Building

Naval Air Station

Pensacola FL 32509

Landholding Agency: Navy

Property Number: 77201440021

Status: Underutilized

Directions: 2402; 586A

Comments: public access denied and no
alternative w/out compromising national
security.

Reasons: Secured Area.

Maryland

1645 Vertical EMP Test

Facility

McCauley Road

Patuxent River MD

Landholding Agency: Navy

Property Number: 77201440019

Status: Excess

Comments: public access denied and no
alternative w/out compromising national
Security.

Reasons: Secured Area.

[FR Doc. 2014-29075 Filed 12-11-14; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B814.IA001213]

**Revision of Agency Information
Collection for Reporting Systems for
Public Law 102-477 Demonstration
Project**

AGENCY: Bureau of Indian Affairs,
Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs (AS-IA) published a notice announcing the submission of the revised information collection titled “Reporting Systems for Public Law 102-477” to the Office of Management and Budget (OMB) for approval. In response, the AS-IA received several requests to extend the comment period to allow additional time for tribes to review and comment on the revised forms and related materials; therefore, we are providing a new 30-day comment period.

DATES: Submit comments on or before January 12, 2015.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the

Interior at the Office of Management and Budget, by facsimile to (202) 395-5806 or you may send an email to: OIRA_Submission@omb.eop.gov. Please send a copy of your comments to: Mr. Jack Stevens, Division Chief, Office of Indian Energy and Economic Development, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., MS-20 SIB, Washington, DC 20240; facsimile: (202) 208-4564; email: Jack.Stevens@bia.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Stevens, (202) 208-6764. You may review the information collection request online at <http://www.reginfo.gov> under “Information Collection Review.” Follow the instructions to review Department of the Interior collections under “Currently under Review” by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

On September 26, 2014, we published a notice in the **Federal Register** (79 FR 57969) announcing the submission of the revised information collection conducted under OMB Control Number 1076-0135, Reporting Systems for Public Law 102-477 Demonstration Project. In response to the notice, we received requests to extend the comment period to allow additional time for tribes to review and comment on the revised forms and related materials. All the related forms and documents to this revision are available for review under the following Web site at <http://www.bia.gov/WhoWeAre/AS-IA/ORM/477Forms/index.htm>.

There are currently four information collections associated with this OMB Control Number: IA 7701—Narrative Report; IA 7702—Statistical Report; IA 7703—Financial Report; and IA 7703A—Tribal Temporary Assistance for Needy Families (TANF) Financial Report. These forms are included in this request and will continue to be authorized for use until 2017.

The revision reduces the number of forms to two: Statistical Report and Financial Expenditure Report. The previous TANF Financial Report and Financial Report have been combined to create the Financial Expenditure Report, allowing tribes to complete and submit the information on one form. Revisions were made to the Narrative Report and Statistical Report to provide clear instructions and guidance. In addition, a new guidance document, “Function Cost Categories,” has been added for reference.

The new reporting forms (Version 2) will replace the currently approved forms (Version 1) after 2017. To the

extent possible, tribes should begin using the new reporting forms (Version 2) as they enter new contracts, but in no case later than the 2017 expiration date. Until then, the BIA will continue to accept either version of the forms to ensure a smooth transition in reporting and to allow time for training and technical assistance.

II. Request for Comments

The Assistant Secretary—Indian Affairs requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency’s estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076-0135.

Title: Reporting System for Public Law 102-477 Demonstration Project.

Brief Description of Collection: Public Law 102-477 authorized tribal governments to integrate federally-funded employment, training and related services programs into a single, coordinated, comprehensive delivery plan. Interior has made available a single universal format for Statistical Reports for tribal governments to report on integrated activities undertaken within their projects, and a single universal format for Financial Reports for tribal governments to report on all project expenditures. Respondents that participate in Temporary Assistance for

Needy Families (TANF) must provide additional information on these forms.

Type of Review: Revision of currently approved collection.

Respondents: Indian tribes participating in Public Law 102-477.

Number of Respondents: 64 on average.

Frequency of Response: Each respondent must supply the information for the Financial Status Report and Public Law 102-477 Demonstration Project Statistical Report once per year.

Estimated Time per Response: Ranges from 2 to 40 hours.

Estimated Total Annual Hour Burden: 4,730 hours.

Dated: December 9, 2014.

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2014-29208 Filed 12-11-14; 8:45 am]

BILLING CODE 4310-4M-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plat listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plat will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen on January 12, 2015.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215-7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239-3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plat of Amended Protraction Diagram No. 33 in Township 48 North, Range 15 West, New Mexico Principal Meridian, Colorado, was accepted on November 17, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014-29165 Filed 12-11-14; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L1420000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the official filing of the survey plat listed below. The plat will be available for viewing at <http://www.glorerecords.blm.gov>.

DATES: The plat described in this notice was filed on November 24, 2014.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, CO 80215-7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239-3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The supplemental plat of Section 32 in Township 12 South, Range 90 West, Sixth Principal Meridian, Colorado, was accepted on November 18, 2014, and filed on November 24, 2014.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2014-29166 Filed 12-11-14; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-MWR-CUVA-16772; PPMWROW2/ PMP00UP05.YP0000]

Notice of Availability of the Final White-Tailed Deer Management Plan, Environmental Impact Statement, Cuyahoga Valley National Park, Ohio

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Final White-Tailed Deer Management Plan/Environmental Impact Statement (Plan/EIS), Cuyahoga Valley National Park (Park), Ohio.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days from the date of publication of the Notice of Availability of the Final Plan/EIS in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: A limited number of hard-copies of the Final Plan/EIS may be picked up in-person or may be obtained by making a request in writing to Cuyahoga Valley National Park, 15610 Vaughn Road, Brecksville, Ohio 44141. The document is also available on the internet at the NPS Planning, Environment, and Public Comment Web site at: <http://parkplanning.nps.gov/CUVAdeerplan>.

FOR FURTHER INFORMATION CONTACT:

Chief of the Resource Management Division, Lisa Petit, at the address above, or by telephone at (440) 546-5970.

SUPPLEMENTARY INFORMATION: The Final Plan/EIS responds to, and incorporates as appropriate, agency and public comments received on the Draft Plan/EIS, which was available for public and agency review and comment from July 26 to September 24, 2013. Two public meetings were held during the 60-day comment period to gather input on the Draft Plan/EIS. Sixty eight pieces of correspondence were received during the public review period. Agency and public comments and NPS responses are provided in Appendix F of the Final Plan/EIS.

The Final Plan/EIS considers four alternatives for the management of white-tailed deer at the Park. Under Alternative A (No Action), existing management actions would continue, including deer and vegetation monitoring, data management, and research. No new actions would occur to reduce the effects of deer overbrowsing. Alternative B (Combined Non-lethal Actions) would include all

actions described under Alternative A and would incorporate a combination of nonlethal actions, including the construction of large-scale deer exclosures (fencing) for the purposes of forest regeneration. Nonsurgical reproductive control of does would be used to restrict population growth when this technology meets certain criteria. Alternative C (Lethal Actions) would also include all actions described under Alternative A, and would add lethal deer management actions to reduce the herd size, including direct reduction of the deer herd by sharpshooting with firearms or by implementing capture and euthanasia of individual deer in certain circumstances where sharpshooting would not be appropriate.

Alternative D (Combined Lethal and Non-lethal Actions) is the NPS preferred alternative. Alternative D would include all actions described under Alternative A, and it would also incorporate a combination of lethal and nonlethal actions from Alternatives B and C. Sharpshooting and limited capture/euthanasia would be used initially to quickly reduce deer herd numbers. Then, population maintenance could be conducted either by nonsurgical reproductive control methods, if certain criteria are met, or by sharpshooting. Both of these population maintenance methods are retained as options in order to maintain maximum flexibility for future management.

Dated: September 22, 2014.

Patricia S. Trap,

Acting Regional Director, Midwest Region.

[FR Doc. 2014-29164 Filed 12-11-14; 8:45 am]

BILLING CODE 4310-MA-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-17224; PPWOCRADP2, PCU00RP14.R50000]

National Historic Landmarks Committee of the National Park System Advisory Board Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, (5 U.S.C. Appendix 1-16), that a meeting of the National Historic Landmarks Committee of the National Park System Advisory Board will be held beginning at 10:00 a.m. on February 11, 2015, at the Charles Sumner School Museum and Archives. The meeting will continue beginning at 9:30 a.m. on February 12, 2015.

DATES: The meeting will be held on Wednesday, February 11, 2015, from 10:00 a.m. to 4:30 p.m.; and Thursday, February 12, 2015, from 9:30 a.m. to 4:30 p.m. (Eastern).

Location: The Charles Sumner School Museum and Archives, 3rd Floor, The Richard L. Hurlbut Memorial Hall, 1201 17th Street NW., Washington, DC 20036.

Agenda: The National Park System Advisory Board and its National Historic Landmarks Committee may consider the following nominations:

Alabama

U.S. POST OFFICE AND COURTHOUSE (FRANK M. JOHNSON, JR. FEDERAL BUILDING AND U.S. COURTHOUSE), Montgomery, AL

Colorado

RED ROCKS PARK AND MOUNT MORRISON CIVILIAN CONSERVATION CORPS CAMP, Jefferson County, CO

Connecticut

JAMES MERRILL HOUSE, Stonington, CT

Georgia

U.S. POST OFFICE AND COURTHOUSE (ELBERT PARR TUTTLE U.S. COURT OF APPEALS BUILDING), Atlanta, GA

Illinois

HENRY GERBER HOUSE, Chicago, IL

Louisiana

U.S. COURT OF APPEALS—FIFTH CIRCUIT (JOHN MINOR WISDOM U.S. COURT OF APPEALS BUILDING), New Orleans, LA

Michigan

LAFAYETTE PARK, Detroit, MI

Montana

FIRST PEOPLES BUFFALO JUMP, Cascade County, MT

Virginia

GEORGE WASHINGTON MASONIC NATIONAL TEMPLE, Alexandria, VA

Proposed Amendments to Existing Designations:

Massachusetts

PAUL REVERE HOUSE, Boston, MA (updated boundary and documentation)

MOSES PIERCE—HICHBORN HOUSE, Boston, MA (updated boundary and documentation)

Proposed Withdrawal of Designations:

New York

OLD BLENHEIM BRIDGE, Schoharie County, NY

The committee may also consider the following historic trail:

LEWIS AND CLARK EASTERN LEGACY NATIONAL HISTORIC TRAIL

FOR FURTHER INFORMATION CONTACT:

Patricia Henry, Historian, National Historic Landmarks Program, National Park Service, 1849 C Street NW., Washington, DC 20240, telephone (202) 354-2216 or email: Patty_Henry@nps.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Historic Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the National Park System Advisory Board of the qualifications of each property being proposed for National Historic Landmark designation, and to make recommendations regarding the possible designation of those properties as National Historic Landmarks to the National Park System Advisory Board at a subsequent meeting at a place and time to be determined. The Committee also makes recommendations to the National Park System Advisory Board regarding amendments to existing designations and proposals for withdrawal of designation. The members of the National Historic Landmarks Committee are:

Dr. Stephen Pitti, Chair
Dr. James M. Allan
Dr. Cary Carson
Dr. Yong Chen
Mr. Douglas Harris
Ms. Mary Hopkins
Mr. Luis Hoyos, AIA
Dr. Sarah A. Leavitt
Dr. Barbara J. Mills
Dr. Michael E. Stevens
Dr. Amber Wiley
Dr. David Young

The meeting will be open to the public. Pursuant to 36 CFR part 65, any member of the public may file, for consideration by the National Historic Landmarks Committee of the National Park System Advisory Board, written comments concerning the National Historic Landmarks nominations, amendments to existing designations, or proposals for withdrawal of designation.

Comments should be submitted to J. Paul Loether, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street NW., Washington, DC 20240, email: Paul_Loether@nps.gov.

Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 4, 2014.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014-29163 Filed 12-11-14; 8:45 am]

BILLING CODE 4310-EE-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Wireless Headsets, DN 3044*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR § 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,¹ and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.² The public record for this investigation may be viewed on the Commission's Electronic Document

¹ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

² United States International Trade Commission (USITC): <http://edis.usitc.gov>.

Information System (EDIS) at EDIS.³ Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of One-E-Way on December 8, 2014. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless headsets. The complaint names as respondents Sony Corporation of Japan; Sony Corporation of America of New York, NY; Sony Electronics, Inc. of San Diego, CA; Sennheiser Electronic GmbH & Co. KG of Germany; Sennheiser Electronic Corporation of Old Lyme, CT; BlueAnt Wireless Pty, Ltd. of Australia; BlueAnt Wireless, Inc. of Chicago, IL; Creative Technology Ltd. of Singapore; Creative Labs, Inc. of Milpitas, CA; Beats Electronics, LLC of Culver City, CA; Beats Electronics International Ltd. of Ireland; Jawbone, Inc. of San Francisco, CA; and GN Netcom A/S d/b/a Jabra of Denmark. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. § 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States

relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR § 210.4(f)). Submissions should refer to the docket number ("Docket No. 3044") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, *Electronic Filing Procedures*⁴). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.⁵

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337),

⁴ Handbook for Electronic Filing Procedures: http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.

⁵ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR §§ 201.10, 210.8(c)).

By order of the Commission.

Issued: December 8, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014-29097 Filed 12-11-14; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-939]

Certain Three-Dimensional Cinema Systems and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 7, 2014, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of RealD Inc. of Beverly Hills, California. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain three-dimensional cinema systems and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,905,602 ("the '602 patent"); U.S. Patent No. 8,220,934 ("the '934 patent"); U.S. Patent No. 7,857,455 ("the '455 patent"); and U.S. Patent No. 7,959,296 ("the '296 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the

³ Electronic Document Information System (EDIS): <http://edis.usitc.gov>.

Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2014).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 8, 2014, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain three-dimensional cinema systems and components thereof by reason of infringement of one or more of claims 1–2, 4, 6, 8, 10, 11, 14, 15, 17, 20, 21, and 23 of the '602 patent; claims 1, 6, 8, 10–12, 15, and 17 of the '934 patent; claims 1–3, 9–11, 13–15, 17–19, and 21 of the '455 patent; and claims 1, 2, 7, 8, 11, 12, and 17 of the '296 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: RealD Inc., 100 North Crescent Drive, Suite 200, Beverly Hills, CA 90210.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

MasterImage 3D, Inc., 15260 Ventura Boulevard, Suite 1220, Sherman Oaks, CA 91403.

MasterImage 3D Asia, LLC, BYC Highcity Building A, 22nd Floor, 131, Gasan digital 1-ro, Gasan-don, Geumcheon-gu, Seoul 153–803, Republic of Korea.

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not participate as a party in this investigation.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 8, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–29100 Filed 12–11–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–041]

Sunshine Act Meeting; Change of Time of Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

DATE: December 15, 2014.

NEW TIME: 12:00 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

In accordance with 19 CFR 201.35(d)(1), the Commission hereby gives notice that the meeting of December 15, 2014 will be held at 12:00 p.m.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting,

may be carried over to the agenda of the following meeting. Earlier notification of this change was not possible.

By order of the Commission:

Issued: December 10, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–29254 Filed 12–10–14; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0053]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: FBI eFOIA Form

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 30-day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Federal Bureau of Investigation, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** Volume 79, Number 196, page 61096, on October 9, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until January 12, 2015.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact David Sobonya, FOIA Public Information Officer, Federal Bureau of Investigation, 170 Marcel Drive, Winchester, VA 22602. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 or send to OIRA_submission@omb.eop.gov.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; 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.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement of the FBI eFOIA form with changes, a previously approved collection for which approval has expired.

2. *The Title of the Form/Collection:* FBI eFOIA form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the Department of Justice is the Federal Bureau of Investigation.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The general public who wish to make online FOIA request will be the most affected group. This information collection is to allow the Federal Bureau of Investigation to accept and respond to FOIA requester as defined in 28 CFR 16.3.

(a) How made and addressed. You may make a request for records of the Department of Justice by writing directly to the Department component that maintains those records. You may find the Department's "Freedom of Information Act Reference Guide"—which is available electronically at the Department's World Wide Web site, and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see § 16.41(d) for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual

permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request should be sent to the component's FOIA office at the address listed in appendix I to part 16. In most cases, your FOIA request should be sent to a component's central FOIA office. For records held by a field office of the Federal Bureau of Investigation (FBI) or the Immigration and Naturalization Service (INS), however, you must write directly to that FBI or INS field office address, which can be found in most telephone books or by calling the component's central FOIA office. (The functions of each component are summarized in part 0 of this title and in the description of the Department and its components in the "United States Government Manual," which is issued annually and is available in most libraries, as well as for sale from the Government Printing Office's Superintendent of Documents. This manual also can be accessed electronically at the Government Printing Office's World Wide Web site (which can be found at http://www.access.gpo.gov/su_docs). If you cannot determine where within the Department to send your request, you may send it to the FOIA/PA Mail Referral Unit, Justice Management Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW., Washington, DC 20530-0001. That office will forward your request to the component(s) it believes most likely to have the records that you want. Your request will be considered received as of the date it is received by the proper component's FOIA office. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) Description of records sought. You must describe the records that you seek in enough detail to enable Department personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. In addition, if you want records about a court case, you should provide the title of the case, the court in which the case was filed, and the nature of the case. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Department will be able to locate those records in response to your

request. If a component determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient.

The component also shall give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) Agreement to pay fees. If you make a FOIA request, it shall be considered an agreement by you to pay all applicable fees charged under § 16.11, up to \$25.00, unless you seek a waiver of fees. The component responsible for responding to your request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 11,000 FOIA requests are completed annually. These requests can be submitted via free-form letter, email or the eFOIA form. In FY 2014 approximately 200 online eFOIA forms were submitted. An average of 8 minutes per respondent is needed to complete the eFOIA form. The estimated range of burden for respondents is expected to be between 4 minutes to 12 minutes for completion.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is .5 hours. It is estimated that respondents will take .5 hour to complete a questionnaire. The burden hours for collecting respondent data sum to 250 hours (500 respondents × .5 hours = 250 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: December 9, 2014.

Jerri Murray,
Department Clearance Officer for PRA, U.S.
Department of Justice.

[FR Doc. 2014-29177 Filed 12-11-14; 8:45 am]

BILLING CODE 4410-02-P

DEPARTMENT OF JUSTICE**Office of the Attorney General**

[AG Order No. 3481–2014]

Attorney General Guidelines Stating Principles for Working With Federally Recognized Indian Tribes**AGENCY:** Office of the Attorney General, Department of Justice.**ACTION:** Notice.**SUMMARY:** The Attorney General is issuing guidelines stating principles for working with federally recognized Indian tribes.**DATES:** This notice is effective December 3, 2014.**ADDRESSES:** Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW., Room 2310, Washington, DC 20530, email *OTJ@usdoj.gov*.**FOR FURTHER INFORMATION CONTACT:** Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, at (202) 514–8812 (not a toll-free number) or *OTJ@usdoj.gov*.**SUPPLEMENTARY INFORMATION:** The Attorney General Guidelines state the following principles for working with federally recognized Indian tribes:**Overarching Principles**

- The Department of Justice honors and strives to act in accordance with the general trust relationship between the United States and tribes.
- The Department of Justice is committed to furthering the government-to-government relationship with each tribe, which forms the heart of our federal Indian policy.
- The Department of Justice respects and supports tribes' authority to exercise their inherent sovereign powers, including powers over both their citizens and their territory.
- The Department of Justice promotes and pursues the objectives of the United Nations Declaration on the Rights of Indigenous Peoples.
- The Department of Justice is committed to tribal self-determination, tribal autonomy, tribal nation-building, and the long-term goal of maximizing tribal control over governmental institutions in tribal communities, because tribal problems generally are best addressed by tribal solutions, including solutions informed by tribal traditions and custom.

Consultation and Communication With Tribes

- The Department of Justice recognizes that its commitment to tribal

self-determination requires regular, meaningful, and informed consultation with American Indian and Alaska Native tribal officials when developing new or amended policies, regulations, and legislative actions initiated by the Department that may affect tribes, as detailed in the Department's Policy Statement on Tribal Consultation.

- The Department of Justice recognizes that—in addition to, but not in lieu of, formal consultation—there can be great benefit in timely, detailed, informal communications with tribal officials and other community leaders.
- The Department of Justice supports the Attorney General's Tribal Nations Leadership Council and other task forces and advisory groups that allow elected tribal representatives to provide direct input to the Department's leaders and components.

Culture and Mutual Respect

- The Department of Justice recognizes that each tribe's history and contemporary culture are unique, and that solutions that work for one tribe may not be suitable for others.
- The Department of Justice works to respectfully consider traditional tribal cultural practices and values, and is sensitive to the need for effective cross-cultural communication.
- The Department of Justice seeks to foster an internal Departmental culture, from top to bottom, that will encourage its officers and employees to identify and be responsive to the needs of tribes routinely, not merely as an afterthought.

Law Enforcement and Litigation

- The Department of Justice is committed to helping protect all Native Americans from violence, takes seriously its role in enforcing federal criminal laws that apply in Indian country, and recognizes that, absent the Department's action, some serious crimes might go unaddressed.
- The Department of Justice prioritizes helping protect Native American women and children from violence and exposure to violence, and works with tribes to hold perpetrators accountable, to protect victims, and to reduce the incidence of domestic violence, sexual assault, and child abuse and neglect in tribal communities.
- The Department of Justice is committed to protecting tribal treaty rights, tribal lands and natural resources, and tribal jurisdiction through litigation, where appropriate, and to handling litigation involving tribes in a manner that is mindful of the government-to-government relationship.
- The Department of Justice promotes the proper application of the Indian

Child Welfare Act of 1978 (ICWA), and seeks to protect tribes and Native American families from unwarranted removal of their children.

- The Department of Justice works to safeguard the civil rights of Native Americans by prosecuting hate crimes, protecting the right to vote, and otherwise helping ensure that Native Americans are free from illegal discrimination.

Nation-Building and Tribal Justice Systems

- The Department of Justice believes that stable funding at sufficient levels for essential tribal justice functions is critical to the long-term growth of tribal institutions.
- The Department of Justice seeks to increase tribes' flexibility to administer grant programs and thus design solutions appropriate to their communities, while ensuring strict accountability.
- The Department of Justice believes that pilot and demonstration projects that are available to state or local governments should be available to similarly situated tribal governments, and endeavors, where appropriate and practicable, to give serious consideration to locating projects in tribal communities.
- The Department of Justice is committed to fully implementing the Indian Civil Rights Act of 1968 (ICRA), the Tribal Law and Order Act of 2010 (TLOA), and the Violence Against Women Reauthorization Act of 2013 (VAWA), and believes that working with tribes to strengthen their justice systems, including indigent defense services, is critical to fulfilling the promise of these statutes.
- The Department of Justice supports tribes' efforts to build innovative approaches to law enforcement, public safety, and victim services, and, where appropriate, to evaluate those approaches by collecting empirical evidence and conducting scientific and statistical research.

Coordination and Outreach

- The Department of Justice, when working with other federal agencies on issues involving tribes, advocates respecting tribal self-determination, tribal autonomy, tribal nation-building, and the government-to-government relationship.
- The Department of Justice works to facilitate communication and build relationships among the federal agencies engaged with tribal governments and to promote the sharing of federal resources and expertise.

- The Department of Justice works to facilitate communication and build relationships between tribes and state, local, and private partners in law enforcement, public safety, victim services, and civil rights, to promote prosperous and resilient tribal communities, and to use dispute resolution techniques such as mediation to resolve community conflicts and tensions.

- The Department of Justice recognizes the link between healthy, prospering families and public safety, and the need to coordinate law enforcement efforts with educational, housing, environmental-protection, and public-health services.

Sustainability

- The Department of Justice will continue taking steps to institutionalize its commitment to tribal justice and to make its officers and employees aware of these Attorney General Guidelines stating principles for working with federally recognized Indian tribes, so that progress in areas important to tribes continues regardless of changes in Department personnel.

These guidelines and principles are intended to improve the internal management of the Department of Justice. They are not intended to and do not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party in any matter, civil or criminal, against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person, nor do these guidelines or principles place any limitations on otherwise lawful litigative prerogatives of the Department of Justice. Please contact the Department's Office of Tribal Justice (OTJ) with any questions about these guidelines and principles.

Dated: December 3, 2014.

Eric H. Holder, Jr.,
Attorney General.

[FR Doc. 2014-28903 Filed 12-11-14; 8:45 am]

BILLING CODE 4410-A5-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. ATF 2014R-50N]

Granting of Relief; Federal Firearms Privileges

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice.

ACTION: Notice of granting of restoration of Federal firearms privileges.

SUMMARY: Northrop Grumman Systems Corporation (NGSC), a wholly owned subsidiary of Northrop Grumman Corporation (NGC), has been granted relief from the disabilities imposed by Federal laws by the Director of ATF with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms.

FOR FURTHER INFORMATION CONTACT: Shermaine Kenner, Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms and Explosives; U.S. Department of Justice; 99 New York Avenue NE., Washington, DC 20226; telephone (202) 648-7070.

SUPPLEMENTARY INFORMATION: The Attorney General is responsible for enforcing the provisions of the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44. He has delegated that responsibility to the Director of ATF, subject to the direction of the Attorney General and the Deputy Attorney General. 28 CFR 0.130(a). ATF has promulgated regulations that implement the provisions of the GCA in 27 CFR part 478.

Section 922(g) of the GCA prohibits certain persons from shipping or transporting any firearm in interstate or foreign commerce, or receiving any firearm which has been shipped or transported in interstate or foreign commerce, or possessing any firearm in or affecting commerce. These prohibitions apply to any person who—

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is a fugitive from justice;
- (3) Is an unlawful user of or addicted to any controlled substance;
- (4) Has been adjudicated as a mental defective or committed to a mental institution;
- (5) Is an alien illegally or unlawfully in the United States or, with certain exceptions, aliens admitted to the United States under a nonimmigrant visa;
- (6) Has been discharged from the Armed Forces under dishonorable conditions;
- (7) Having been a citizen of the United States, has renounced U.S. citizenship;
- (8) Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner; or

(9) Has been convicted in any court of a misdemeanor crime of domestic violence.

The term “person” is defined in section 921(a)(1) as including “any individual, corporation, company, association, firm, partnership, society, or joint stock company.” Section 925(c) of the GCA provides that a person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General to remove the firearms disabilities imposed under section 922(g) “if it is established to his satisfaction that the circumstances regarding the disability, and the applicant’s record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest.” The Attorney General has delegated the authority to grant relief from firearms disabilities to the Director of ATF.

Section 925(c) further provides that “[w]henver the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the **Federal Register** notice of such action, together with the reasons therefor.” Regulations implementing the provisions of section 925(c) are set forth in 27 CFR 478.144.

Since 1992, Congress has eliminated funding for ATF to investigate or act upon applications for relief from federal firearms disabilities submitted by individuals. However, since 1993, Congress has authorized funding for ATF to investigate and act upon applications filed by corporations for relief from Federal firearms disabilities.

An application to ATF for relief from Federal firearms disabilities under 18 U.S.C. 925(c) was submitted by NGSC. In the matter under review, between 1993 and 2002, NGSC, a wholly owned subsidiary of NGC, merged with and succeeded the assets and business operations of three non-surviving entities that had been convicted in Federal court of crimes punishable by imprisonment for a term exceeding one year. Specifically, TRW Electronic Products, Inc. was convicted on September 25, 1987, in the United States District Court for the District of Colorado, Case No. 87 CR-250, for violations of 18 U.S.C. 2 and 1001. TRW, Inc. was convicted on August 25, 1988, in the United States District Court for the Northern District of Ohio for a violation of 18 U.S.C. 371. Litton Applied Technology Division was convicted on June 30, 1999, in the United States District Court for the

Central District of California, Case No. CR 99–673, for a violation of 18 U.S.C. 371.

By letter dated June 6, 2012, ATF granted relief to Northrop Grumman Guidance and Electronics Company, Inc., a wholly owned subsidiary of NGC, resulting from its own prohibiting convictions, but took no action on relief to the non-surviving entities because they no longer exist. See 77 FR 58150. Nonetheless, because NGSC merged with and succeeded the assets and operations of the non-surviving entities, ATF subsequently determined that NGSC, as their successor, is eligible for relief.

Pursuant to 18 U.S.C. 925(c), on September 23, 2014, NGSC, a wholly owned subsidiary of NGC, as successor to TRW Electronic Products, Inc., TRW, Inc., and Litton Applied Technology Division, was granted relief by ATF from the disabilities imposed by Federal law, 18 U.S.C. 922(g)(1), with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms and ammunition as a result of these convictions of the non-surviving entities. It has been established to ATF's satisfaction that the circumstances regarding NGSC's disabilities and its record and reputation are such that the NGSC will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

B. Todd Jones,

Director.

[FR Doc. 2014–29236 Filed 12–11–14; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–405]

Electronic Prescriptions for Controlled Substances: Notice of Approved Certification Process

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of approved certification process.

SUMMARY: The Drug Enforcement Administration is announcing one new DEA-approved certification process for providers of Electronic Prescriptions for Controlled Substances applications. Certifying organizations with an approved certification process are posted on the Drug Enforcement Administration's Web site upon approval.

FOR FURTHER INFORMATION CONTACT: Imelda L. Paredes, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The Drug Enforcement Administration (DEA) implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. Titles II and III are referred to as the “Controlled Substances Act” and the “Controlled Substances Import and Export Act,” respectively, and are collectively referred to as the “Controlled Substances Act” or the “CSA” for the purpose of this notice. 21 U.S.C. 801–971. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

The CSA and DEA's implementing regulations establish the legal requirements for possessing and dispensing controlled substances, including the issuance of a prescription for a legitimate medical purpose by a practitioner acting in the usual course of professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. 21 CFR 1306.04(a). The prescription provides a record of the actual dispensing of the controlled substance to the ultimate user (the patient) and, therefore, is critical to documenting that controlled substances held by a pharmacy have been dispensed. The maintenance of complete and accurate records is an essential part of the closed system of distribution established by Congress.

Electronic Prescriptions for Controlled Substances

Historically, where Federal law required that a prescription for a controlled substance be issued in writing, that requirement could only be satisfied through the issuance of a paper prescription. Given advancements in

technology and security capabilities for electronic applications, the DEA amended its regulations to provide practitioners with the option of issuing electronic prescriptions for controlled substances in lieu of paper prescriptions. The DEA's interim final rule for Electronic Prescriptions for Controlled Substances was published on March 31, 2010, at 75 FR 16236–16319, and became effective on June 1, 2010.

Update

Certifying Organization With a Certification Process Approved by the DEA Pursuant to 21 CFR 1311.300(e)

The interim final rule and the DEA's Electronic Prescriptions for Controlled Substances Clarification (76 FR 64813) provide that, as an alternative to the third-party audit requirements of 21 CFR 1311.300(a) through (d), an electronic prescription or pharmacy application may be verified and certified as meeting the requirements of 21 CFR part 1311 by a certifying organization whose certification process has been approved by the DEA. The preamble to the interim final rule further indicated that, once a certifying organization's certification process has been approved by the DEA in accordance with 21 CFR 1311.300(e), such information will be posted on the DEA's Web site. 75 FR 16243 (March 31, 2010). On December 3, 2014, the DEA approved the certification process developed by Electronic Healthcare Network Accreditation Commission. Relevant information has been posted on the DEA's Web site at: <http://www.DEAdiversion.usdoj.gov>.

Dated: December 3, 2014.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2014–29118 Filed 12–11–14; 8:45 am]

BILLING CODE 4410–09-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–0008, NRC–2011–0085]

Exelon Generation Corporation, LLC; Calvert Cliffs Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; notice of docketing; opportunity to request a hearing and to petition for leave to intervene; and order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has docketed a license amendment application from

Exelon Generation Corporation, LLC (Exelon Generation). Exelon Generation is requesting revisions to its renewed license to increase maximum enrichment levels; to increase the amount of fuel allowed to be stored; and to change various Technical Specifications of the 32PHB DSC casks utilized at the Calvert Cliffs Independent Storage Installation located in Calvert County, Maryland. The NRC is evaluating whether approval of this request would be categorically excluded from the requirement to prepare an environmental assessment.

DATES: A request for hearing and petition for leave to intervene must be filed by February 10, 2015. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by December 22, 2014.

ADDRESSES: Please refer to Docket ID NRC-2011-0085 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web Site: Go to <http://www.regulations.gov> and search for Docket ID NRC-2011-0085. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff by telephone at 1-800-397-4209, 301-415-4737, or by email to pd.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John M. Goshen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-287-9250; email: John.Goshen@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC received, by letter dated March 26, 2014, as supplemented on July 25, 2014, a license amendment application pursuant to 10 CFR part 72 from Exelon Generation requesting a revision to its Renewed Special Nuclear Material License No. SNM-2505 at its Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI) site located in Calvert County, Maryland. Renewed Special Nuclear Material License No. SNM-2505 authorizes the licensee to receive, possess, store, and transfer spent fuel, reactor-related greater than Class C waste, and other radioactive materials associated with spent fuel storage at the Calvert Cliffs ISFSI. This amendment request contains SUNSI. A publicly-available version of the license amendment application and enclosures are available in ADAMS under Accession Nos. ML14090A122, ML14090A123, and ML14090A124. A publicly-available version of the supplemental information received on July 25, 2014, is available in ADAMS under Accession Nos. ML14274A498, ML14212A307, and ML14212A308.

Specifically, the amendment, if granted, will authorize the storage of Westinghouse and Areva Combustion Engineering (CE) 14X14 fuel in the NUHOMS®-32PHB Dry Shielded Canister (DSC) system, and will revise Materials License No. SNM-2505 and Technical Specifications (TS) as follows:

1. Renewed License SNM-2505 Section 6, Byproduct, Source, and/or Special Nuclear Material—The proposed amendment would increase the maximum allowable enrichment from 4.5 percent U-235 to 5.0 percent U-235 to allow for storage of higher enriched fuel assemblies.

2. Renewed License SNM-2505 Section 8, Maximum Amount That Licensee May Possess at Any One Time Under This License—The proposed amendment would increase this amount from the current 1,111.68 TeU to 1,558.27 TeU to allow for storage of fuel generated over the 60 year licensed lifetime of the Calvert Cliffs Units.

3. Renewed License se SNM-2505 Section 16—The proposed amendment would add acceptance standards for liquid penetrant tests of the double closure seal welds at the bottom end of the DSC for the NUHOMS-32PHB DSC.

The acceptance standards for the NUHOMS®-24P DSC and the NUHOMS®-32P DSC remain the same.

4. TS 2.1, Fuel to be Stored at ISFSI—This TS ensures that the fuel assembly radiation source is below design values. To accomplish this, the TS provides limits on the neutron and gamma sources allowed in each fuel assembly. The proposed change would add a new neutron and gamma source for fuel assemblies stored in NUHOMS®-32PHB DSCs. The new neutron and gamma sources for the NUHOMS®-32PHB DSC were selected to bound fuel assemblies that reach the TS Limiting Condition for Operation 3.1.1(5) thermal limit to be loaded.

5. TS 3.1.1, Fuel to be Stored at ISFSI—This TS ensures that the fuel assemblies stored in the DSCs meet the design requirements of the DSCs. This proposed amendment makes the following changes:

- a. TS 3.1.1(2)—The current initial enrichment limit is 4.5 weight percent U-235. The proposed amendment would add new maximum initial enrichment limits of 4.75 and 5.0 weight percent U-235 for a NUHOMS®-32PHB DSC, based on internal DSC basket design. The current maximum initial enrichment limit of 4.5 weight percent U-235 for the NUHOMS®-24P and NUHOMS®-32P DSCs remains the same.

- b. TS 3.1.1(3)—The current maximum fuel assembly average burnup limit is 47,000 MWd/MTU for the NUHOMS®-24P DSCs and 52,000 MWd/MTU for the NUHOMS®-32P DSCs. The proposed amendment would add a new maximum fuel assembly average burnup limit of 62,000 MWd/MTU for fuel stored in NUHOMS®-32PHB DSCs. The current burnup limits for the NUHOMS®-24P and NUHOMS®-32P DSCs remain the same.

- c. TS 3.1.1(5)—The current maximum heat generation rate limit is 0.66 kilowatt per fuel assembly. The proposed amendment would add a new maximum heat generation rate of 0.8 kilowatt per fuel assembly for NUHOMS®-32PHB DSC basket zones 1 and 4, and a maximum heat generation rate of 1.0 kilowatt per fuel assembly for NUHOMS®-32PHB DSC basket zones 2 and 3. The current maximum heat generation rate for the NUHOMS®-24P and NUHOMS®-32P DSCs remain the same.

- d. TS3.1.1(7)—Currently, the maximum fuel assembly mass to be placed in the NUHOMS®-24P and NUHOMS®-32P DSCs, including control components, shall not exceed 1450 lbs. (658 kg). This proposed amendment adds a new requirement that the maximum fuel assembly mass to be

placed in the NUHOMS®-32PHB DSC shall not exceed 1375 lbs. (625 kg) excluding control components. The current maximum fuel assembly mass limit remains the same for the NUHOMS®-24P and NUHOMS®-32P DSCs.

6. TS 3.2.2.1—The proposed amendment would add acceptance standards for liquid penetrant tests of the top shield plug closure weld, the siphon and vent port cover welds, and the top cover plate weld for the NUHOMS®-32PHB DSC. The acceptance standards for the NUHOMS®-24P and NUJHOMS®-32P DSCs remain the same.

7. TS 3.2.2.2 and 4.2.2.1, DSC Closure Welds—Currently, the standard helium leak rate for the top shield plug closure weld, and the siphon and vent port cover welds shall not exceed 10^{-4} atm-cc/s for the NUHOMS®-24P and NUHOMS®-32P DSCs. The proposed amendment will add a new requirement that the standard helium leak rate for the NUHOMS®-32PHB DSC top shield plug closure weld, and the siphon and vent port cover welds not exceed 10^{-7} ref-cc/s. The maximum helium leak rate for the NUHOMS®-24P and NUHOMS®-32P DSCs remains the same.

8. TS 3.4.1.1, Maximum Air Temperature Rise—This TS limits the temperature rise from the HSM inlet to the outlet. This provides assurance that the fuel is being adequately air cooled while in the HSM. The current limit is a maximum 64 °F temperature rise. The proposed amendment would add a new maximum 80 °F allowable temperature rise for HSMs with NUHOMS®-32 PHB DSCs. The requested change to the TSs would also address the additional temperature limit and the verification of the appropriate heat load for the fuel assemblies. The maximum temperature rise limit will remain 64 °F for the existing NUHOMS®-24P and NUHOMS®-32P DSCs.

9. New TS 3.3.2.1, Time Limit for Completion of NUHOMS®-32 PHB Transfer Operations—The proposed amendment would establish a new TS for the time to complete the transfer of the NUHOMS®-32PHB DSC from the cask handling area to the HSM. This new TS does not apply to the NUHOMS®-24P or NUHOMS®-32P due to their lower heat load. The time limit for completion of the transfer is as follows:

- a. No time limit for a DSC with a total heat load of 21.12 kW or less,
- b. 72 hours for a DSC with a total heat load greater than 21.12 kW but less than or equal to 23.04 kW,

c. 48 hours for a DSC with a total heat load greater than 23.04 kW but less than or equal to 25.6 kW,

d. 20 hours for a DSC with a total heat load greater than 25.6 kW but less than or equal to 29.6 kW.

10. New TS 3.3.3.1, Time Limit for Completion of NUHOMS®-32PHB DSC Vacuum Drying Operation—The proposed amendment would establish a new TS limiting the time to complete the NUHOMS®-32PHB DSC blowdown and vacuum drying process if nitrogen is used for blowdown. The time limit for completion of vacuum drying of a loaded NUHOMS®-32PHB DSC following blowdown with nitrogen is as follows:

a. 56 hours for a DSC with a total heat load of 23.04 kW or less.

b. 40 hours for a DSC with a total heat load greater than 23.04 kW but less than or equal to 25.6 kW, 32 hours for a DSC with a total heat load greater than 25.6 kW but less than or equal to 29.6 kW.

An NRC administrative completeness review, documented in a letter to CCNPP dated September 12, 2014 (ADAMS Accession No. ML14258A041), found the application acceptable for a technical review. If the NRC approves the amendment, the approval will be documented in an amendment to NRC renewed license SNM-2505. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. The NRC's findings will be documented in a safety evaluation report. In the amendment request, Exelon Generation asserted that the proposed amendments satisfy the categorical exclusion criteria of 10 CFR 51.22. The NRC will evaluate this assertion and make findings consistent with the National Environmental Policy Act and 10 CFR part 51.

II. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located in One White Flint North, Room O1-F21 (first floor), 11555 Rockville

Pike, Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition. The Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth, with particularity, the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

A State, local governmental body, federally-recognized Indian tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by February 10, 2015. The petition must be filed in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited

appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by February 10, 2015.

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/getting-started.html>. System requirements for accessing the E-Submittal server are detailed in the NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support

unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m. Eastern Time,

Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Exelon Generation Corporation, LLC, Docket 72-0008, Calvert Cliffs Independent Spent Fuel Storage Installation, Calvert County, Maryland; Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland, 20852. The email address for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and OGCmailcenter@nrc.gov, respectively.¹ The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory

proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

² Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded

contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 4th day of December 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of Federal Register notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2014-29141 Filed 12-11-14; 8:45 am]
BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2015-2; Order No. 2277]

New Postal Product

AGENCY: Postal Regulatory Commission.

³Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning modification to a Global Expedited Package Services 3 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

staff determinations (because they must be served on a presiding officer or the Commission, as

DATES: *Comments are due:* December 15, 2014.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

FOR FURTHER INFORMATION CONTACT:
David A. Trissell, General Counsel, at
202-789-6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Notice of Filings
- III. Ordering Paragraphs

I. Introduction

On December 5, 2014, the Postal Service filed notice that it has agreed to a Modification to the existing Global Expedited Package Services 3 negotiated service agreement approved in this docket.¹ In support of its Notice, the Postal Service includes a redacted copy of the Modification and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Modification and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* at 1–2.

The Modification revises a few phrases in the agreement and adds an additional Annex 2 to the agreement. *Id.* at 1.

The Postal Service intends for the Modification to become effective on January 1, 2015. *Id.* The Postal Service asserts that the modified contract will comply with 39 U.S.C. 3633. *Id.* Attachment 2.

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than December 15, 2014. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Curtis E. Kidd to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2015–2 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd to serve as an officer of the Commission

(Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than December 15, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

[FR Doc. 2014–29096 Filed 12–11–14; 8:45 am]

BILLING CODE 7710–FW–P

**SECURITIES AND EXCHANGE
COMMISSION**

[Release No. 34–73777; File No. SR–
NYSEARCA–2014–136]

**Self-Regulatory Organizations; NYSE
Arca, Inc.; Notice of Filing and
Immediate Effectiveness of Proposed
Rule Change Amending Commentary
.02 To Exchange Rule 6.72 in Order to
Extend the Penny Pilot in Options
Classes in Certain Issues Through
June 30, 2015**

December 8, 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 November 26, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The Exchange proposes to amend Commentary .02 to Exchange Rule 6.72 in order to extend the Penny Pilot in options classes in certain issues (“Pilot Program”) previously approved by the Securities and Exchange Commission (“Commission”) through June 30, 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 the
Statutory Basis for, the Proposed Rule
Change*

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Exchange Rule 6.72 to extend the time period of the Pilot Program,⁴ which is currently scheduled to expire on December 31, 2014, through June 30, 2015. The Exchange also proposes that the dates to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2015.⁵

This filing does not propose any substantive changes to the Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

⁴ See Securities Exchange Act Release No. 72192 (May 20, 2014), 79 FR 30209 (May 27, 2014) (SR–NYSEARCA–2014–60).

⁵ The month immediately preceding a replacement class's addition to the Pilot Program (*i.e.*, December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2015 would be identified based on The Option Clearing Corporation's trading volume data from June 1, 2014 through November 30, 2014. The Exchange will announce the replacement issues to the Exchange's membership through a Trader Update.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

¹ Notice of the United States Postal Service of Filing Modification to Global Expedited Package Services 3 Negotiated Service Agreement, December 5, 2014 (Notice).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing.¹¹ However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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 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. The Exchange has satisfied this pre-filing requirement.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 15 U.S.C. 78s(b)(2)(B).

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-2014-136 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-2014-136. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2014-136 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-29104 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73785; File No. SR-OCC-2014-18]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Provide That The Options Clearing Corporation's President Will Be Its Chief Operating Officer, and That the President Will Not Be a Management Director

December 8, 2014.

On October 31, 2014, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2014-18 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 November 7, 2014.³ On November 11, 2014, OCC filed Amendment No. 1 to the proposal.⁴ The Commission did not receive any comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Description of the Proposal

The purpose of this rule change, as amended, is to provide that OCC's President will be its Chief Operating Officer, rather than its Chief Executive Officer, and that the President will not be a management director on OCC's Board of Directors. These changes are being made in connection with the resignation of OCC's former President and Chief Executive Officer, a transition plan that includes the election of OCC's current Chief Operating Officer as President and Chief Operating Officer, and the appointment of an Ad Hoc Search Committee to identify an appropriate candidate to become OCC's

Chief Executive Officer (collectively, the "Transition Plan"). According to OCC, OCC's Board of Directors has determined that in light of the resignation of the former President and Chief Executive Officer and the election of the current Chief Operating Officer as President, the positions of President and Chief Executive Officer should be separated and the position of President should instead be combined with the position of Chief Operating Officer. To reflect this change, OCC is revising Section 8 of Article IV of its By-Laws to state that the President will be OCC's Chief Operating Officer, rather than its Chief Executive Officer.

According to OCC, while OCC's existing By-Laws provide that the President, who is also the Chief Executive Officer, serves as a Management Director on OCC's Board of Directors, given the separation of the President and Chief Executive Officer positions and the pending search for a new Chief Executive Officer, OCC's Board of Directors has also determined that the President should not be a Management Director. Accordingly, OCC is revising Section 7 of Article III and Section 1 of Article IV of its By-Laws to refer only to the Executive Chairman, and not the President, as a Management Director. OCC also is making a conforming revision to Section 8 of Article IV of its By-Laws to state that the President will not preside at meetings of the Board of Directors or the stockholders in the absence or disability of the Executive Chairman and the Management Vice Chairman because the President will no longer serve as a Management Director.

OCC is also amending its Stockholder Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. In each case, conforming changes are being made to provide that only the Executive Chairman, not the President, will serve as a Management Director.

Once a replacement Chief Executive Officer has been elected by the Board of Directors, OCC intends to reconsider the appropriate number of Management Directors. According to OCC, the rule change, as proposed and amended, represents a short-term measure to implement the Transition Plan and is not intended as a permanent change in the composition of the Board of Directors. As indicated in the filing, once OCC's Board of Directors has elected a Chief Executive Officer, OCC will propose further changes to its By-Laws, Stockholders Agreement, Board of Directors Charter and Fitness Standards for Directors, Clearing Members and Others. OCC believes that the short-term

flexibility reflected in the foregoing changes will assist OCC and its Board of Directors in implementing the Transition Plan efficiently and governing OCC effectively.

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁵ directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.

The Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,⁶ which requires that the rules of a registered clearing agency be designed to, among other things, remove the impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest. The proposed rule change, as amended, is consistent with Section 17A(b)(3)(F) because it should remove the impediments to and perfect the mechanism of a national clearance and settlement system and protecting investors and the public interest by providing transparency with respect to the composition of OCC's management structure and Board of Directors during the Transition Plan. By clarifying who from senior management is acting in the role of OCC's President and clarifying which senior management position is serving as a management director on OCC's Board of Directors during the Transition, both OCC's members and the public will have more information on the overall structure of management and the Board of Directors at OCC and more information on the level of authority of specific senior management positions. Additionally, this proposed rule change is consistent with Section 17A(b)(3)(F) because the Transition Plan will facilitate uninterrupted, ongoing, operations at OCC notwithstanding the above described changes at OCC.

III. Accelerated Approval of the Proposed Rule Change As Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,⁷ for approving the proposed rule change, as modified by Amendment No. 1, earlier than 30 days after the date

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 73497 (November 3, 2014), 79 FR 66440 (November 7, 2014) (SR-OCC-2014-18).

⁴ In Amendment No. 1, OCC amended the proposal to clarify that the proposal as described also amended Article IV, Section 1, of OCC's By-Laws to reflect OCC's Board of Directors' decision that the President should not be a Management Director. Specifically, OCC is amending Article IV, Section 1 of its By-Laws to refer only to the Executive Chairman, and not the President, as a Management Director.

⁵ 15 U.S.C. 78s(b)(2)(C).

⁶ 15 U.S.C. 78q-1(b)(3)(F).

⁷ 15 U.S.C. 78s(b)(2)(C)(iii).

of publication of notice in the **Federal Register**.

As discussed above, OCC filed Amendment No. 1 to describe the proposed change to Article IV, Section 1 of OCC's By-Laws to reflect OCC's Board of Directors' decision that the President should not be a Management Director. Specifically, OCC is amending Article IV, Section 1 of its By-Laws to refer only to the Executive Chairman, and not the President, as a Management Director. Amendment No. 1 provides the Commission with clarifying information about how OCC is implementing and providing transparency about the Transition Plan. By allowing OCC to implement the proposed changes, as amended, on an accelerated basis, OCC will be able to implement the Transition Plan sooner, which should allow OCC to manage and govern OCC more efficiently and effectively.

Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

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-OCC-2014-18 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-OCC-2014-18. 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 OCC. 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-OCC-2014-18 and should be submitted on or before January 2, 2015.

V. 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 Act⁸ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-OCC-2014-18), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29110 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73782; File No. SR-EDGX-2014-32]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGX Exchange, Inc.

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November

⁸ 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).

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

26, 2014, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ of the Exchange pursuant to EDGX Rules 15.1(a) and (c) ("Fee Schedule"). Changes to the Fee Schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.directedge.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to amend: (i) The criteria

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

for the Retail Order Tier under Footnote 4; and (ii) the first two bullets regarding added and removal flags under the General Notes section to include Flags EA, ER, and 5, which include in [sic] internalized volume.

Retail Order Tier

The Exchange currently provides a rebate of \$0.0032 per share for Retail Orders⁶ that yield Flag ZA and add liquidity. The Exchange currently offers a Retail Order Tier under Footnote 4 whereby Members are provided a rebate of \$0.0034 per share if they: (i) Add an Average Daily Volume⁷ (“ADV”) of Retail Orders yielding Flag ZA that is 0.10% or more of the Total Consolidated Volume⁸ (“TCV”) on a daily basis, measured monthly; and (ii) have an “added liquidity” to “added to removed liquidity” ratio of at least 85%. The Exchange proposes to ease the criteria to satisfy this tier by: (i) Lowering the requirement that a Member have an average daily volume of Retail Orders of 0.10% or more of the TCV on a daily basis, measured monthly, to 0.07% or more of the TCV on a daily basis, measured monthly; and (ii) deleting the requirement that a Member have an “added liquidity” to “added to removed liquidity” ratio of at least 85%. The Exchange believes easing the criteria to satisfy the Retail Order Tier will attract more Retail Orders to the Exchange.

Added and Removal Flags

The General Notes section of the Fee Schedule includes two bullets that contain the list of applicable “added flags” and “removal flags” that may be considered when calculating whether a Member satisfied a certain pricing tier. The Exchange appends Flags EA, ER,

and 5 to orders that inadvertently match against each other and share the same MPID (Member shares both sides of the trade). The Exchange proposes to amend the first bullet regarding added flags to include Flag EA, which covers internalized trades that add liquidity. The Exchange also proposes to amend the second bullet regarding removal flags to include Flag ER, which covers internalized trades that remove liquidity. Lastly, the Exchange proposes to amend both the first and second bullets to include Flag 5, which covers internalized trades that add or remove liquidity during the pre and post market sessions. The Exchange also proposes to add Footnote 10 to state that a Member’s monthly volume attributed to Flag 5 will be divided evenly between the added flags and removal flags when determining whether that Member satisfied a certain tier. The Exchange proposes to divide a Member’s Flag 5 volume as such because the Exchange’s systems cannot currently delineate orders yielding Flag 5 that added from those that removed liquidity for purposes of determining whether a Member satisfies a certain tier.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on December 1, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Retail Order Tier

The Exchange believes that easing the criteria required to achieve the Retail Order Tier is reasonable, equitable and not unfairly discriminatory because it would continue to encourage Members to send additional Retail Orders that add liquidity to the Exchange for execution in order to qualify for an incrementally higher rebate for such executions that add liquidity. The potential for increased volume from Retail Orders would increase potential revenue to the Exchange, and allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of lower fees. The increased liquidity benefits all investors by deepening EDGX’s liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.¹¹ The Exchange believes that it is thus appropriate to continue to create a financial incentive to bring more retail order flow to a public market, such as the Exchange, over off-exchange venues. The Exchange believes that investor protection and transparency is promoted by rewarding displayed liquidity on exchanges over off-exchange executions. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors’ confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange’s liquidity pool, supporting the quality of price discovery, promoting market

⁶ Exchange Rule 11.21(a) defines a “Retail Order,” in part, as an: (i) An agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.

⁷ ADV is defined in the Exchange’s Fee Schedule “as the average daily volume of shares that a Member executed on, or routed by, the Exchange for the month in which the fees are calculated. ADV is calculated on a monthly basis, excluding shares on any day that the Exchange’s system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours (‘Exchange System Disruption’), on any day with a scheduled early market close and on the last Friday in June (the ‘Russell Reconstitution Day’).”

⁸ TCV is defined in the Exchange’s Fee Schedule “as the volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month in which the fees are calculated, excluding volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close or the Russell Reconstitution Day.”

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission’s Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

transparency and improving investor protection.

The Exchange believes that reducing the percentage of TCV required to achieve the Retail Order Tier from 0.10% to 0.07% for Members' Retail Orders that add liquidity (Flag ZA) is reasonable, equitable and not unfairly discriminatory because this percentage continues to be within a range that the Exchange believes would incentivize Members to submit Retail Orders to the Exchange in order to qualify for the applicable rebate of \$0.0034 per share. The Exchange notes that certain other existing pricing tiers within its Fee Schedule make rebates available to Members that are also based on the Member's level of activity as a percentage of TCV. These existing percentage thresholds, depending on other related factors and the level of the corresponding rebates, are both higher and lower [sic] than the 0.07% proposed herein.¹²

The Exchange also notes that the revisions to the Retail Order Tier, including removing the requirement that Members have an "added liquidity" to "added to removed liquidity" ratio of at least 85%, are reasonable in that NYSE Arca, Inc. ("NYSE Arca") offers a comparable Retail Order Tier (with an analogous Retail Order definition) that provides a rebate of \$0.0033 per share for its Retail Orders that provide liquidity on NYSE Arca in Tapes A, B and C securities for ETP Holders that execute an ADV of Retail Orders that is 0.20% or more of the TCV with no additional criteria.¹³ In addition, The NASDAQ Stock Market LLC ("Nasdaq") recently proposed to offer its members a rebate of \$0.0034 per share for Designated Retail Orders, as defined by Nasdaq, where the member adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the Nasdaq Options Market rules.¹⁴ Moreover, like

¹² See for example, the Market Depth Tier 1 Rebate (\$0.00325 per share rebate), Mega Step-Up Tier Rebate (\$0.0032 per share), Ultra Tier rebate (\$0.0031 per share rebate), and Investor Tier rebate (\$0.0032 per share rebate) that are all tied to a percentage of TCV.

¹³ See Securities Exchange Act Release No. 69134 (March 14, 2013), 78 FR 17247 (March 20, 2013) (SR-NYSEArca-2013-24). See also, NYSE Arca Equities, Inc., Schedule of Fees and Charges for Exchange Services, https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_3_1_13.pdf.

¹⁴ See Securities Exchange Act Release No. 73648 (November 19, 2014) (SR-Nasdaq-2014-108). See also Nasdaq Price List available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

existing pricing on the Exchange and the NYSE that are tied to Member's volume levels as a percentage of TCV, the proposed Retail Order Tier continues to be equitable and not unfairly discriminatory because it is available to all Members on an equal and non-discriminatory basis.

Added and Removal Flags

The Exchange believes that its proposal to amend two bullets under the General Notes section of the Fee Schedule that contain the list of applicable "added flags" and "removal flags" are [sic] represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The Exchange appends Flag EA, ER, and 5 to buy and sell orders that inadvertently match against each other and share the same MPID (Member shares both sides of the trade). The Exchange also believes proposed Footnote 10 stating that a Member's monthly volume attributed to Flag 5 will be divided evenly between the added flags and removal flags when determining whether that Member satisfied a certain tier represents an equitable allocation of reasonable dues, fees, and other charges. The Exchange proposes to divide a Member's Flag 5 volume as such because Flag 5 includes both added and removed liquidity because the Exchange's systems cannot currently delineate orders yielding Flag 5 that added from those that removed liquidity purposes of determining whether a Member satisfies a certain tier. The Exchange believes that Members orders that yield Flags EA, ER, or 5 should be included in the calculation of the ADV threshold as added or removal flags for purposes of determining whether a tier's criteria has been met. Including such Flags would be a reasonable means to encourage Members to direct their orders to the Exchange because they would have certainty that certain orders will not be excluded from their ADV calculations because it inadvertently matched against an order sharing the same MPID. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by

the Exchange's competitors.

Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Retail Order Tier

Regarding the Retail Order Tier, the Exchange believes that its proposal to amend the criteria to achieve the tier will increase intermarket competition for Retail Orders because the proposed Retail Order Tier is comparable in price and criteria to NYSE Arca and Nasdaq's retail order tier.¹⁵ In addition, the proposed rule change is in direct response to Nasdaq recently implementing a rebate for retail orders of \$0.0034 per share where the member adds Customer and/or Professional liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.40% or more of national customer volume in multiply-listed equity and ETF options classes in a month as pursuant to Chapter XV, Section 2 of the Nasdaq Options Market rules.¹⁶ The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the Retail Order Tier would continue to apply uniformly to all Members and the ability of some Members to meet the Retail Order Tier would only benefit other Members by contributing to increased retail liquidity on the Exchange.

Added and Removal Flags

The Exchange believes that adding orders yielding Flags EA, ER, and 5 to the "added flags" and "removal flags" would increase intermarket competition because it would encourage Members to direct their orders to the Exchange because they would have certainty that their orders will not be excluded from their ADV calculations because it inadvertently matched against an order sharing the same MPID. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the added and removal flags would continue to apply uniformly to all Members and the ability of some Members to meet the tiers

¹⁵ See NYSE Arca, NYSE Arca Equities Trading Fees—Retail Order Tier, available at <http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees> (last visited June 27, 2013). See also Nasdaq, Price List—Rebate to Add Displayed Designated Retail Liquidity, available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2> (last visited June 27, 2013).

¹⁶ See supra note 14.

would only benefit other Members by contributing to increased liquidity and improve market quality at the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f) of Rule 19b-4 thereunder.¹⁸ 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-EDGX-2014-32 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-EDGX-2014-32. 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-EDGX-2014-32, and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29108 Filed 12-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73776; File No. SR-CME-2014-29]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Clarifying Changes to CME Rule 814 and CME Rule 901

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder² notice is hereby given that, on November 26, 2014, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(4)(ii)⁴ thereunder, so that the proposal was effective upon filing with the

Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization. More specifically, the proposed rule change would make amendments to CME Rule 814 and CME Rule 901 to specify the time at which a settlement bank becomes responsible to the clearing house to perform variation margin settlement and the point during the clearing cycle at which a clearing member's obligations to the clearing house cease. The proposed revisions would not modify clearing house operations but merely clarify to the marketplace the clearing cycle currently in place.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME 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. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization with the Commodity Futures Trading Commission ("CFTC") and operates a substantial business clearing futures and swaps contracts subject to the jurisdiction of the CFTC. CME is proposing to make amendments to CME Rule 814 and CME Rule 901 to specify the time at which a settlement bank becomes responsible to the clearing house to perform variation margin settlement and the point during the clearing cycle at which a clearing member's obligations to the clearing house cease. The proposed revisions would not modify clearing house operations but merely clarify to the marketplace the clearing cycle currently in place. CME notes that it has also made a corresponding filing with the CFTC, in Submission No. 14-280, regarding the proposed changes.

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f).

The proposed changes would reflect the best practices outlined in the Principles for Financial Market Infrastructures (“PFMIs”), adopted by the joint Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions.⁵ Principle 8 of the PFMIs (Settlement finality) states that an “FMI’s rules and procedures should clearly define the point at which settlement is final” and that “[a]n FMI should be designed to provide clear and certain final settlement of payments, transfer instructions, or other obligations.”⁶

Revised CME Rule 814 (Settlement Variation) will specify that “settlement variation is deemed final when an irrevocable commitment to pay has been provided to the Clearing House by a settlement bank in a form or manner as approved by the Clearing House.” The amendment to Rule 814 codifies CME’s uniform practice in regard to its settlement bank legal agreements, which provide that the settlement bank’s obligation arises upon CME’s receipt of the settlement bank’s irrevocable commitment to pay.

CME Rule 901.S (General Requirements and Obligations) is being added to state that “the obligation(s) of a clearing member to pay settlement variation and/or performance bond during each clearing cycle is not extinguished until all required cash and/or collateral is deposited into the correct CME bank account at the relevant custodial or settlement bank.” The proposed changes increase the transparency of the CME legal framework in this area and align the existing rules with global PFMI standards by specifying the times at which settlement bank obligations to the clearing house arise and clearing member obligations are extinguished.

CME believes the proposed rule change is consistent with the requirements of the Act including Section 17A.⁷ Because the proposed change clarifies in CME’s rules the time at which a settlement bank becomes responsible to the clearing house to perform variation margin settlement and the point during the clearing cycle at which a clearing member’s obligations

to the clearing house cease,⁸ it promotes the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, assures the safeguarding of securities and funds which are in the custody or control of CME or for which it is responsible, and, in general, protects investors and the public interest in a way that is consistent with Section 17A(b)(3)(F) of the Act.⁹

B. Self-Regulatory Organization’s Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed changes specify the time at which a settlement bank becomes responsible to the clearing house to perform variation margin settlement and the point during the clearing cycle at which a clearing member’s obligations to the clearing house cease. The proposed revisions will not modify clearing house operations but merely clarify to the marketplace the clearing cycle currently in place.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(4)(ii)¹¹ thereunder. CME asserts that this proposal constitutes a change in an existing service of CME that (a) primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, and swaps that are not security-based swaps or mixed swaps, and forwards that are not security forwards; and (b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such

securities-clearing service, which renders the proposed change effective upon filing. CME believes that the proposal does not significantly affect any securities clearing operations of CME because CME recently filed a rule change that clarified that CME has decided not to clear security-based swaps, except in a very limited set of circumstances.¹² The rule filing reflecting CME’s decision not to clear security-based swaps removed any ambiguity concerning CME’s ability or intent to perform the functions of a clearing agency with respect to security-based swaps. Therefore, this proposal will not have an effect on any securities clearing operations of CME.

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-CME-2014-29 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-CME-2014-29. 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/>

¹² See Securities Exchange Act Release No. 34-73615 (Nov. 17, 2014), 79 FR 69545 (Nov. 21, 2014) (SR-CME-2014-49). The only exception is with regards to Restructuring European Single Name Credit Default Swap (“CDS”) Contracts created following the occurrence of a Restructuring Credit Event in respect of an iTraxx Component Transaction. The clearing of Restructuring European Single Name CDS Contracts will be a necessary byproduct after such time that CME begins clearing iTraxx Europe index CDS.

⁵ See Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions, Principles for Financial Market Infrastructures (Apr. 16, 2012), available at <http://www.bis.org/publ/cpss101a.pdf>.

⁶ *Id.* at 64.

⁷ 15 U.S.C. 78q-1.

⁸ Pursuant to a teleconference with CME’s counsel on December 4, 2014, staff in the Division of Trading and Markets has modified this sentence to clarify CME’s intended explanation of the statutory basis for the proposed rule change.

⁹ 15 U.S.C. 78q-1(b)(3)(F).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(4)(ii).

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of CME and on CME's Web site at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

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-CME-2014-29 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-29102 Filed 12-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73786; File No. SR-CME-2014-54]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Position Limits and Position Accountability of the USD Malaysian Crude Palm Oil Calendar (Cleared Only) Contracts

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2014, Chicago Mercantile Exchange Inc. ("CME") filed with the Securities and Exchange Commission ("Commission") the

proposed rule change described in Items I, II and III, below, which Items have been primarily prepared by CME. CME filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ and Rule 19b-4(f)(4)(ii)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is filing a proposed rule change that is limited to its business as a derivatives clearing organization ("DCO"). More specifically, the proposed rule change would amend rules related to the position limits and position accountability of the USD Malaysian Crude Palm Oil Calendar (Cleared Only) Contract for clearing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose 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. CME 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

CME is registered as a DCO with the Commodity Futures Trading Commission ("CFTC") and offers clearing services for many different futures and swaps products. The proposed rule change that is the subject of this filing is limited to CME's business as a DCO offering clearing services for CFTC-regulated swaps products. More specifically, the proposed rule change would amend rules related to the position limits and position accountability of the USD Malaysian Crude Palm Oil Calendar Swap (Cleared Only) Contract for clearing.

The proposed amendment would establish independent position accountability levels for CME's USD Malaysian Crude Palm Oil Calendar Swap (the "Swap"). Feedback from

counterparties to the Swap suggests that much of the participation in the product involves commercial hedgers or counterparties to commercial hedgers. The Swap is not subject to mandatory position limit requirements. Transitioning from position limits to position accountability levels will facilitate the risk reduction practices of commercial firms and promote the continued participation of counterparties to commercial hedgers. Accordingly, CME proposes to transition the Swap's current position limit of 2,800 contracts into new position accountability levels to be set at 2,800 contracts.

The amendment will be reflected in the Position Limit, Position Accountability and Reportable Level Table and Header Notes located in the Interpretations and Special Notices Section of Chapter 5 of the CME Rulebook.

The changes that are described in this filing are limited to CME's business as a DCO clearing products under the exclusive jurisdiction of the CFTC. The changes will be effective on filing. CME notes that it has also certified the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in a separate filing, CME Submission No. 14-434.

CME believes the proposed rule change is consistent with the requirements of the Exchange Act including Section 17A of the Exchange Act.⁵ CME is proposing the amendment to establish new independent position accountability levels for CME's USD Malaysian Crude Palm Oil Calendar Swap, a change that is expected to facilitate the risk reduction practices of commercial firms and promote the continued participation of counterparties to commercial hedgers. The change is designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives 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 consistent with Section 17A(b)(3)(F) of the Exchange Act.⁶

Furthermore, the proposed change is limited in its effect to products offered under CME's authority to act as a DCO. The products that are the subject of this filing are under the exclusive jurisdiction of the CFTC. As such, the proposed change is limited to CME's

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(4)(ii).

⁵ 15 U.S.C. 78q-1.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

activities as a DCO clearing swaps that are not security-based swaps, futures that are not security futures and forwards that are not security forwards. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives markets, promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed change is limited in its effect to products offered under CME's authority to act as a DCO, the proposed change is properly classified as effecting a change in an existing service of CME that:

(a) Primarily affects the clearing operations of CME with respect to products that are not securities, including futures that are not security futures, swaps that are not security-based swaps or mixed swaps; and forwards that are not security forwards; and

(b) does not significantly affect any securities clearing operations of CME or any rights or obligations of CME with respect to securities clearing or persons using such securities-clearing service. As such, the change is therefore consistent with the requirements of Section 17A of the Exchange Act⁷ and are properly filed under Section 19(b)(3)(A)⁸ and Rule 19b-4(f)(4)(ii)⁹ thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed amendment would simply establish independent position accountability levels for CME's USD Malaysian Crude Palm Oil Calendar Swap. Further, the change is limited to CME's derivatives clearing business and, as such, does not affect security-based swap clearing activities of CME in any way and therefore would not impose any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not

received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)¹⁰ of the Act and paragraph (f)(4)(ii) of Rule 19b-4¹¹ thereunder. 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 No. SR-CME-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-CME-2014-54. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at <http://www.cmegroup.com/market-regulation/rule-filings.html>.

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-CME-2014-54 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-29178 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73778; File No. SR-NYSEMKT-2014-99]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to NYSE Amex Options Rule 960NY in Order To Extend the Penny Pilot in Options Classes in Certain Issues Through June 30, 2015

December 8, 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 November 26, 2014, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to NYSE Amex Options Rule 960NY in order to extend the

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(4)(ii).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(4)(ii).

Penny Pilot in options classes in certain issues (“Pilot Program”) previously approved by the Securities and Exchange Commission (“Commission”) through June 30, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to amend Commentary .02 to Exchange Rule 960NY to extend the time period of the Pilot Program,⁴ which is currently scheduled to expire on December 31, 2014, through June 30, 2015. The Exchange also proposes that the dates to replace issues in the Pilot Program that have been delisted be revised to the second trading day following January 1, 2015.⁵

This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

⁴ See Securities Exchange Act Release No. 72190 (May 20, 2014), 79 FR 30215 (May 27, 2014) (SR-NYSEMKT-2014-47).

⁵ The month immediately preceding a replacement class’s addition to the Pilot Program (*i.e.*, December) would not be used for purposes of the analysis for determining the replacement class. Thus, a replacement class to be added on the second trading day following January 1, 2015 would be identified based on The Option Clearing Corporation’s trading volume data from June 1, 2014 through November 30, 2014. The Exchange will announce the replacement issues to the Exchange’s membership through a Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)⁶ of the Securities Exchange Act of 1934 (the “Act”), in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The proposal to extend the Pilot Program is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange and the Commission additional time to analyze the impact of the Pilot Program while also allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry wide initiative supported by all other option exchanges. The Exchange believes that extending the Pilot Program will allow for continued competition between NYSE Amex Options market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁰ normally does not become operative prior to 30 days after the date of the filing.¹¹ However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹³ of the Act to determine whether the proposed rule

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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 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. The Exchange has satisfied this pre-filing requirement.

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 15 U.S.C. 78s(b)(2)(B).

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-NYSEMKT-2014-99 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-NYSEMKT-2014-99. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT-2014-99 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29103 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73791; File No. SR-Phlx-2014-66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Adopt New Exchange Rule 1081, Solicitation Mechanism, To Introduce a New Electronic Solicitation Mechanism

December 8, 2014.

On October 14, 2014, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member can electronically submit all-or-none orders of 500 contracts or more (or, in the case of mini options, 5000 contracts or more) the member represents as agent against contra orders the member solicited. The proposed rule change was published for comment in the **Federal Register** on October 31, 2014.³ The Commission has received no comment letters on the proposal.

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether these proposed rule changes should be disapproved. The 45th day for this filing is December 15, 2014.

The Commission is extending the 45-day time period for Commission action

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 73441 (October 27, 2014), 79 FR 64862.

⁴ 15 U.S.C. 78s(b)(2).

on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider and take action on the Exchange's proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act⁵ and for the reasons stated above, the Commission designates January 29, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-Phlx-2014-66).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29182 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73790; File No. SR-ICC-2014-17]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Granting Approval of Proposed Rule Change To Revise ICC End-of-Day Price Discovery Policies and Procedures

December 8, 2014.

I. Introduction

On October 17, 2014, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-ICC-2014-17 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 November 3, 2014.³ The Commission received no comment letters regarding the proposed change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description of the Proposed Rule Change

ICC is proposing this change to revise the ICC End-of-Day Price Discovery Policies and Procedures to incorporate enhancements to its price discovery

⁵ 15 U.S.C. 78s(b)(2)(A)(ii)(I).

⁶ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-73451 (Oct. 28, 2014), 79 FR 65280 (Nov. 3, 2014) (SR-ICC-2014-17).

process. This revision does not require any changes to the ICC Clearing Rules.

According to ICC, it utilizes a “cross and lock” algorithm as part of its price discovery process. As described by ICC, under this algorithm, bids and offers derived from Clearing Participant (“CP”) submissions are matched by sorting them from highest to lowest and lowest to highest levels, respectively. This sorting process pairs the CP submitting the highest bid price with the CP submitting the lowest offer price, the CP submitting the second highest bid price with the CP submitting the second-lowest offer price, and so on. The algorithm then identifies crossed and/or locked markets. Crossed markets are the Clearing Participant pairs generated by the sorting and ranking process for which the bid price of one Clearing Participant is above the offer price of the matched Clearing Participant. The algorithm identifies locked markets, where the bid and the offer are equal, in a similar fashion. The mid-point of the first non-crossed, non-locked matched market is, as stated by ICC, the final end-of-day level (with additional steps taken to remove off-market submissions from influencing the final level). According to ICC, this process captures the market dynamics of trading; however, final pricing levels are ultimately determined by a single bid and a single offer, which results in the ability for one submission to influence the outcome.

ICC proposes enhancements to its methodology to improve the consistency of prices and reduce the sensitivity of the final level to a single Clearing Participant’s submission. ICC states that under the new “cross and lock” methodology, the average of the mid-points of all non-crossed, non-locked matched markets that are less than or equal to one bid-offer width is used as the final level (with additional steps taken to remove off-market submissions from influencing the final level). ICC states that, as a result, prices are less sensitive to outlying submissions. ICC also proposes additional language in the ICC End-of-Day Price Discovery Policies and Procedures to clarify existing policies and practices, including, but not limited to, language to clarify the existing pricing methodology’s treatment of identical crossed or locked matched market bids or offers.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act⁴ 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 Act⁵ 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 rule change is consistent with Section 17A of the Act⁶ and the rules thereunder applicable to ICC. The revised ICC End-of-Day Price Discovery Policies and Procedures will reduce the sensitivity of the final price level to a single Clearing Participant’s submission, resulting in more consistent day-over-day end-of-day levels. The proposed rule change is therefore reasonably expected to provide a pricing methodology to more accurately reflect the market level. As such, the Commission believes that the changes will promote the prompt and accurate settlement of securities and derivatives transactions, and therefore are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, Section 17(A)(b)(3)(F).

IV. 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 Act⁷ and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-ICC-2014-17) be, and hereby is, approved.⁹

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Kevin M. O’Neill,
Deputy Secretary.

[FR Doc. 2014-29181 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73781; File No. SR-EDGA-2014-31]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGA Exchange, Inc.

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2014, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ of the Exchange pursuant to EDGA Rules 15.1(a) and (c) (“Fee Schedule”). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange’s Web site at <http://www.directedge.com>, at the principal office of the Exchange, and at

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.” See Exchange Rule 1.5(n).

⁵ 15 U.S.C. 78q-1(b)(3)(F).

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 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).

⁴ 15 U.S.C. 78s(b)(2)(C).

the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to amend the first two bullets regarding added and removal flags under the General Notes section to include Flags EA, ER, and 5, which include in [sic] internalized volume. The General Notes section of the Fee Schedule includes two bullets that contain the list of applicable "added flags" and "removal flags" that may be considered when calculating whether a Member satisfied a certain pricing tier. The Exchange appends Flags EA, ER, and 5 to orders that inadvertently match against each other and share the same MPID (Member shares both sides of the trade). The Exchange proposes to amend the first bullet regarding added flags to include Flag EA, which covers internalized trades that add liquidity. The Exchange also proposes to amend the second bullet regarding removal flags to include Flag ER, which covers internalized trades that remove liquidity. The Exchange believes that Members orders that yield Flags EA, ER, or 5 should be included in the calculation of the Average Daily Volume⁶ ("ADV") threshold as added or removal flags for purposes of determining whether a tier's criteria has been met.

Lastly, the Exchange proposes to amend both the first and second bullets

to include Flag 5, which covers internalized trades that add or remove liquidity during the pre and post market sessions. The Exchange also proposes to add Footnote 13 to state that a Member's monthly volume attributed to Flag 5 will be divided evenly between the added flags and removal flags when determining whether that Member satisfied a certain tier. The Exchange proposes to divide a Member's Flag 5 volume as such because the Exchange's systems cannot currently delineate orders yielding Flag 5 that added from those that removed liquidity for purposes of determining whether a Member satisfies a certain tier.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on December 1, 2014.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁷ in general, and furthers the objectives of Section 6(b)(4),⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

The Exchange believes that its proposal to amend two bullets under the General Notes section of the Fee Schedule that contain the list of applicable "added flags" and "removal flags" are [sic] represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. The Exchange appends Flag EA, ER, and 5 to buy and sell orders that inadvertently match against each other and share the same MPID (Member shares both sides of the trade). The Exchange also believes proposed Footnote 13 stating that a

Member's monthly volume attributed to Flag 5 will be divided evenly between the added flags and removal flags when determining whether that Member satisfied a certain tier represents an equitable allocation of reasonable dues, fees, and other charges. The Exchange proposes to divide a Member's Flag 5 volume as such because Flag 5 includes both added and removed liquidity because the Exchange's systems cannot currently delineate orders yielding Flag 5 that added from those that removed liquidity purposes of determining whether a Member satisfies a certain tier. The Exchange believes that Members orders that yield Flags EA, ER, or 5 should be included in the calculation of the ADV threshold as added or removal flags for purposes of determining whether a tier's criteria has been met. Including such Flags would be a reasonable means to encourage Members to direct their orders to the Exchange because they would have certainty that certain orders will not be excluded from their ADV calculations because it inadvertently matched against an order sharing the same MPID. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange believes that adding orders yielding Flags EA, ER, and 5 to the "added flags" and "removal flags" would increase intermarket competition because it would encourage Members to direct their orders to the Exchange because they would have certainty that their orders will not be excluded from their ADV calculations because it inadvertently matched against an order sharing the same MPID. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the added and removal flags would continue to apply

⁶ ADV is defined in the Exchange's Fee Schedule "as the average daily volume of shares that a Member executed on, or routed by, the Exchange for the month in which the fees are calculated. ADV is calculated on a monthly basis, excluding shares on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours ('Exchange System Disruption'), on any day with a scheduled early market close and on the last Friday in June (the 'Russell Reconstitution Day')."

⁷ 15 U.S.C. 78f.

⁸ 15 U.S.C. 78f(b)(4).

uniformly to all Members and the ability of some Members to meet the tiers would only benefit other Members by contributing to increased liquidity and improve market quality at the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and paragraph (f) of Rule 19b-4 thereunder.¹⁰ 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-EDGA-2014-31 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-EDGA-2014-31. 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-EDGA-2014-31, and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-29107 Filed 12-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73787; File No. SR-FICC-2014-06]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend the Rules of the Government Securities Division and the Mortgage-Backed Securities Division on Insolvency and Ceasing To Act

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2014, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the rules of the Government Securities Division ("GSD Rules") of FICC and the rules of the Mortgage-Backed Securities Division ("MBSD Rules") of FICC (each of GSD and MBSD, a "Division" of FICC) on insolvency and ceasing to act that simplify in certain respects FICC's process in a cease to act situation and provide greater legal certainty for FICC and its members, particularly in an intra-day cease to act situation.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the GSD Rules and the MBSD Rules on insolvency and ceasing to act in order to simplify in certain respects FICC's process in a cease to act situation and provide greater legal certainty for FICC and its members, particularly in an intra-day cease to act situation.

Background

In connection with lessons learned from a recent close-out simulation exercise conducted by The Depository Trust & Clearing Corporation, FICC's parent company, in which FICC participated, and related review of the GSD Rules and the MBSD Rules, certain potential challenges with administering certain aspects of the GSD Rules and the MBSD Rules on insolvency and ceasing to act described below, particularly in an intra-day cease to act situation, were identified.

"Time of Insolvency" and "Cut-Off Time"

Currently, GSD and MBSD include in their insolvency rules (GSD Rule 22, MBSD Rule 16) and cease to act rules (GSD Rule 22A, MBSD Rule 17) the

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

concept of a “Time of Insolvency”, which is defined to mean the time at which FICC determines to its reasonable satisfaction that a member is “insolvent” within the meaning of GSD Rule 22 or MBSD Rule 16, respectively.

This “Time of Insolvency” concept is separate from the time at which FICC ceases to act for a member, and such “Time of Insolvency” is currently used in the GSD Rules and the MBSD Rules as a line of demarcation when determining FICC’s obligations with respect to pending transactions involving the insolvent member. Specifically, transactions with the insolvent member that are not compared or deemed compared in accordance with the GSD Rules or the MBSD Rules, respectively, prior to the “Time of Insolvency” are not eligible to be part of the close-out process, unless otherwise determined by the Board of Directors of FICC in order to promote orderly settlement.

For a non-insolvency cease to act situation, the GSD Rules and the MBSD Rules on ceasing to act (GSD Rule 22A, MBSD Rule 17) currently include the concept of a “Cut-Off Time”, which is defined to mean a time specified in advance by FICC in a notice to its membership at which it will cease to act for a member. Like the “Time of Insolvency” concept, “Cut-Off Time” is currently used in the GSD Rules and the MBSD Rules when determining FICC’s obligations with respect to pending transactions involving the defaulted member.

Identifying an exact time at which a member has become “insolvent” for purposes of establishing a “Time of Insolvency” may pose potential challenges for FICC in circumstances where the member is deemed “insolvent” based upon the determination or action of a third party, such as the member’s regulator, supervisory authority or a court of competent jurisdiction. In an intra-day cease to act situation where transaction data is being submitted to FICC in real-time, these potential challenges with identifying an exact “Time of Insolvency” may create a lack of legal certainty for FICC and its members regarding FICC’s obligations with respect to pending transactions involving the insolvent member. In light of the foregoing, FICC proposes to remove the “Time of Insolvency” concept from the GSD Rules and the MBSD Rules and instead simply rely on the single time it ceases to act for an insolvent member for purposes of determining its obligations with respect to pending transactions involving such insolvent member.

In order to also simplify its process in non-insolvency cease to act situations, FICC proposes to remove the separate “Cut-Off Time” concept from the GSD Rules and the MBSD Rules and instead rely on the single time it ceases to act for a defaulted member for purposes of determining its obligations with respect to pending transactions involving such defaulted member.³

Transactions Deemed Compared Based Solely on Non-Defaulting Member Data

Currently, the provisions of the GSD Rules and the MBSD Rules on ceasing to act (GSD Rule 22A, MBSD Rule 17), and the related prongs of the “Compared Trade” definition in Rule 1 of each of the Division’s Rules, provide that, in the context of FICC ceasing to act for a member, a transaction involving such member that would not otherwise be compared or deemed compared under the GSD Rules or the MBSD Rules, respectively, may, in certain circumstances, be deemed a compared trade based solely on data submitted by a non-defaulting member. The determination of whether such a transaction should be deemed a compared trade is currently based on a multi-pronged facts and circumstances-based test, including determinations as to whether the transaction was executed prior to FICC ceasing to act for the defaulted member, whether the transaction was entered into in good faith and not primarily in order to take advantage of the defaulted member’s financial condition and whether the transaction is an Off-the-Market Transaction as defined in Rule 1 of each of the Division’s Rules.

Administering such a multi-pronged facts and circumstances-based test for individual transactions in a cease to act situation, particularly an intra-day cease to act situation where transaction data is being submitted to FICC in real-time, may pose potential challenges to FICC and create a lack of legal certainty for FICC and its members regarding FICC’s obligations with respect to individual pending transactions involving the insolvent or otherwise defaulted member. In order to simplify FICC’s process in a cease to act situation and provide FICC and its members with greater ex ante legal certainty regarding

the rules applicable to pending transactions involving an insolvent or otherwise defaulted member, FICC proposes to remove the multi-pronged facts and circumstances-based test and the related provisions of each of the Division’s Rules and instead simply rely on the compared trade definitions under each of the Division’s Rules, subject to the discretion of the Board of Directors of FICC to determine otherwise in order to promote orderly settlement with respect to transactions the data on which have been submitted only by non-defaulting members.

Proposed GSD Rule Changes

FICC is proposing to amend the GSD Rules as follows:

In Rule 1—“Definitions”, the following definitions have been revised:

The term “Compared Trade” is revised to remove the prong of the definition which provides that, in the context of FICC ceasing to act for a member under GSD Rule 22A, a transaction involving such member that would not otherwise be a Compared Trade under the GSD Rules may, in certain circumstances, be deemed a Compared Trade based solely on data submitted by a non-defaulting member.

The term “Off-the-Market Transaction” is revised to conform the text and the numbering of the definition with the text and numbering of the parallel “Off-the-Market Transaction” definition in the MBSD Rules.

In Rule 3A—“Sponsoring Members and Sponsored Members”, Sections 15(a) and 16(a) are revised to remove references to Rule 22, current Section 3 (Notification of Insolvency) and related conforming changes to the text of such sections are made. Section 15(b) is revised to remove the reference to the “Time of Insolvency” concept and to align the text regarding the actions taken by FICC in connection with the insolvency of a Sponsored Member with the parallel text included in Section 16 relating to the actions taken by FICC in connection with the insolvency of a Sponsoring Member. Consistent with the numbering of Section 15, Section 16(a) is revised to make the second paragraph a new subsection (b). New Section 16(b) is also revised to align the text regarding the actions taken by FICC in connection with the insolvency of a Sponsoring Member with the parallel text included in Section 15(b) relating to the actions taken by FICC in connection with the insolvency of a Sponsored Member.

In Rule 22—“Insolvency of a Member”, current Section 3, which provides for FICC to notice its membership and the Securities and

³ It should be noted that this proposed change will more closely align the GSD Rules and the MBSD Rules with the rules of FICC’s affiliate, National Securities Clearing Corporation (“NSCC”). Under its Rule 18 (Procedures for When the Corporation Declines or Ceases to Act), NSCC relies on the time it declines or ceases to act for a member when determining which transactions involving such member will be excluded from its operations, rather than on a separate “Time of Insolvency” or “Cut-Off Time”, as applicable.

Exchange Commission (SEC) regarding the insolvency of a member, is removed in order to clarify that the membership and the SEC will only receive one notice from FICC at the time it ceases to act for a member in accordance with the provisions of Section 1 of Rule 22A (Procedures for When the Corporation Ceases to Act), whether FICC ceases to act for the member for insolvency or non-insolvency related reasons. Section 4 (Ceasing to Act for the Member) is renumbered as new Section 3 and revised to remove the reference to the “Time of Insolvency” concept.

In Rule 22A—“Procedures for When the Corporation Ceases to Act”, Section 1 (Notification) is revised to clarify that FICC will notice the SEC as well as its membership of every decision to cease to act for a member. Section 1 is further revised to remove the requirement that FICC establish a separate “Time of Insolvency”, in the event it ceases to act because of a member’s insolvency, or “Cut-Off Time”, in the event it ceases to act for a member for non-insolvency related reasons.

Sections 2, 2(a) and 2(b) are revised to remove the “Time of Insolvency” and “Cut-Off Time” concepts, and instead rely on the time FICC ceases to act for a member for purposes of determining its obligations with respect to pending transactions involving such member. Section 2(a) is further revised to use the defined term “Compared Trade” for purposes of clarifying which transactions are eligible to be part of the close-out process as of the time FICC ceases to act for a member, subject to the discretion of the Board of Directors of FICC to determine otherwise in order to promote orderly settlement.

Section 2(c), which provides that, in the context of FICC ceasing to act for a member, a transaction involving such member that would not otherwise be compared or deemed compared under the GSD Rules may, in certain circumstances, be deemed compared based solely on data submitted by a non-defaulting member, based on a multi-pronged facts and circumstances-based test, is removed. FICC would instead rely on the “Compared Trade” definition in GSD Rule 1 when determining its obligations with respect to pending transactions involving an insolvent or otherwise defaulted member, subject to the discretion of the Board of Directors of FICC to determine otherwise in order to promote orderly settlement with respect to transactions the data on which have been submitted only by non-defaulting members.

Proposed MBSB Rule Changes

FICC is proposing to amend the MBSB Rules as follows:

In Rule 1—“Definitions”, the following definitions have been revised:

The term “Compared Trade” is revised to remove the prong of the definition which provides that, in the context of FICC ceasing to act for a member under MBSB Rule 17, a transaction involving such member that would not otherwise be compared or deemed compared under the MBSB Rules may, in certain circumstances, be deemed a Compared Trade based solely on data submitted by a non-defaulting member. The “Compared Trade” definition is further clarified to reference the specific MBSB Rules (Rule 5 and Rule 7) pursuant to which a transaction would be compared or deemed compared by MBSB.

In Rule 16—“Insolvency of a Member”, current Section 3, which provides for FICC to notice its membership and the Securities and Exchange Commission (SEC) regarding the insolvency of a member, is removed in order to clarify that the membership and the SEC will only receive one notice from FICC at the time it ceases to act for a member in accordance with the provisions of Section 1 of Rule 17 (Procedures for When the Corporation Ceases to Act), whether FICC ceases to act for the member for insolvency or non-insolvency related reasons. Section 4 (Ceasing to Act for the Member) is renumbered as new Section 3 and revised to remove the reference to the “Time of Insolvency” concept.

In Rule 17—“Procedures for When the Corporation Ceases to Act”, Section 1 (Notification) is revised to clarify that FICC will notice the SEC as well as its membership of every decision to cease to act for a member. Section 1 is further revised to remove the requirement that FICC establish a separate “Time of Insolvency”, in the event it ceases to act because of a member’s insolvency, or “Cut-Off Time”, in the event it ceases to act for a member for non-insolvency related reasons.

Sections 2, 2(a), 2(d) and 2(e) are revised to remove the “Time of Insolvency” and “Cut-Off Time” concepts, and instead rely on the time FICC ceases to act for a member for purposes of determining its obligations with respect to pending transactions involving such member.

Section 2(g), which provides that, in the context of FICC ceasing to act for a member, a transaction involving such member that would not otherwise be compared or deemed compared under the MBSB Rules may, in certain

circumstances, be deemed compared based solely on data submitted by a non-defaulting member, based on a multi-pronged facts and circumstances-based test, is removed. FICC would instead rely on the compared trade definitions in the MBSB Rules when determining its obligations with respect to pending transactions involving an insolvent or otherwise defaulted member, subject to the discretion of the Board of Directors of FICC to determine otherwise in order to promote orderly settlement with respect to transactions the data on which have been submitted only by non-defaulting members.

2. Statutory Basis

The proposed rule is consistent with Section 17A(b)(3)(F)⁴ of the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder because it will promote the prompt and accurate 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 in that it will simplify in certain respects FICC’s process in a cease to act situation and provide greater legal certainty for FICC and its members as to FICC’s obligations with respect to pending transactions involving an insolvent or otherwise defaulted member, particularly in an intra-day cease to act situation.

B. Clearing Agency’s Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact, or impose any burden, on competition because it relates to changes to FICC’s insolvency and cease to act rules that would apply equally to all members of each Division of FICC.

C. Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

⁴ 15 U.S.C. 78q-1(b)(3)(F).

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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-comment@sec.gov. Please include File No. SR-FICC-2014-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington DC 20549.

All submissions should refer to File Number SR-FICC-2014-06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on its Web site at <http://www.dtcc.com/-/media/Files/Downloads/legal/rule-filings/2014/ficc/SR-FICC-2014-06.pdf>. 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-FICC-2014-06 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29179 Filed 12-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73784; File No. SR-BX-2014-049]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Directed Market Makers

December 8, 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 November 25, 2014, NASDAQ OMX BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add definitions of Directed Order and Directed Market Maker ("DMM"), as well as provisions concerning the designation of an order as a Directed Order and DMM market making obligations. The proposal also revises priority rules to provide for a DMM participation entitlement. Finally, the rule makes certain clarifications to the text of rules governing Lead Market Makers ("LMMs"). The proposal seeks to enable BX to compete with the many options exchanges that offer directed orders in their respective markets.

The text of the proposed rule change is available on the Exchange's Web site at <http://>

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

nasdaqomxbx.cchwallstreet.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt rules to permit BX Market Makers to act as Designated Market Makers, or DMMs, in their appointed options classes, provided the DMM meets certain obligations and quoting requirements as provided for in the new proposed Exchange Rules. The Exchange proposes to provide DMMs with certain participation entitlements. The Exchange believes that these amendments, described below in greater detail, will enhance competition by affording the BX Options market the opportunity to compete for directed order flow.

Current Categories of BX Options Participants

Today on BX there are three types of Options Participants: Options Order Entry Firms, Options market makers and LMMs. Options Order Entry Firms, or OEFs, are Options Participants who represent customer orders as agent on BX Options and non-market maker Participants conducting proprietary trading as principal.

Options market makers are Options Participants registered with the Exchange as options market makers in one or more listed options on BX.³ BX Options market makers are required to electronically engage in a course of dealing to enhance liquidity available on BX and to assist in the maintenance of fair and orderly markets.⁴ Among

³ See BX Options Rules at Chapter VII.

⁴ Options market makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard

other things, Options market makers must quote 60 percent of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX may announce in advance.⁵

Recently, the Exchange adopted rules providing that an approved BX Options market maker may become an LMM in one or more listed options, provided that each class is limited to one LMM.⁶ BX does not limit the number of entities that may become LMMs. LMMs are subject to more extensive obligations than other BX Options market makers, including an obligation to provide continuous two-sided quotations meeting certain quote width requirements throughout the trading day in its appointed issues for 90 percent of the time the Exchange is open for trading in each issue.⁷ The Exchange provides LMMs with specific participation entitlements in Chapter VI (Trading Systems) at Section 10, entitled "Book Processing."

DMM Designation and Directed Orders

The Exchange is now proposing to define Directed Orders and to provide for another category of market maker, the DMM. A "Directed Order" would be defined as an order to buy or sell which has been directed (pursuant to the Exchange's instructions on how to direct an order) to a particular market maker (the DMM with respect to that

to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is to be used to finance the broker-dealer's activities as market maker on a national securities exchange. Thus, an Options market maker has a corresponding obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment.

⁵ BX Regulation may consider exceptions to the requirement to quote 60 percent (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. Market makers are not required to make two-sided markets pursuant to Section 5(a)(i) of Chapter VII in any Quarterly Option Series, adjusted option series, or any option series until the time to expiration for such series is less than nine months. Accordingly, the continuous quotation obligations set forth in this rule do not apply to market makers respecting Quarterly Option Series, adjusted option series, or any series with an expiration of nine months or greater. If a technical failure or limitation of a system of BX prevents a market maker from maintaining, or prevents a market maker from communicating to BX Options, timely and accurate quotes, the duration of such failure or limitation shall not be included in any of these calculations with respect to the affected quotes. Substantial or continued failure by an Options market maker to meet any of its obligations and duties, will subject the Options market maker to disciplinary action, suspension, or revocation of the Options market maker's registration in one or more options series. See obligations of Options market makers in Chapter VII, Section 6.

⁶ See Chapter VII, Section 13.

⁷ See Chapter VII, Section 14.

Directed Order).⁸ Pursuant to a proposed amendment to Chapter VI, Section 6(a)(2), Limit Orders,⁹ Minimum Quantity Orders,¹⁰ Market Orders,¹¹ Price Improving Orders,¹² All-or-None Orders¹³ and Post-Only Orders¹⁴ may all be designated as

⁸ See proposed Chapter VI, Section 1(e)(1), which replaces a Reserved section with a definition of Directed Order. The new provision also states that Directed Orders are handled within the System pursuant to Chapter VI, Section 10.

⁹ See Chapter VI, Section 1(e)(2). "Limit Orders" are orders to buy or sell an option at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

¹⁰ See Chapter VI, Section 1(e)(3). "Minimum Quantity Orders" are orders that require that a specified minimum quantity of contracts be obtained, or the order is cancelled. Minimum Quantity Orders are treated as having a time-in-force designation of Immediate or Cancel. Minimum Quantity Orders received prior to the opening cross or after market close will be rejected.

¹¹ See Chapter VI, Section 1(e)(5). "Market Orders" are orders to buy or sell at the best price available at the time of execution. Participants can designate that their Market Orders not executed after a pre-established period of time, as established by the Exchange, will be cancelled back to the Participant.

¹² See Chapter VI, Section 1(a)(6). "Price Improving Orders" are orders to buy or sell an option at a specified price at an increment smaller than the minimum price variation in the security. Price Improving Orders may be entered in increments as small as one cent. Price Improving Orders that are available for display shall be displayed at the minimum price variation in that security and shall be rounded up for sell orders and rounded down for buy orders.

¹³ See Chapter VI, Section 1(e)(10). "All-or-none" shall mean a market or limit order which is to be executed in its entirety or not at all. All-or-None Orders are treated as having a time-in-force designation of Immediate or Cancel. All-or-None Orders received prior to the opening cross or after market close will be rejected.

¹⁴ See Chapter VI, Section 1(e)(11). "Post-Only Orders" are orders that will not remove liquidity from the System. Post-Only Orders are to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) If a Post-Only Order would lock or cross an order on the System, the order will be re-priced to \$.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the NBBO as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C). Participants may choose to have their Post-Only Orders returned whenever the order would lock or cross the NBBO or be placed on the book at a price other than its limit price. Post-Only Orders received prior to the opening cross or after market close will be rejected. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled or Immediate or Cancel. Although a Post-Only Order may be designated as a Directed Order, because it is not executed immediately upon receipt it will never result in the awarding of a DMM participation entitlement as discussed below.

Directed Orders. A Directed Order may also be designated as Immediate or Cancel ("IOC"),¹⁵ Good-till-Cancelled ("GTC"),¹⁶ Day ("DAY")¹⁷ or a WAIT¹⁸ order pursuant to Chapter VI, Section 6(a)(1) as proposed to be amended. New Section 15, DMMs, of Chapter VII, Market Participants, provides that market makers may receive Directed Orders in their appointed classes as provided therein, provided they indicated to the Exchange, in a form specified, that they will receive Directed Orders. Directed Orders may be available only in certain options.¹⁹

Pursuant to new Chapter VII, Market Participants, Section 15, when the Exchange's disseminated price is the NBBO at the time of receipt of the Directed Order, and the DMM is quoting at or improving²⁰ the Exchange's

¹⁵ See Chapter VI, Section 1(g)(2). "Immediate Or Cancel" or "IOC" shall mean for orders so designated, that if after entry into the System a marketable order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant. IOC Orders shall be available for entry from the time prior to market open specified by the Exchange on its Web site until market close and for potential execution from 9:30 a.m. until market close. IOC Orders entered between the time specified by the Exchange on its Web site and 9:30 a.m. Eastern Time will be held within the System until 9:30 a.m. at which time the System shall determine whether such orders are marketable. IOC orders can be routed if designated as routable.

¹⁶ See Chapter VI, Section 1(g)(4). "Good Til Cancelled" or "GTC" shall mean for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until the option expires, whichever comes first. GTC Orders shall be available for entry from the time prior to market open specified by the Exchange on its Web site until market close and for potential execution from 9:30 a.m. until market close.

¹⁷ See Chapter VI, Section 1(g)(3). "DAY" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until market close, unless canceled by the entering party, after which it shall be returned to the entering party. DAY Orders shall be available for entry from the time prior to market open specified by the Exchange on its Web site until market close and for potential execution from 9:30 a.m. until market close.

¹⁸ See Chapter VI, Section 1(g)(5). "WAIT" shall mean for orders so designated, that upon entry into the System, the order is held for one second without processing for potential display and/or execution. After one second, the order is processed for potential display and/or execution in accordance with all order entry instructions as determined by the entering party.

¹⁹ The Exchange would specify via an Options Trader Alert which options would be subject to the Directed Orders provisions specified herein.

²⁰ Today, BX Options Participants enter Price Improving Orders, which orders have a specified price smaller than the minimum price variation ("MPV") in the option. Price Improving Orders may

disseminated price, the Directed Order will be automatically executed and allocated in accordance with Chapter VI, Section 10 such that the DMM will receive a DMM participation entitlement provided for in Chapter VI, Section 10, discussed below.²¹ If the DMM participation entitlement is not awarded at the time of receipt of the Directed Order, no DMM participation entitlement will apply and the order will be handled as though it were not a Directed Order for the remainder of the life of the order. However, when (a) the Exchange's disseminated price is the NBBO, and the quotation disseminated by the DMM on the opposite side of the market from the Directed Order is inferior to the NBBO at the time of receipt of the Directed Order, or (b) the Exchange's disseminated price is not the NBBO at the time of receipt of the Directed Order, the Directed Order will be processed as though it were not a Directed Order.²²

New Section 15 requires a DMM to provide continuous two-sided quotations throughout the trading day in all options issues in which the DMM is assigned for 90 percent of the time the Exchange is open for trading in each issue. Such quotations must meet the legal quote width requirements of Chapter VII, Section 6. These obligations will apply collectively to all series in all of the issues, rather than on an issue-by-issue basis once the market maker has indicated to the Exchange that the market maker will be receiving Directed Orders. While the Market Maker's quoting requirement is a daily obligation, the Exchange is able to determine compliance with these obligations on a monthly basis. BX Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on

be entered in increments as small as one cent. Price Improving Orders will be displayed at the MPV in that security and rounded up for sell orders and down for buy orders. Without this order type, market participants would not be able to submit orders priced between the MPV. Instead, orders, if submitted, would be priced (and displayed) at the MPV. The treatment of Price Improving Orders is not altered by this rule change. It is consistent to account for the possibility that the DMM improves the Exchange's disseminated price by submitting a marketable order in a non-standard increment, which in this case, would aggressively improve the NBBO. Awarding a participation entitlement to a DMM will not otherwise change the manner in which Price Improving Orders will be displayed at the MPV and available to be executed at price improving increments.

²¹ Chapter VII, Market Participants, Section 15, Directed Market Makers, subsection (i) Price Improving Orders from a DMM participant which are reflected on OPRA at the NBBO retain price priority and are eligible for a DMM participation entitlement.

²² See Chapter VII, Market Participants, Section 15, Directed Market Makers, subsection (ii).

demonstrated legal or regulatory requirements or other mitigating circumstances.²³ If a technical failure or limitation of a system of the Exchange prevents a DMM from maintaining, or prevents a DMM from communicating to the Exchange, timely and accurate electronic quotes in an issue, the duration of such failure shall not be considered in determining whether the DMM has satisfied the 90 percent quoting standard with respect to that option issue. Further, these obligations shall not apply to DMMs with respect to Quarterly Options Series, adjusted option series,²⁴ or any series with a time to expiration of nine months or greater. However, a DMM may still receive a participation entitlement in such series if it elects to quote in such series and otherwise satisfies the requirements of Chapter VI, Section 10.

LMM and New DMM Participation Entitlements

By way of background, Chapter VI, Trading System, Section 10, Book Processing, currently provides that the Exchange will determine to apply, for each option, either a Price/Time or a Size Pro-Rata execution algorithm. In addition to describing each execution algorithm, Chapter VI, Section 10 also describes certain priority overlays applicable to each of those algorithms.

Currently, under both Price/Time and Size Pro-Rata algorithms, Public Customer Priority is always in effect and provides that the highest bid and lowest offer have priority except that Public Customer orders have priority over non-Public Customer orders at the same price. If there are two or more Public Customer orders for the same options series at the same price, priority is afforded to such Public Customers orders in the sequence in which they are received by the System. For purposes of the Public Customer Priority overlay, a Public Customer order does not include a Professional²⁵ order.

Chapter VI, Section 10 also currently provides for a LMM priority overlay after all Public Customer orders have been fully executed, upon receipt of an

²³ Chapter VII, Market Participants, Section 15, Directed Market Makers, subsection (iii).

²⁴ An adjusted option series is an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the s [sic]

²⁵ See Chapter I, Section 1(a)(49). The term "Professional" means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A Participant or a Public Customer may, without limitation, be a Professional. All Professional orders shall be appropriately marked by Participants.

order, provided the LMM's bid/offer is at the Exchange's disseminated price. The LMM priority overlay applies under both the Price/Time and the Size Pro-Rata execution algorithms, if applicable.

Specifically, with respect to Size Pro-Rata executions, the Exchange affords an LMM a participation entitlement if the LMM's bid/offer is at or better than the Exchange's disseminated price and all Public Customer²⁶ orders have been fully executed.²⁷ The LMM is not entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. LMM participation entitlements are considered after the opening process. The LMM participation entitlement provides a BX Options LMM with the greater of: The LMM's Size Pro-Rata share; 50 percent of remaining interest if there is one or no other market maker at that price; 40 percent of remaining interest if there are two other market makers at that price; or 30 percent of remaining interest if there are more than two other market makers at that price; or if rounding would result in an allocation of less than one contract, a BX Options LMM receives one contract. Rounding is up or down to the nearest integer.²⁸ After all Public Customer orders have been fully executed and LMM participation entitlements applied, if applicable, BX Options market makers then have priority over all other Participant orders at the same price.²⁹

For symbols trading under the Price/Time algorithm, the Public Customer Priority Overlay is always in effect. Chapter VI, Section 10 also currently provides for a LMM priority overlay after all Public Customer orders have been fully executed, upon receipt of an order, provided the LMM's bid/offer is at or better than the Exchange's disseminated price, the LMM is afforded a participation entitlement.³⁰ The LMM is not entitled to receive a number of contracts that is greater than the displayed size associated with such LMM. After Public Customers orders have been executed, a BX Options LMM

²⁶ See Chapter I, Section 1(50). The term "Public Customer" means a person that is not a broker or dealer in securities.

²⁷ Price Improving Orders retain price priority before an LMM participation entitlement is provided at the Exchange's disseminated price. See Chapter VI, Sections 1(a)(6) and 7(b)(3)(B).

²⁸ When the decimal is exactly 0.5, the rounding direction is up to the nearest integer.

²⁹ Chapter VI, Trading Systems, Section 10, Book Processing, subsection (C)(2)(ii)(1).

³⁰ As is the case with Size Pro-Rata executions discussed above, Price Improving Orders retain price priority before an LMM participation entitlement is provided at the Exchange's disseminated price. See Chapter VI, Sections 1(a)(6) and 7(b)(3)(B).

receives the greater of: (a) Contracts the LMM would receive if the allocation was based on time priority with Public Customer priority; (b) 50 percent of remaining interest if there is one or no other market maker at that price; (c) 40 percent of remaining interest if there are two other market makers at that price; or (d) 30 percent of remaining interest if there are more than two other market makers at that price or if rounding would result in an allocation of less than one contract, a BX Options LMM receives one contract. Rounding is up or down to the nearest integer.³¹

Under both the Price/Time algorithm and the Size Pro-Rata algorithm, Orders for 5 contracts or fewer are allocated to the LMM. The Exchange reviews this provision quarterly and maintains the small order size at a level that will not allow orders of 5 contracts or less executed by the LMM to account for more than 40 percent of the volume executed on the Exchange.³²

The Exchange is now proposing to amend its rules to provide for a DMM priority entitlement under both the Price/Time and the Size Pro-Rata algorithm, and to make certain corresponding changes and clarifications to the current LMM participation entitlements. Under both Price/Time and Size Pro-Rata algorithms, a market maker which receives a Directed Order is a DMM with respect to that Directed Order. After all Public Customer orders at a given price point have been fully executed, upon receipt of a Directed Order, provided the DMM's bid/offer is at or improves the NBBO, the DMM will be afforded a participation entitlement³³ at the last execution price, which is equal to or better than the NBBO if the DMM executed the order at such price. The DMM shall not be entitled to receive a number of contracts that is greater than the displayed size at a given price point associated with such DMM. DMM participation entitlements will be considered after the opening process. Chapter VI, Section 10(C)(1)(c) specifies that under the Price/Time execution algorithm, DMM participant entitlements (like LMM participation entitlements)³⁴ shall only be in effect

when the Public Customer Priority Overlay is also in effect.

Pursuant to the DMM participation entitlement in effect under the Price/Time algorithm, the DMM would receive, with respect to a Directed Order, the greater of: (1) Contracts the DMM would receive if the allocation was based on time priority pursuant to subparagraph (C)(1)(a) with Public Customer priority; (2) after Public Customer orders are executed, 40 percent of remaining interest; or (3) the LMM participation entitlement (if the DMM is also the LMM). If there are multiple DMM quotes at the same price which are at or improve the NBBO when the Directed Order is received, the DMM participation entitlement would apply only once to the one which has the highest time priority at the last price executed upon receipt of the Directed Order which is equal to or better than the NBBO. If rounding would result in an allocation of less than one contract, the DMM would receive one contract. Rounding would be up or down to the nearest integer.³⁵ Under no circumstances would the DMM receive an allocation of greater than 40% of an order at a price at which they receive a directed entitlement, unless it resulted from rounding.

Pursuant to the DMM participation entitlement in effect under the Size Pro-Rata algorithm, the DMM would receive, with respect to a Directed Order, the greater of: (1) The DMM's Size Pro-Rata share under subsection (1)(C)(2)(iv); (2) after Public Customer orders are executed, 40 percent of remaining interest; or (3) the LMM participation entitlement (if the DMM is also the LMM). If there are multiple DMM quotes at the same price which are at or improve the NBBO when the Directed Order is received, the DMM participation entitlement would apply only to the one which has the highest time priority at the last price executed upon receipt of the Directed Order which is equal to or better than the NBBO. Additional DMM quotes at such price will receive no further allocation of the Directed Order. Like the DMM participation entitlement applicable to executions under the Price/Time algorithm, if rounding would result in an allocation of less than one contract, the DMM would receive one contract, and rounding would be up or down to the nearest integer.³⁶ Under no circumstances would the DMM receive an allocation of greater than 40% of an

order at a price at which they receive a directed entitlement, unless it resulted from rounding.

As noted above, under both execution algorithms only one participation entitlement, LMM or DMM, may be applied on a given order. The Exchange is amending the current LMM entitlements under each algorithm to provide with respect to a Directed Order that if the LMM is also the DMM, the LMM shall receive the DMM participation entitlement applicable to that algorithm, if any, if such DMM participation entitlement is greater than the LMM participation entitlement the LMM would otherwise receive pursuant to Chapter VI, Section 10, subsections (C)(1)(b)(1)(a)–(d) (in the case of Price/Time symbols) or (C)(2)(ii)(1)(a)–(d) (in the case of Size Pro-Rata symbols). The Exchange is also modifying the LMM priority rules so that the LMM participation entitlement will not apply to a Directed Order if when it is received the DMM's bid/offer is at or improves³⁷ the NBBO and the LMM is at the same price level and the LMM is not the DMM.³⁸

The Exchange is also proposing to revise the current allocation to the LMM of orders for five contracts or fewer (which applies under both algorithms). As revised, the provision would not apply if the order of 5 contracts or fewer is directed to a DMM who is quoting at the NBBO.³⁹

Currently, with respect to executions under the Size Pro-Rata algorithm, BX Options market makers have priority over all other Participant orders at the same price after all Public Customer orders have been fully executed and LMM participation entitlements applied. The Exchange proposes to amend this provision so that this BX Options market maker priority applies only after any DMM participation entitlements have been applied as well.⁴⁰

Finally, the Exchange proposes to clarify with respect to LMMs under both execution algorithms that after all Public Customer orders have been fully executed, upon receipt of an order, the LMM will be afforded a participation entitlement provided that LMM's bid/offer is at or improves upon the

³¹ Chapter VI, Trading Systems, Section 10, Book Processing, subsection (C)(1)(b)(1).

³² Chapter VI, Trading Systems, Section 10, Book Processing, subsections (C)(1)(b)(2) and (C)(2)(ii)(2).

³³ As with the LMM participation entitlements discussed above, Price Improving Orders retain price priority. A DMM participation entitlement will only be provided at the last price executed which is equal to or better than the Exchange's disseminated price. See Chapter VI, Sections 1(a)(6) and 7(b)(3)(B).

³⁴ Chapter VI, Trading Systems, Section 10, Book Processing, subsection (C)(1)(b).

³⁵ Chapter VI, Trading Systems, Section 10, Book Processing, subsections (C)(1)(c).

³⁶ Chapter VI, Trading Systems, Section 10, Book Processing, subsection (C)(2)(iii).

³⁷ See note 20.

³⁸ Chapter VI, Trading Systems, Section 10, Book Processing, subsections (C)(1)(b)(1) (with respect to Price/Time symbols) and (C)(2)(ii)(1) (with respect to Size Pro-Rata Symbols).

³⁹ Chapter VI, Trading Systems, Section 10, Book Processing, subsections (C)(1)(b)(2) (with respect to Price/Time symbols) and (C)(2)(ii)(2) (with respect to Size Pro-Rata Symbols).

⁴⁰ Chapter VI, Trading Systems, Section 10, Book Processing, subsection (C)(2)(iv).

Exchange's disseminated price. The addition of the reference to an improved bid/offer will conform the LMM provision to the corresponding new DMM provision.⁴¹ The Exchange is also making a clarifying change in Chapter VI, Section 10(1)(C)(1)(b)(1)(a) by changing "subparagraph (1)(a) above" to "subparagraph (C)(1)(a) above."

Examples of DMM Participation Entitlement Under Price/Time Algorithm

Examples 1 through 3 below illustrate the manner in which a DMM will be allocated pursuant to the Price/Time model.

Example Number 1

Assume an LMM has been assigned and that the DMM is not the LMM.

ABBO = 1.00–1.10

BX BBO = 1.00–1.10 comprised of the following in order of receipt

Market Maker 1 ("MM1") 1.00 (10)–1.10 (10)

Customer A 5 offered at 1.10

Firm 5 offered at 1.10

DMM 1.00 (10)–1.10 (20)

LMM 1.00 (10)–1.10 (10)

Customer B 2 offered at 1.10

Incoming Directed Order to pay 1.10 for 40 contracts.

Determination of Allocation:

Price/Time with Customer Priority would result in Customer A trading 5, Customer B trading 2, MM1 trading 10, Firm trading 5, and DMM trading 18.

The DMM allocation would result in Customer A trading 5, Customer B trading 2, and DMM trading 40% of remaining $33 = 13$ (13.2 rounded down); then normal price/time would resume and MM1 would trade 10, Firm would trade 5, and LMM would trade 5.

The LMM allocation is not calculated.

In this example, Price/Time with Customer Priority would prevail since the DMM would receive a greater allocation this way.

Example Number 2

Assume an LMM is assigned and that the DMM is not the LMM.

ABBO = 1.00–1.10

BX BBO = 1.00–1.10 comprised of the following in order of receipt

MM1 1.00 (10)–1.10 (10)

Customer A 5 offered at 1.10

Firm 5 offered at 1.10

Market Maker 2 ("MM2") 1.00 (10)–1.10 (10)

DMM 1.00 (10)–1.10 (20)

Customer B 2 offered at 1.10

Incoming Directed Order to pay 1.10 for 40 contracts.

Determination of Allocation:

Price/Time with Customer Priority would result in Customer A trading 5, Customer B trading 2, MM1 trading 10, Firm trading 5, MM2 trading 10 and DMM trading 8.

The DMM allocation would result in Customer A trading 5, Customer B trading 2, DMM trading 40% of remaining $33 = 13$ (13.2 rounded down); then normal price/time would resume with MM1 trading 10, Firm trading 5 and MM2 trading 5.

The LMM allocation would not be calculated.

In this example, the DMM allocation would prevail since the DMM receives a greater allocation this way.

Example Number 3

Assume an LMM is assigned and that the DMM is also the LMM.

ABBO = 1.00–1.10

BX BBO = 1.00–1.10 comprised of the following in order of receipt:

MM1 1.00 (10)–1.10 (10)

Firm 25 offered at 1.10

DMM/LMM 1.00 (10)–1.10 (20)

Customer B 2 offered at 1.10

Incoming Directed Order to pay 1.10 for 40 contracts.

Determination of Allocation:

Price/Time with Customer Priority would result in Customer B trading 2, MM1 trading 10, Firm trading 25, and DMM/LMM trading 3.

DMM allocation would result in Customer B trading 2 and DMM/LMM trading 40% of remaining $38 = 15$ (15.2 rounded down); then normal price/time would resume and MM1 would trade 10 and Firm would trade 13.

LMM allocation would result in Customer B trading 2 and DMM/LMM trading 50% of remaining $38 = 19$; then normal price time would resume and MM1 would trade 10 and Firm would trade 9.

In this example, the LMM allocation would prevail since the DMM/LMM would receive a greater allocation this way.

Examples of DMM Participation Entitlement Under Size Pro-Rata Algorithm

Examples 4 through 6 below illustrate the manner in which a DMM will be allocated pursuant to the Size Pro-Rata model.

Example Number 4

Assume an LMM is assigned and the DMM is not the LMM.

ABBO = 1.00–1.10

BX BBO = 1.00–1.10 comprised of the following in order of receipt:

LMM 1.00 (10)–1.10 (15)

Customer A 5 offered at 1.10

Firm 5 offered at 1.10

DMM 1.00 (10)–1.10 (20)

MM1 1.00 (10)–1.10 (10)

Customer B 2 offered at 1.10

Incoming Directed Order to pay 1.10 for 40 contracts.

Determination of Allocation:

Size Pro-Rata would result in Customer A trading 5, Customer B trading 2, LMM trading 11 (15/45*33remaining), DMM trading 14 (20/45*33), MM1 trading 7 (10/45*33), and then LMM based on time receiving the residual 1 lot.

The DMM allocation would result in Customer A trading 5, Customer B trading 2, and DMM trading 40% of remaining $33 = 13$ (13.2 rounded down); then normal Size Pro-Rata for remaining with the LMM trading 12 (15/25*20) and MM1 trading 8 (10/25*20).

The LMM allocation would not be calculated.

In this example, the Size Pro-Rata allocation would prevail since the DMM would receive the greater allocation this way.

Example Number 5

Assume that no LMM is assigned.

ABBO = 1.00–1.10

BX BBO = 1.00–1.10 comprised of the following in order of receipt:

DMM 1.00 (10)–1.10 (15)

Customer A 5 offered at 1.10

Firm 5 offered at 1.10

MM1 1.00 (10)–1.10 (20)

MM2 1.00 (10)–1.10 (10)

Customer B 2 offered at 1.10

Incoming Directed Order to pay 1.10 for 40 contracts.

Determination of Allocation:

Size Pro-Rata would result in Customer A trading 5, Customer B trading 2, DMM trading 11 (15/45*33remaining), MM1 trading 14 (20/45*33), MM2 trading 7 (10/45*33), and the DMM based on time receiving the residual 1 lot.

The DMM allocation would result in Customer A trading 5, Customer B trading 2, and DMM trading 40% of remaining $33 = 13$ (13.2 rounded down); then normal Size Pro-Rata for remaining with MM1 trading 13 (20/30*20) and MM2 trading 6 (10/30*20), and the DMM based on time receiving the residual 1 lot.

The LMM allocation would not be calculated.

In this example, the DMM allocation would prevail since the DMM would receive the greater allocation this way.

Example Number 6

Assume that an LMM is assigned and that the DMM is also the LMM.

⁴¹ See note 20.

ABBO = 1.00–1.10
 BX BBO = 1.00–1.10 comprised of the following in order of receipt:

DMM/LMM 1.00 (10)–1.10 (15)
 Customer A 5 offered at 1.10
 Firm 5 offered at 1.10
 MM1 1.00 (10)–1.10 (30)
 Customer B 2 offered at 1.10

Incoming Directed Order to pay 1.10 for 40 contracts.

Determination of Allocation:
 Size Pro-Rata would result in Customer A trading 5, Customer B trading 2, DMM/LMM trading 11 (15/45*33 remaining), MM1 trading 22 (30/45*33).

The DMM allocation would result in Customer A trading 5, Customer B trading 2, and DMM/LMM trading 40% of remaining 33 = 13 (13.2 rounded down); then Size Pro-Rata for remaining with MM1 trading full size of 20.

The LMM allocation would result in Customer A trading 5, Customer B trading 2, and DMM/LMM entitled to 50% of remaining 33 = 17 (16.5 rounded up) but capped at his size of 15 thus trading 15; then normal Size Pro-Rata for remaining with MM1 trading 18.

In this example, the LMM allocation would prevail since the DMM is the LMM and would receive a greater allocation this way.

Examples of Price Improving Orders

Example Number 1

For this scenario assume the NBBO is at 1.00 (bid) and 1.20 (offer).

Assume a Price Improving Order (O1) from a Customer is present on BX to sell 20 contracts at 1.18. Also assume a Directed Market Maker (DMM1) and two other Market Makers (MM2 and MM3) are each quoting 1.00–1.20 with a size of 50 contracts on each side. O1 and the Market Maker quotes are reflected in the BX BBO as 1.00–1.20 with a size of 150 contracts on the bid and 170 contracts on the offer. If an order (O2) is received to buy 50 contracts at a limit of 1.20 which is directed to DMM1, the order will execute upon receipt with 20 contracts trading against O1 at 1.18, 12 contracts trading against DMM1 at 1.20 (40% of remaining 30 contracts), 9 contracts trading against MM2 at 1.20, and 9 contracts trading against MM3 at 1.20.

Example Number 2

For this scenario assume the NBBO is at 1.00 (bid) and 1.20 (offer).

Assume two Price Improving Orders (O1 and O2) from a Customer (C1) and Directed Market Maker (DMM1), respectively, are present on BX to sell 10 contracts each at 1.18. Also assume the Directed Market Maker (DMM1) and

two other Market Makers (MM2 and MM3) are each quoting 1.00–1.20 with a size of 50 contracts on each side. O1, O2, and the Market Maker quotes are reflected in the BX BBO as 1.00–1.20 with a size of 150 contracts on the bid and 170 contracts on the offer. If an order (O3) is received to buy 50 contracts at a limit of 1.20 which is directed to DMM1, the order will execute upon receipt with 10 contracts trading against O1 at 1.18 and 10 contracts trading against DMM1's Price Improving Order (O2) at 1.18. The remaining 30 contracts will trade at 1.20 with 12 contracts trading against DMM1 (40% of remaining 30 contracts), 9 contracts trading against MM2, and 9 contracts trading against MM3.

Example Number 3

Assume the following orders exist in the Order book for Market Maker 2 and 3 (MM2 and MM3 respectively) and the following DMM quotes:

1.19 offer 10 MM2 (Price Improving Order)
 1.20 offer 20 MM3
 1.20 offer 10 DMM Quote 1
 1.20 offer 10 DMM Quote 2

If an order was directed to the DMM to buy 15 contracts at 1.20, 10 contracts would be executed at 1.19 contra MM2. The DMM would receive 40% of the remaining 5 contracts (2 contracts) which would be allocated to DMM Quote 1. The remaining 3 contracts would be allocated as per Price Time priority to MM3.

Example Number 4

Assume the following orders exist in the Order book for Market Maker 2 and 3 (MM2 and MM3 respectively) and the following DMM quotes:

1.18 offer 10 MM2 (Price Improving Order)
 1.19 offer 20 MM3
 1.19 offer 10 DMM Quote 1
 1.19 offer 10 DMM Quote 2
 1.20 offer 10 MM3

If an order directed to the DMM to buy 15 contracts for 1.20, 10 contracts would be executed at 1.18 contra MM2. The DMM would receive 40% of remaining 5 contracts (2 contracts), because it was the last price executed pursuant to Chapter VI, Section 10(1)(C)(1)(c), which would be allocated to DMM Quote 1. The remaining 3 contracts would be allocated as per Price Time priority to MM3.

Priority Overlays

The Exchange is proposing to amend language in Chapter VI, Section 10(1)(C)(2) which applies to priority overlays. The language currently states

that “the Exchange will apply the following designated Participant priority overlays, which are always in effect when the Size Pro-Rata execution algorithm is in effect.” The priority overlays which are references are Public Customer, LMM, DMM and market maker priority. The Exchange is proposing to amend the sentence to state, “the Exchange *may* apply the following designated Participant priority overlays, when the Size Pro-Rata execution algorithm is in effect.” The amendment is intended to provide more specificity to the rule text as Public Customer priority will be in effect always for Size Pro-Rata, but may be in effect for the other types of priorities. The amendment also conforms the language to the Price/Time rule text in Chapter VI, Section 10(1)(C)(1).

Implementation.

Within thirty (30) days the Exchange will begin to implement the proposal and will issue an Options Trader Alert in advance to inform market participants of such date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁴² in general, and furthers the objectives of Section 6(b)(5) of the Act⁴³ 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, because it will establish a Directed Order process similar to what operates on other exchanges, as explained herein, which will provide Participants with additional choices among the many competing exchanges with regard to their execution needs and strategies. BX Options operates in an intensely competitive environment and seeks to offer the same services that its competitors offer and in which its customers find value.

In its approval of other options exchange directed order programs, the Commission has, like proposals to amend a specialist guarantee, focused on whether the percentage of the “entitlement” would rise to a level that could have a material adverse impact on quote competition within a particular

⁴² 15 U.S.C. 78f(b).

⁴³ 15 U.S.C. 78f(b)(5).

exchange, and concluded that such programs do not jeopardize market integrity or the incentive for market participants to post competitive quotes.⁴⁴ BX's proposed DMM participation entitlement of 40 percent, is consistent with the directed order allocations of other options exchanges. BX notes that the remaining portion of each order will continue to be allocated based on the competitive bids/offers of market participants. In addition, at the time of receipt of the Directed Order, a DMM will have to be quoting at or improving⁴⁵ the NBBO which is intended to incent the DMM to quote aggressively. BX also notes that DMMs will have heightened quoting obligations as compared to other BX Options market makers.

A DMM will have to be quoting at or improving the NBBO at the time the order is received to capitalize on the guarantee and will only receive a participation entitlement at one such price point. The DMM must be publicly quoting at that price when the order is received. In this regard, the proposal prohibits an order flow provider from notifying a DMM regarding its intention to submit a Directed Order so that such DMM could change its quotation immediately prior to submission of the directed order. The Exchange's rules already provide the necessary protections against coordinated action as between a DMM and an order entry firm.⁴⁶ Furthermore, BX will proactively conduct surveillance for, and enforce against, such violations.⁴⁷

In addition, this proposal does not affect a broker-dealer's duty of best execution. A broker-dealer has a legal duty to seek to obtain best execution of customer orders, and any decision to preference a particular DMM must be consistent with this duty.⁴⁸ A broker-

dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated in SRO rules and, through judicial and Commission decisions, the antifraud provisions of the federal securities laws.⁴⁹ The duty of best execution requires broker-dealers to execute customer trades at the most favorable terms reasonably available under the circumstances, *i.e.*, at the best reasonably available price.⁵⁰ The duty of best execution requires broker-dealers to periodically assess the quality of competing markets to assure that order flow is directed to the markets providing the most beneficial terms for their customer orders.⁵¹ Broker-dealers

(*2d Cir.* 1971); *Arleen Hughes*, 27 SEC 629, 636 (1948), *aff'd sub nom. Hughes v. SEC*, 174 F.2d 969 (D.C. Cir. 1949)). See also Order Execution Obligations, Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("Order Handling Rules Release").

⁴⁹ Order Handling Rules Release, 61 FR at 48322. See also *Newton*, 135 F.3d at 270. Failure to satisfy the duty of best execution can constitute fraud because a broker-dealer, in agreeing to execute a customer's order, makes an implied representation that it will execute it in a manner that maximizes the customer's economic gain in the transaction. See *Newton*, 135 F.3d at 273 ("[T]he basis for the duty of best execution is the mutual understanding that the client is engaging in the trade—and retaining the services of the broker as his agent—solely for the purpose of maximizing his own economic benefit, and that the broker receives her compensation because she assists the client in reaching that goal."); *Marc N. Geman*, Securities Exchange Act Release No. 43963 (February 14, 2001) (citing *Newton*, but concluding that respondent fulfilled his duty of best execution). See also Payment for Order Flow, Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006, 55009 (Nov. 2, 1994) ("Payment for Order Flow Final Rules"). If the broker-dealer intends not to act in a manner that maximizes the customer's benefit when he accepts the order and does not disclose this to the customer, the broker-dealer's implied representation is false. See *Newton*, 135 F.3d at 273–274.

⁵⁰ *Newton*, 135 F.3d at 270. *Newton* also noted certain factors relevant to best execution—order size, trading characteristics of the security, speed of execution, learning costs, and the cost and difficulty of executing an order in a particular market. *Id.* at 270 n. 2 (citing Payment for Order Flow, Securities Exchange Act Release No. 33026 (October 6, 1993), 58 FR 52934, 52937–38 (October 13, 1993) (Proposed Rules)). See *In re E.F. Hutton & Co.* ("Manning"), Securities Exchange Act Release No. 25887 (July 6, 1988). See also Payment for Order Flow Final Rules, 59 FR at 55008–55009.

⁵¹ Order Handling Rules Release, 61 FR at 48322–48333 ("In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from different markets or market makers trading a security."). See also *Newton*, 135 F.3d at 271; Market 2000: An Examination of Current Equity Market Developments V–4 (SEC Division of Market Regulation January 1994) ("Without specific instructions from a customer, however, a broker-dealer should periodically assess the quality of competing markets to ensure that its order flow is directed to markets providing the most advantageous terms for the customer's order.");

must examine their procedures for seeking to obtain best execution in light of market and technology changes and modify those practices if necessary to enable their customers to obtain the best reasonably available prices.⁵² In doing so, broker-dealers must take into account price improvement opportunities, and whether different markets may be more suitable for different types of orders or particular securities.⁵³

With respect to a DMM's obligations, the Exchange would require DMMs be subject to heightened standards as compared to other market makers. A DMM must provide continuous two-sided quotations throughout the trading day in all options classes in which the DMM is assigned, once the market maker indicates to the Exchange an intent to receive Directed Orders, for 90% of the time the Exchange is open for trading in each issue. Such quotations must meet the legal quote width requirements herein. These obligations will apply to all of the DMM's option issues collectively, rather than on an option-by-option basis. While the Market Maker's quoting requirement is a daily obligation, the Exchange is able to determine compliance with these obligations on a monthly basis. BX Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. However, determining compliance with the continuous quoting requirement on a monthly basis does not relieve a DMM of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a DMM for failing to meet the continuous quoting obligation each trading day.

The Exchange believes that offering DMMs participation entitlements promotes just and equitable principles of trade because DMMs will be held to a higher standard as compared to other

Payment for Order Flow Final Rules, 59 FR at 55009.

⁵² Order Handling Rules, 61 FR at 48323.

⁵³ Order Handling Rules, 61 FR at 48323. For example, in connection with orders that are to be executed at a market opening price, "[b]roker-dealers are subject to a best execution duty in executing customer orders at the opening, and should take into account the alternative methods in determining how to obtain best execution for their customer orders." Disclosure of Order Execution and Routing Practices, Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414, 75422 (December 1, 2000) (adopting new Exchange Act Rules 11Ac1–5 and 11Ac1–6 and noting that alternative methods offered by some Nasdaq market centers for pre-open orders included the mid-point of the spread or at the bid or offer).

⁴⁴ See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR-Phlx-2004–91).

⁴⁵ See note 20. Price Improving Orders, provide for investors the opportunity to trade at a better price than would otherwise be available—inside the disseminated best bid and offer for a security. The opportunity for investors to receive executions inside the disseminated best bid or offer could result in better executions for investors.

⁴⁶ See BX Chapter III, Section 4, Prevention of the Misuse of Material Nonpublic Information. BX prohibits an order flow provider from notifying a DMM of its intention to submit a directed order so that the DMM could change its quotation to match the national best bid or offer ("NBBO") immediately prior to the submission of the directed order.

⁴⁷ The Exchange will submit a letter detailing its surveillance and enforcement to the Commission.

⁴⁸ See, e.g., *Newton v. Merrill, Lynch, Pierce, Fenner & Smith, Inc.*, 135 F.3d 266, 269–70, 274 (3d Cir.), *cert. denied*, 525 U.S. 811 (1998); *Certain Market Making Activities on Nasdaq*, Securities Exchange Act Release No. 40900 (January 11, 1999) (settled case) (citing *Sinclair v. SEC*, 444 F.2d 399

market participants including market makers. A market maker would be required, pursuant to this proposal, to quote 60% of the trading day. DMMs are being held to a higher obligation and therefore are being rewarded with participation entitlements. Similar to market makers, DMMs add value through continuous quoting⁵⁴ and the commitment of capital. In addition, the DMM quoting requirements promote liquidity and continuity in the marketplace in requiring DMMs to be held to a higher standard of quoting. The Exchange also believes that the proposed rule change supports the quality of the Exchange's markets because it maintains the quoting obligations of market makers as DMMs at 90%. DMM transactions must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. Accordingly, the proposed rule change supports the quality of the Exchange's trading markets by helping to ensure that DMMs will be required to meet a higher quoting standard in order to reap the benefits of the participation entitlements. The Exchange believes this proposed change to offer participation entitlements to DMMs is offset by DMMs' continued responsibilities to provide significant liquidity to the market to the benefit of market participants.

The Exchange also notes that it believes that while rounding is up or down to the nearest integer, thereby having the potential to result in an allocation that is slightly greater than 40% of the remaining interest, this concept is not novel. Today, the rounding is computed in the same manner for LMM allocations, thereby resulting in the potential for slightly greater than 40% of remaining allocation for the LMM. It is also important to note that if the rounding results in computing the nearest lower integer, the DMM would receive slightly less than the percentages noted herein. The Exchange believes that the manner in which it rounds is not an impediment to a free and open market and a national market system. The rounding

computation described herein is consistent with the manner in which rounding is computed on BX's System, where appropriate. The Exchange applies the rounding methodology in all BX functionality related to allocation computations, not just in relation to DMM allocation computations. The Exchange believes that its method of rounding is transparent, just and equitable. The rounding provisions, unlike the allocation provisions, are not a guarantee but simply the result of a mathematical computation that can only be computed after the transactions are executed. The Exchange's proposal is focused on the guarantees that a DMM could expect as a result of quoting competitively, that is, quoting at or better than the NBBO. The rounding outcome is not guaranteed and is only the result of necessity of allocating shares in a just, equitable and transparent manner to market participants.

The proposed rule change also removes impediments to and allows for a free and open market, while protecting investors, by promoting transparency regarding DMMs' obligations and benefits in the Exchange Rules. In addition, the Exchange believes that the proposed rule change is designed to not permit unfair discrimination among DMMs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The competition among the options exchanges is vigorous and this proposal is intended to afford the BX Options market the opportunity to compete for directed order flow. In that regard, the proposal is pro-competitive and will offer market participants an additional venue for the execution of Directed Orders. The Exchange does not believe the proposal imposes a burden on intra-market competition not necessary or appropriate in furtherance of the purposes of the Act, because the ability to send Directed Orders is available to all Participants, and the ability to become a DMM is available to all market makers. Further, the Exchange does not believe the proposal will negatively impact quote competition on BX and create an unfair burden on competition. The directed order will be allocated based on the competitive bidding of market participants. A DMM will have to be quoting at the NBBO at the time the order is received to capitalize on the guarantee.

DMMs will be subject to enhanced quoting obligations and the obligations would apply to all options classes, once the market maker indicates to the Exchange an intent to receive Directed Orders, for 90% of the time the Exchange is open for trading in each issue collectively to all appointed issues, rather than on an option-by-option basis and compliance with this obligation will be determined on a monthly basis. Further, the proposal will not diminish, and in fact may increase, market making activity on the Exchange and thereby enhance intermarket competition. Moreover, the proposed rule change will not impose any burden on intra-market competition because it will affect all DMMs the same. DMMs will be subject to heightened quoting obligations as compared to other BX market makers. All market makers may become DMMs.

The Exchange does not believe the proposed rule change will cause any unnecessary burden on intra-market competition because it provides all market makers the opportunity to benefit from participation entitlements as a DMM. The Exchange believes that the proposed rule change will promote competition among market participants to the benefit of the Exchange, its Members, and market participants. This proposal puts in place a structure by which all Options Participants can both compete for order flow by contributing to price and size discovery for the entire market. Further, market makers must enter orders that assume the risk of trading with all participants at NBBO without knowing the details of the particular order. Market makers are incentivized to aggressively quote at the NBBO with this proposal to the benefit of all market participants, while maintaining their quoting obligations. The Exchange believes the proposal will encourage greater order flow to be sent to the Exchange through Directed Orders and that this increased order flow will benefit all market participants on the Exchange. The Exchange is not limiting the class of market participants that can be directed orders, any market maker may apply to receive directed orders and those market participants would be required to meet the heightened standards for quoting. DMMs must meet additional quoting and other regulatory obligations compared to certain other Exchange Participants and have thus demonstrated a commitment to providing liquidity on the Exchange. The Exchange believes that limiting the benefit of the participation entitlement to DMMs is fair and reasonable because

⁵⁴ Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a market maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and market makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. See Chapter VII, Section 5. Further, all market makers are designated as specialists on BX for all purposes under the Act or rules thereunder. See Chapter VII, Section 2.

these DMMs must satisfy additional quoting and other obligations.

The Exchange does not believe the proposed change will cause any unnecessary burden on inter-market competition because all market makers are entitled to receive participation entitlements provided they direct orders and those orders are executed by those DMMs. In addition, the Exchange believes that the proposed rule change will in fact promote competition. The Exchange believes allowing DMMs to receive participation entitlements will promote trading activity on the Exchange because it will provide incentives to DMMs to quote in series which they are not obligated to do so, to the benefit of the Exchange, its Members, and market participants.

The Exchange does not believe that the method in which it rounds up or down to the nearest integer creates an undue burden on competition. The rounding outcome is not guaranteed and is only the result of necessity of allocating shares in a just, equitable and transparent manner to market participants.

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-BX-2014-049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2014-049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2014-049, and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁵

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29109 Filed 12-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73779; File No. SR-NSCC-2014-12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Amend NSCC's Rules and Procedures in Connection with the Discontinuance of the Analytic Reporting Service

December 8, 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 November 25, 2014, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 57 (Insurance and Retirement Processing Services) and Addendum A (Fee Structure) of NSCC's Rules & Procedures in connection with the discontinuance of the Analytic Reporting Service, as more fully described below. The text of the proposed rule change is available on NSCC's Web site at <http://www.dtcc.com/legal/sec-rule-filings.aspx>, at the principal office of NSCC, 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, NSCC 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. NSCC has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁵ 17 CFR 200.30-3(a)(12).

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Statement of Purpose

Background. In 2011, NSCC launched the Analytic Reporting Service ("Service") as part of NSCC's suite of insurance and retirement services.³ The Service gives subscribing NSCC members access to aggregated insurance products information, including benchmarking information and league tables (such aggregated information, collectively, "Analytics Data"). The Analytics Data produced by the Service is primarily sourced from data and information transmitted to NSCC by its members in connection with NSCC's other insurance and retirement service ("IPS Data"). In 2013, at members' requests, NSCC enhanced the Service to among other things include, as source data for the Service, insurance transaction data processed outside of NSCC but submitted to NSCC for inclusion in the Service by its members and other third parties ("Storage Data").⁴

Prior to implementation of the Service, the suite of insurance and retirement services consisted of transmission and receipt of IPS Data from one member to another, with NSCC merely serving as a conduit for such exchanges of information. With the implementation of the Service, NSCC began maintaining and storing IPS Data for purposes of creating Analytics Data.

Proposed Rule Change. Since its launch, subscribers to the Service have been few, and presently, there are only 12 members subscribing. As a result, NSCC is not recovering the costs of maintaining the Service. For this reason, NSCC proposes to amend Rule 57, Section 12 to eliminate the Service. All 12 members have been notified of NSCC's intention to discontinue the Service, and though some of the members have expressed disappointment that the Service is being discontinued, none have objected. Accordingly, NSCC will discontinue the Service effective the close of business on December 31, 2014, or if Commission approval is later than such date, immediately upon Commission approval.

In addition, NSCC will amend Addendum A, to remove the fee structure applicable to the Service.

³ Securities Exchange Act Release No. 63604 (December 23, 2010), 75 FR 82115 (December 29, 2010) (SR-NSCC-2010-18).

⁴ Securities Exchange Act Release No. 69824 (June 21, 2013), 78 FR 38743 (June 27, 2013) (SR-NSCC-2013-08).

As noted above, prior to implementation of the Service, NSCC did not maintain or store any IPS Data; it merely transmitted such data from one member to another. In connection with elimination of the Service, NSCC proposes to amend Rule 57, Section 1, to explicitly state that NSCC will maintain and store IPS Data transmitted to it by and between its members, which IPS Data has not otherwise been rejected, withdrawn or deleted pursuant to the provisions of Rule 57.⁵ NSCC shall also retain the right to evaluate the usefulness of such IPS Data, including by providing such IPS Data to third parties under appropriate agreements of confidentiality and to prohibit such third parties from using such IPS Data other than for evaluation of such IPS Data's potential usefulness. Any proposed future use by NSCC of such stored and maintained IPS Data shall be subject to a proposed rule change filing with the Commission. With respect to Storage Data supplied to NSCC for inclusion in the Service, NSCC shall only retain such Storage Data in compliance with its data retention policy and shall dispose of all Storage Data in accordance with such policy. Storage Data shall not be stored or maintained for purposes of evaluation for future use by NSCC.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to NSCC, in particular Section 17A(b)(3)(F) of the Act,⁶ which requires that NSCC's Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. Given the limited number of subscribers to the Service, NSCC has determined that it is not economically efficient to maintain the Service. As such, by identifying and eliminating a Service [sic] that is not economically efficient, NSCC can better apply its economic resources, which promotes the prompt and accurate clearance and settlement of securities transactions. Further, discontinuance of the Service will be implemented consistently with the

⁵ NSCC notes that IPS Data that constitutes "Clearing Data" is and will be subject to the prohibitions, limitations and exceptions set forth in Rule 49 (Release of Clearing Data and Clearing Fund Data). In general, Rule 49 limits NSCC's ability to release Clearing Data relating to transactions of a particular participant. Rule 49 defines "Clearing Data" as transaction data which is received by NSCC for inclusion in the clearance and/or settlement process of NSCC, or such data, reports or summaries thereof, which may be produced as a result of processing such transaction data.

⁶ 15 U.S.C. 78q-1(b)(3)(F).

safeguarding of securities and funds in NSCC's custody or control or for which NSCC is responsible because the Service is strictly an information service; accordingly, discontinuance of the Service will neither directly nor indirectly affect NSCC's safeguarding of securities or funds in its custody or control or for which it is responsible.

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact, or impose any burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments when received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such a 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-NSCC-2014-12 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-NSCC-2014-12. This file

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://dtcc.com/legal/sec-rule-filings.aspx>. 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-NSCC-2014-12 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2014-29105 Filed 12-11-14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73788; File No. SR-CBOE-2014-089]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Sales Value Fee

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on November

25, 2014, the Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") 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 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 its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, 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 amend its Fees Schedule, effective November 28, 2014. Specifically, the Exchange proposes to enable the Exchange to collect the Sales Value Fee³ (the "Fee") directly from Trading Permit Holders ("TPHs") when the Fee is due pursuant to an on-floor position transfer between unaffiliated TPHs. In addition, the Exchange proposes to remove obsolete language related to the CBOE Stock Exchange, LLC ("CBSX").⁴ Finally, the Exchange proposes to remove the

³ Pursuant to Section 31 of the Securities Exchange Act of 1934, CBOE pays transaction fees to the SEC based on the volume of securities that are executed on the Exchange. The Sales Value Fee is the mechanism by which CBOE assesses the transaction fees to each TPH.

⁴ Trading ended on CBSX on April 30, 2014. See Securities Exchange Act Release No. 34-71880 (April 4, 2014) (Notice) (SR-CBOE-2014-036).

regulatory review process related to the Position Transfer Fee.

Currently, the Sales Value Fee is collected indirectly from TPHs through their clearing firms by OCC on behalf of CBOE. The OCC does not collect the Fee when an on-floor position transfer⁵ takes place. The Exchange is proposing to collect the Fee directly from TPHs when there is an on-floor position transfer between unaffiliated TPHs. TPHs will be considered affiliated if one of the TPHs has "control" under Rule 1.1(k) over another TPH.⁶

In addition, the Fees Schedule currently indicates that the Fee is assessed by CBOE to each TPH for the sale of securities when a sale in non-option securities occurs on CBSX with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Exchange Act or a sell order in non-option securities that is routed for execution at a market other than on CBSX, resulting in a covered sale on that market and an obligation of the routing broker providing Routing Services for CBSX to pay the related sales fee of that market. As noted above, CBSX is no longer active; therefore, the Exchange proposes to clarify that the Fee will be assessed by CBOE to TPHs for sales of securities when a sale in option securities occurs with respect to which CBOE is obligated to pay a fee to the SEC under Section 31 of the Exchange Act or when a sell order in option securities is routed for execution at a market other than CBOE, resulting in a covered sale on that market and an obligation of the routing broker providing Routing Services for CBOE, as described in CBOE Rule 6.14B, to pay the related sales fee of that market.

Finally, the Exchange currently provides a service to TPHs seeking to make an off-floor position transfer pursuant to Rule 6.49A whereby a TPH can solicit CBOE to perform a "regulatory review" of the potential transfer to determine whether the proposed transfer meets the off-floor

⁵ See Rule 6.49A.

⁶ The term "affiliate" of or a person "affiliated with" another person means a person who, directly or indirectly, controls, is controlled by, or is under common control with, such other person. See Rule 1.1(j).

The term "control" means the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation, shall be presumed to control such corporation. See Rule 1.1(k).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

position transfer provisions of Rule 6.49A. The Exchange currently charges the initiating TPH a fee of \$.02 per contract for the “regulatory review” with a cap of \$25,000. The Exchange is proposing to eliminate the “regulatory review” program, as well as the associated fee.

The Exchange is seeking an effective date of November 28, 2014 in order to sync the fee change with the CBOE billing cycle. For example, position transfers that occur on Friday, November 28, 2014 will settle on Monday, December 1, 2014. CBOE billing is applied upon settlement; therefore, on-floor position transfers that are subject to a Sales Value Fee that trade on November 28th will settle on December 1st and be assessed the Sales Value Fee during the December billing cycle.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁸ requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitation 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹⁰ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes that the proposed clarifications to the Fees Schedule will make the Fees

Schedule easier to read and alleviate potential confusion. The alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Fee allows the Exchange to recoup transaction fees that the Exchange pays to the SEC pursuant to Section 31 of the Securities Exchange Act, and the Exchange incurs the Section 31 fees because of the trading activity of TPHs. Therefore, the Exchange believes that it is reasonable and equitable to assess the Fee to TPHs. Additionally, the Exchange does not believe the proposed change is unfairly discriminatory as it applies equally to all TPHs that are performing on-floor position transfers between unaffiliated entities.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CBOE 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. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes apply to all TPHs. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition because it only applies to position transfers occurring on CBOE.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. 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 will institute proceedings 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-CBOE-2014-089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR-CBOE-2014-089. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2014-089 and should be submitted on or before January 2, 2015.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29180 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73780; File No. SR-EDGX-2014-28]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 13.9 of EDGX Exchange, Inc. Related to Communication and Routing Service Known as ConnectEdge

December 8, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 25, 2014, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 13.9 related to a communication and routing service known as ConnectEdge. The Exchange also proposes to add fees related to ConnectEdge to its fee schedule.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.directedge.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 13.9 related to a communication and routing service known as ConnectEdge. The Exchange also proposes to add fees related to ConnectEdge to its fee schedule. The Exchange currently offers and proposes to continue offering ConnectEdge on a voluntary basis in a capacity similar to a vendor. ConnectEdge is a communication service that provides Members⁵ an additional means to receive market data from and route orders to any destination connected to Exchange's network. ConnectEdge does not provide any advantage to subscribers for connecting to the Exchange's affiliates⁶ as compared to other method of connectivity available to subscribers. The servers of the Member need not be located in the same facilities as the Exchange in order to subscribe to ConnectEdge. Members may also seek to utilize ConnectEdge in the event of a market disruption where other alternative connection methods become unavailable.

Specifically, this service allows Members to route orders to other exchanges and market centers that are connected to the Exchange's network. This communications or routing service would not effect trade executions and would not report trades to the relevant Securities Information Processor. An order sent via the service does not pass through the Exchange's matching engine

⁵ The term "Member" is defined as "any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act." See Exchange Rule 1.5(n).

⁶ The Exchange's affiliated exchanges are EDGA Exchange, Inc. ("EDGA"), BATS Exchange, Inc. ("BATS"), and BATS Y-Exchange, Inc. ("BYX").

before going to a market center outside of the Exchange (*i.e.*, a participant could choose to route an order directly to any market center on the Exchange's network). A participant would be responsible for identifying the appropriate destination for any orders sent through the service and for ensuring that it had authority to access the selected destination; the Exchange would merely provide the connectivity by which orders (and associated messages) could be routed by a participant to a destination and from the destination back to the participant.⁷

The Exchange will charge a monthly connectivity fee to Members utilizing ConnectEdge to route orders to other exchanges and broker-dealers that are connected to the Exchange's network. The amount of the connectivity fee varies based solely on the bandwidth selected by the Member. Specifically, the Exchange proposes to charge \$350 for 1 Mb, \$700 for 5 Mb, \$950 for 10 Mb, \$1,500 for 25 Mb, \$2,500 for 50 Mb, and \$3,500 for 100 Mb.

ConnectEdge would also allow participants to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the Member would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the Member. The proposed connectivity fees are set forth in the Exhibit 5 attached hereto and range from \$100 to \$3,500 based on the market data product the vendor selects. The Members would pay any fees charged by the exchange providing the market data feed directly to that exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of, a free and open market and a national market system, and, in general, protects investors and the public interest. Specifically, the

⁷ This service is an alternative to a service that the Exchange already provides to its Members—current order-sending Members route orders through access provided by the Exchange to the Exchange that either check the Exchange for available liquidity and then route to other destinations or, in certain circumstances, bypass the Exchange and route to other destinations. See Exchange Rule 11.9(b)(2) (setting forth routing options whereby Members may select their orders be routed to other market centers).

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

proposal is consistent with Section 6(b)(5) of the Act,¹⁰ in that it provides Members an alternative means to receive market data from and route orders to any destination connected to the Exchange's network, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. In addition, ConnectEdge removes impediments to and perfects the mechanism of a free and open market and a national market system because, in the event of a market disruption, Members would be able to utilize ConnectEdge to connect to other market centers where other alternative connection methods become unavailable. The proposed rule change is also similar to a communication and routing service implemented by the Chicago Stock Exchange, Inc. ("CHX").¹¹ The proposed rule change will also not permit unfair discrimination among customers, brokers, or dealers because ConnectEdge will be available to all of the Exchange's customers on an equivalent basis regardless of whether the servers of the Member are located in the same facilities as the Exchange.

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,¹² in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange will charge a connectivity fee to Members utilizing ConnectEdge to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the Member. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to charge \$350 for 1 Mb, \$700 for 5 Mb, \$950 for 10 Mb, \$1,500 for 25 Mb, \$2,500 for 50 Mb, and \$3,500 for 100 Mb. The New York Stock Exchange, Inc. ("NYSE") currently charges \$300 for 1 Mb, \$700 for 5 Mb, \$900 for 10 Mb, \$1,500 for 25 Mb, \$2,000 for 50 Mb, and

\$2,600 for 100 Mb.¹³ The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the Exchange is either similar to or less than that charged by the NYSE.

Second, with regard to utilizing ConnectEdge to receive market data products from other exchanges, the Exchange would only charge participants a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the Member. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, the Nasdaq Stock Market LLC ("Nasdaq") charges \$1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge \$1,000 per month connectivity for CQS/CTS data feed.¹⁴ The Exchange notes that, overall, the connectivity fee for receipt of other market centers' data feed proposed by the Exchange is either similar to or less than that charged by Nasdaq.

The participants would pay any fees: (i) Charged by the exchange providing the market data feed directly to that exchange (ii) charged by a market center to which they routed an order and an execution occurred directly to that market center. The Exchange itself would not charge any additional fees.¹⁵ ConnectEdge is offered and purchased on a voluntary basis, in that neither the Exchange nor Members are required by any rule or regulation to make this product available. Accordingly, Members can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing Members with an alternative means to connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that

they reflect the costs and the benefit of providing alternative connectivity.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all Members. All Members that voluntarily select various service options will be charged the same amount for the same services. All Members have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all Members, irrespective of whether their servers are located in the same facility as the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposal will promote competition by the Exchange offering a service similar to those offered by the CHX, Nasdaq and NYSE. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the proposed rule change is designed to provide Members with an alternative means to access other market centers if they chose or in the event of a market disruption where other alternative connection methods become unavailable. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ 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

¹⁰ *Id.*

¹¹ See Securities Exchange Act Release No. 54846 (November 30, 2006), 71 FR 71003 (December 7, 2006) (SR-CHX-2006-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Implementation of a Communication and Routing Service).

¹² 15 U.S.C. 78f(b)(4).

¹³ See NYSE's SFTI Americas Product and Service List available at <http://www.nyxdata.com/docs/connectivity>.

¹⁴ See Nasdaq Rule 7034 (setting forth Nasdaq's connectivity fees for receipt of third party market data products).

¹⁵ The Exchange's rules and fees would not address the fees or manner of operation of any destination to which the participant asked that an order be routed.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would permit the Exchange to provide Members with an alternative means to access other market centers particularly in the event of a market disruption. In addition, the Exchange represents that ConnectEdge does not provide any advantage to subscribers for connecting to the Exchange's affiliates¹⁹ as compared to other methods of connectivity available to subscribers. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.²⁰ The Commission hereby grants the Exchange's request and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

¹⁸ In addition, Rule 19b-4(f)(6)(iii) 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.

¹⁹ See *supra* note 6.

²⁰ 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).

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-EDGX-2014-28 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-EDGX-2014-28. 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-EDGX-2014-28 and should be submitted on or before January 2, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014-29106 Filed 12-11-14; 8:45 am]

BILLING CODE 8011-01-P

²¹ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8966]

Notice of Proposal To Extend the Agreement Between the Government of United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material From the Pre-Hispanic Cultures of the Republic of Nicaragua

The Government of the Republic of Nicaragua has informed the Government of the United States of America of its interest in an extension of the *Agreement Between the Government of United States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of the Republic of Nicaragua* ("Agreement").

Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to the requirement under 19 U.S.C. 2602(f)(1), an extension of this Agreement is hereby proposed.

Pursuant to 19 U.S.C. 2602(f)(2), the views and recommendations of the Cultural Property Advisory Committee regarding this proposal will be requested.

A copy of the Agreement, the Designated List of restricted categories of material, and related information can be found at the following Web site: <http://culturalheritage.state.gov>.

Dated: November 25, 2014.

Evan Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2014-29213 Filed 12-11-14; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 8967; Docket No. DOS-2014-0027]

Notice of Meeting of the Cultural Property Advisory Committee

There will be a meeting of the Cultural Property Advisory Committee January 21-23, 2015 at the U.S. Department of State, Annex 5, 2200 C Street NW., Washington, DC. Portions of this meeting will be closed to the public, as discussed below.

During the closed portion of the meeting, the Committee will review the proposal to extend the *Agreement Between the Government of United*

States of America and the Government of the Republic of Nicaragua Concerning the Imposition of Import Restrictions on Archaeological Material from the Pre-Hispanic Cultures of the Republic of Nicaragua (“Nicaragua Agreement”) [Docket No. DOS–2014–0027]. An open session to receive oral public comment on the proposal to extend the Nicaragua Agreement will be held on Wednesday, January 21, 2015, beginning at 11:00 a.m. EST.

Also, during the closed portion of the meeting, the Committee will conduct an interim review of the *Agreement Between the Government of the United States of America and the Government of the Republic of Mali Concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to Approximately the Mid-Eighteenth Century* (“Mali Agreement”). Public comment, oral and written, will be invited at a time in the future should the Mali Agreement be proposed for extension.

The Committee’s responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*; “Act”). The text of the Act and Agreements, as well as related information, may be found at <http://culturalheritage.state.gov>. If you wish to attend the open session on January 21, 2015, you should notify the Cultural Heritage Center of the Department of State at (202) 632–6301 no later than 5:00 p.m. (EST) January 9, 2015, to arrange for admission. Seating is limited. When calling, please specify if you need reasonable accommodation. The open session will be held at 2200 C St. NW., Edward R. Murrow Conference Room, Washington, DC 20037. Please plan to arrive 30 minutes before the beginning of the open session.

If you wish to make an oral presentation at the open session, you must request to be scheduled by the above-mentioned date and time, and you must submit written comments, ensuring that they are received no later than January 9, 2015 at 11:59 p.m. (EST), via the eRulemaking Portal (see below), to allow time for distribution to Committee members prior to the meeting. Oral comments will be limited to five (5) minutes to allow time for questions from members of the Committee. All oral and written comments must relate specifically to the determinations under 19 U.S.C. 2602, pursuant to which the Committee must make findings. This statute can be found at the Web site noted above.

If you do not wish to make oral comment but still wish to make your views known, you may send written comments for the Committee to consider. Your comments should relate specifically to the determinations under 19 U.S.C. 2602. Submit all written materials electronically through the eRulemaking Portal (see below), ensuring that they are received no later than January 9, 2015 at 11:59 p.m. (EST). Our adoption of this procedure facilitates public participation; implements Section 206 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2915; and supports the Department of State’s “Greening Diplomacy” initiative which aims to reduce the State Department’s environmental footprint and reduce costs.

Please submit comments only once using one of these methods:

- **Electronic Delivery.** To submit comments electronically, go to the Federal eRulemaking Portal (<http://www.regulations.gov>), enter the Docket No. DOS–2014–0027, and follow the prompts to submit a comment. Comments submitted in electronic form are not private. They will be posted on the site <http://www.regulations.gov>. Because the comments cannot be edited to remove any identifying or contact information, the Department of State cautions against including any information in an electronic submission that one does not want publicly disclosed (including trade secrets and commercial or financial information that is privileged or confidential pursuant to 19 U.S.C. 2605(i)(1)).
- **Regular Mail or Delivery.** If you wish to submit information that you believe to be privileged or confidential in confidence pursuant to 19 U.S.C. 2605(i)(1), you may do so via regular mail, commercial delivery, or personal hand delivery to the following address: Cultural Heritage Center (ECA/P/C), SA–5, Floor C2, U.S. Department of State, Washington, DC 20522–05C2. Only comments that you believe to be privileged or confidential will be accepted via those methods. Comments must be received by January 9, 2015.

Comments submitted by fax or email are not accepted. All comments submitted electronically must be submitted via the eRulemaking Portal only. All comments submitted electronically will be viewable by the public, so do not include any information that you consider privileged or confidential.

The Department of State requests that any party soliciting or aggregating comments received from other persons for submission to the Department of

State inform those persons that the Department of State will not edit their comments to remove any identifying or contact information, and that they therefore should not include any information in their comments that they do not want publicly disclosed.

As noted above, portions of the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h), the latter of which stipulates that “The provisions of the Federal Advisory Committee Act shall apply to the Cultural Property Advisory Committee except that the requirements of subsections (a) and (b) of sections 10 and 11 of such Act (relating to open meetings, public notice, public participation, and public availability of documents) shall not apply to the Committee, whenever and to the extent it is determined by the President or his designee that the disclosure of matters involved in the Committee’s proceedings would compromise the government’s negotiating objectives or bargaining positions on the negotiations of any agreement authorized by this chapter.” Pursuant to law, Executive Order, and Delegation of Authority, I have made such a determination.

Personal information regarding attendees is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at <http://www.state.gov/documents/organization/103419.pdf> for additional information.

Dated: November 25, 2014.

Evan Ryan,

Assistant Secretary, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2014–29231 Filed 12–11–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Wisconsin

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to the Interstate 43 (I-43) Freeway Improvement Project in Milwaukee and Ozaukee Counties, Wisconsin. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). Claims seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 11, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: George Poirier, Division Administrator, FHWA, 525 Junction Road, Suite 8000, Madison, Wisconsin 53717; telephone: (608) 829-7500. The FHWA Wisconsin Division's normal office hours are 7 a.m. to 4 p.m. central time.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing approvals for the following highway project: I-43 Freeway Improvement Project from Silver Spring Drive to Wisconsin 60 (WIS 60) in Milwaukee and Ozaukee Counties, Wisconsin. The purpose of the project is to address emerging pavement and structural needs, safety issues, and design deficiencies while identifying methods to accommodate existing and projected future traffic volumes. The project also strives to minimize impacts to the natural, cultural and built environment to the extent feasible and practicable. The project will widen the existing I-43 four-lane divided highway to a six-lane divided highway for approximately 14 miles from Silver Spring Drive to WIS 60. The scope of the proposed action includes rebuilding the mainline roadway, bridges, and interchanges; replacing the existing partial interchange at County Line Road with a full-access interchange; constructing a new interchange at Highland Road; reconstructing local streets affected by the freeway reconstruction; and enhancing the aesthetic appearance of the reconstructed freeway.

The actions by the Federal agencies on this project, and the laws under

which such actions were taken, are described in the combined Record of Decision (ROD) and Final Environmental Impacts Statement (FEIS) approved on November 25, 2014, and in other documents in the FHWA administrative record. The combined ROD and FEIS was prepared pursuant to the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, § 1319, 126 Stat. 405 (2012).

The combined ROD and FEIS, and other documents in the administrative record are available by contacting FHWA at the address provided above. The combined ROD and FEIS can be downloaded from the project Web site at <http://www.dot.wisconsin.gov/projects/seregion/43/index.htm>; or viewed at offices of local governments and transportation agencies in the project area; or at the following public libraries: Whitefish Bay Public Library (5420 N. Marlborough Dr., Whitefish Bay, WI), North Shore Public Library (6800 N. Port Washington Rd., Glendale, WI), Frank L. Weyenberg Library (11345 N. Cedarburg Rd., Mequon, WI), and U.S.S. Liberty Memorial Public Library (1620 11th Ave., Grafton, WI).

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351], Federal-Aid Highway Act [23 U.S.C. 109, 23 U.S.C. 128, and 23 U.S.C. 139].

2. *Air:* Clean Air Act [42 U.S.C. 7401-7671(q) and 23 U.S.C. 109(j)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)], Uniform Relocation Assistance and Real Property Acquisition Act of 1970 [42 U.S.C. 4601 *et seq.* as amended by the Uniform Relocation Act Amendments of 1987 [Pub. L. 100-17].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, and Section 319) [33 U.S.C. 1251-1376].

8. *Hazardous Materials:* Comprehensive Environmental

Response, Compensation, and Liability Act [42 U.S.C. 9601-9675].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands, E.O. 11988 Floodplain Management, E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, E.O. 13175 Consultation and Coordination with Indian Tribal Governments, E.O. 11514 Protection and Enhancement of Environmental Quality, E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, § 1308, 126 Stat. 405 (2012).

Issued on: December 2, 2014.

George R. Poirier,
Division Administrator, Madison, Wisconsin.
[FR Doc. 2014-28922 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2014-0021]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 78 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on October 21, 2014. The exemptions expire on October 21, 2016.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, R.N., Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

II. Background

On September 18, 2014, FMCSA published a notice of receipt of Federal diabetes exemption applications from 78 individuals and requested comments from the public (79 FR 56107). The public comment period closed on October 20, 2014, and four comments were received.

FMCSA has evaluated the eligibility of the 78 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

III. Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for

the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 78 applicants have had ITDM over a range of 1 to 48 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the September 18, 2014, **Federal Register** notice and they will not be repeated in this notice.

IV. Discussion of Comments

FMCSA received four comments in this proceeding. The comments are discussed below.

Gregory Witt believes that drivers should be granted an exemption if a doctor is satisfied that their diabetes is adequately controlled by medication.

Ashley Warren opposes the ruling in FMCSA-2014-0021 because she does not believe drivers are required to receive medical examinations more than every two years. As described in "Section VI. Conditions and Requirements" in this document, all drivers must submit quarterly and annual evaluations from a board-eligible or board-certified endocrinologist each year throughout the duration of the exemption, as well as annual evaluations from an optometrist or ophthalmologist (if the driver has diabetic retinopathy, the evaluation must be completed by an ophthalmologist). In addition, exempted drivers are required to receive an annual DOT physical examination to ensure that they meet all other medical standards not related to ITDM.

Daniel Adams submitted two comments addressing Ashley Warren's comment, explaining the many evaluations drivers are required to submit throughout the duration of their exemption period.

V. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

VI. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VII. Conclusion

Based upon its evaluation of the 78 exemption applications, FMCSA

exempts the following drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b):

Daniel S. Adams (ME)
 Michael L. Agnitsch (NE)
 Shaun M. Aguayo (TX)
 Earl W. Avery (TN)
 Douglas W. Baker, Sr. (VA)
 Michael A. Baker (CT)
 Douglas E. Barron (SC)
 Pablo H. Bilbao La Vieja Pozo (RI)
 Todd D. Bloomfield (WA)
 Sylvester G. Clements, Jr. (WI)
 Fred W. Click (IN)
 Kenneth M. Coco (TX)
 Christopher R. Cook (NY)
 Wygila M. Corliss (NM)
 Timothy J. Cornish (OH)
 Joshua D. Cresswell (NH)
 Evan R. Dieken (MN)
 Greg B. Duck (TX)
 Arthur J. Dunn (PA)
 Richard A. Durr (IL)
 Daniel R. Eloff (OH)
 Thomas O. Everett (WA)
 Victor J. Flowers (CA)
 Brian K. Forrest (PA)
 David S. Fortune (VA)
 Michael S. Frederick (NJ)
 Peter E. Ganss (KS)
 David E. Gates (MA)
 Timothy L. Grant (NC)
 James T. Heck (MN)
 Rodney J. Hendricks (ID)
 Marcus T. Herring (CA)
 Charles R. Hoit (MO)
 Jason L. Hubbard (MD)
 Andy L. Hughes (IL)
 Jammie L. Hughes (OH)
 Charles J. Hurley (MN)
 Rodney L. Johnson (OR)
 Frederick B. Jones (TX)
 Tito D. Jones (GA)
 Scott M. Klain (OR)
 Jeffrey P. Kloeckl (SD)
 John J. Kress (AZ)
 Russell A. Krogstad (MN)
 John B. Leberherz (TX)
 Alan S. Lewis (NM)
 William M. Linskey (MA)
 Jason D. Lowder (OH)
 Arnold V. Magaoay (HI)
 Norman C. Mallett (AR)
 Patrick Marcantuono (NJ)
 Daniel E. McDonald (MN)
 William F. McQueen, Jr. (MO)
 Kenneth M. Miller (ID)
 William F. Mitchell (CT)
 Donald L. Mitzel (PA)
 Gino P. Monterio (WI)
 Matthew K. Morrison (UT)
 Gary R. Nelson (MN)
 Edward L. Norfleet (AL)
 Kyle R. Perry (PA)
 Michael L. Plinski (WA)
 Scott A. Porter (WA)

James A. Rambo (VA)
 Rondo L. Rininger (IN)
 Richard D. Sandison (ND)
 Calvin R. Smith (IL)
 Wesley J. Summerville (PA)
 Jeffrey S. Thomas (PA)
 Stephen M. Thompson (GA)
 Randy L. Triplett (OH)
 John E. Trygstad (SD)
 Jared M. Wabeke (MI)
 Steven R. Weir (MA)
 Donald D. Willard (IA)
 Gary W. Wozniak (NE)
 Steven L. Yokom (ID)
 Daniel R. Zuriff (MN)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: December 5, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014-29152 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2014-0115]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 22, 2014, Norfolk Southern Corporation (NS) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA-2014-0115.

Applicant: Norfolk Southern Corporation, Mr. Brian L. Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the proposed discontinuance of a traffic control system (TCS) on the Winding Gulf

Branch between Horsepen, Milepost (MP) WG 6.5 and Tams, MP WG 12.1, near Amigo, WV.

The reason given for the proposed changes is that the TCS is no longer desirable or needed to handle current train operations. The TCS will be discontinued and replaced with NS Rule 171 for track authority operation. CP Horsepen will be renewed, and fixed approach signals will be installed, in approach to the start of TCS territory.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 26, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to

better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy. See also <http://www.regulations.gov/#!privacyNotice> for the privacy notice of regulations.gov.

Issued in Washington, DC, on December 8, 2014.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2014-29127 Filed 12-11-14; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35862]

Arkansas Louisiana & Mississippi Railroad Company—Lease and Operation Exemption Including Interchange Commitment—Union Pacific Railroad Company

Arkansas Louisiana & Mississippi Railroad Company (ALM), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) and operate approximately 9.32 miles of rail line, known as the Bastrop Lead, between mileposts 551.25 and 560.57, in Collinston, La.

ALM and UP have entered into a lease agreement wherein the Bastrop Lead connects with another line leased by ALM between Bastrop and Monroe, La., to UP's McGehee Sub at Collinston. According to ALM, the lease will allow ALM and UP to shift their primary interchange location from Monroe to Collinston, which should allow for more efficient interchange and handling of traffic that is moved jointly by the carriers.

As required by 49 CFR 1150.43(h), ALM has disclosed in the verified notice that the subject lease agreement contains an interchange commitment that indirectly affects interchange with Kansas City Southern Railway Company at Monroe.

ALM has certified that its projected annual revenues as a result of this transaction will not result in ALM's becoming a Class II or Class I rail carrier, but that its annual revenues exceed \$5 million. Accordingly, as required by 49 CFR 1150.42(e), ALM has certified that: (1) On October 16 and 23, 2014, a copy of the verified notice was posted at the workplaces of the

employees on the line, and (2) on October 24, 2014, a copy of the verified notice was served on the national offices of all labor unions with employees on the line. Additionally, under 49 CFR 1150.42(b), a change in operators requires that notice be given to shippers. ALM states that there are no shippers on the line.

The earliest this transaction may be consummated is December 26, 2014, the effective date of the exemption (30 days after the exemption was filed). ALM states that it intends to consummate the transaction on or shortly after that date.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 19, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35862, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Eric M. Hocky, Clark Hill, PLC, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at WWW.STB.DOT.GOV.

Decided: December 9, 2014.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014-29186 Filed 12-11-14; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35884]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement dated November 24, 2014, has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) between milepost 579.3 near Mill Creek, Okla., on BNSF's Creek Subdivision and milepost 631.0 near Joe Junction, Tex., on BNSF's Madill Subdivision, a distance of approximately 51.7 miles.

The transaction may be consummated on or after December 28, 2014, the effective date of the exemption (30 days after the verified notice of exemption was filed). The temporary trackage rights will expire on November 30, 2015. The purpose of the temporary trackage rights is to allow UP to move loaded and empty unit ballast trains to be used for UP maintenance of way projects.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 19, 2014 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35884, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: December 9, 2014.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014-29187 Filed 12-11-14; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****[Docket No. FD 35883]****Union Pacific Railroad Company—
Temporary Trackage Rights
Exemption—The Kansas City Southern
Railway Company**

The Kansas City Southern Railway Company (KCS), pursuant to a written trackage rights agreement (Agreement) dated November 21, 2014,¹ has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) between milepost 678.5 near Alexandria, La., and milepost 780.7 at Lobdell Junction, La., a distance of approximately 102.2 miles.

The transaction may be consummated on or after December 28, 2014, the effective date of the exemption (30 days after the verified notice of exemption was filed). The temporary trackage rights will expire on February 20, 2015. The purpose of the temporary trackage rights is to allow UP to bridge its train service while UP's rail lines are impacted due to maintenance projects in Louisiana.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 19, 2014 (at least seven days before the exemption becomes effective).

¹ A redacted version of the Agreement between KCS and UP was filed with the notice of exemption. UP states that, within ten days of its execution, it will file an executed, redacted copy. UP also states that it will file an unredacted copy along with a motion for protective order. That motion will be addressed in a separate decision.

An original and 10 copies of all pleadings, referring to Docket No. FD 35883, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Jeremy M. Berman, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at "WWW.STB.DOT.GOV."

Decided: December 9, 2014.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014-29188 Filed 12-11-14; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY**Submission for OMB Review;
Comment Request**

December 8, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 12, 2015 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion 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 maybe found at www.reginfo.gov.

Departmental Offices (DO)

OMB Number: 1505-XXXX.

Type of Review: New Collection.

Title: Retirement Savings Module of the Household Financial Survey.

Abstract: The Treasury Department is seeking OMB approval for an information collection to inform its administration of a new federal program

being launched this year that aims to enable more low- and moderate-income individuals to save for retirement.

As part of its work to launch the program, Treasury is exploring several approaches for enabling eligible individuals to open and put savings into the retirement accounts, including the option of encouraging individuals to open and fund the accounts when they file their federal tax forms. The Department contracted with the Center for Social Development (CSD) at Washington University in St. Louis to assist with research on this topic. CSD currently administers an annual privately-funded survey, the Household Financial Survey (HFS), through which it gathers savings information from low- to moderate-income tax filers immediately after they have filed their tax forms. This national survey is integrated into the no-cost version of Intuit's TurboTax tax preparation software, and it reaches a significant sample of people who could be eligible for the accounts.

Starting in the 2015 tax filing season, CSD will add a Treasury-funded Retirement Savings Module to the 2015 HFS survey. The module will consist of a series of questions focused on individuals' current retirement savings goals, practices, and attitudes surrounding retirement, along with questions designed to glean insights on the potential demand for the new retirement savings accounts, such as what aspects of the program would be desirable to low- to moderate income consumers, and whether these taxpayers may be interested in opening an account at tax time.

The 2015 iteration of the HFS survey will be administered throughout the tax-filing season (January through April 2015). The HFS survey is distributed electronically and takes approximately 20 minutes to complete. The Treasury-funded Retirement Savings Module, which will be added for the first time to the 2015 HFS, is intended to take less than 10 minutes (approximately 1/2 of the time needed to complete the overall survey). Participants will be invited to complete the survey when they file their federal income taxes. Participation in the survey will be voluntary.

The information collected through the Treasury-funded Retirement Savings Module of the HFS will provide baseline characteristics, needs, and practices of a segment of the population targeted by the federal program.

Affected Public: Individuals.

Estimated Total Burden Hours: 1,333.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2014-29095 Filed 12-11-14; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF THE TREASURY

**Submission for OMB Review;
Comment Request**

December 8, 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 January 12, 2015 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.

Internal Revenue Service (IRS)

OMB Number: 1545-0058.

Type of Review: Revision of a currently approved collection.

Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

Form: 1028.

Abstract: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in IRC section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Affected Public: Private Sector: Businesses and other for-profits, farms.

Estimated Annual Burden Hours: 3,594.

OMB Number: 1545-0235.

Type of Review: Extension without change of a currently approved collection.

Title: Monthly Tax Return for Wagers.
Form: 730.

Abstract: Form 730 is used to identify taxable wagers and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 418,362.

OMB Number: 1545-1012.

Type of Review: Extension without change of a currently approved collection.

Title: Form 5305A-SEP—Salary Reduction Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

Form: 5305A-SEP.

Abstract: Form 5305A-SEP is used by an employer to make an agreement to provide benefits to all employees under a salary reduction Simplified Employee Pension (SEP) described in section 408(k). This form is not to be filed with IRS, but is to be retained in the employer's records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SEP. The data is used to verify the deduction.

Affected Public: Private Sector: Business and other for-profits.

Estimated Annual Burden Hours: 972,000.

OMB Number: 1545-1028.

Type of Review: Extension without change of a currently approved collection.

Title: INTL-941-86 (NPRM) and INTL-655-87 (Temporary) (TD 8178) Passive Foreign Investment Companies.

Abstract: These regulations specify how U.S. persons who are shareholders of passive foreign investment companies (PFICs) make elections with respect to their PFIC stock.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 112,500.

OMB Number: 1545-1797.

Type of Review: Extension without change of a currently approved collection.

Title: REG-106876-00 (TD9082) (Final), Revision of Income Tax Regulations under Sections 897, 1445, and 6109 to require use of Taxpayer Identifying Numbers on Submission under the Section 897 and 1445.

Abstract: The collection of information relates to applications for withholding certificates under sec. 1.1445-1 to be filed with the IRS with

respect to (1) dispositions of U.S. real property interests that have been used by foreign persons as a principle residence within the prior 5 years and excluded from gross income under section 121 and (2) dispositions of U.S. real property interests by foreign persons in deferred like kind exchanges that qualify for non-recognition under section 1031.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 600.

OMB Number: 1545-1926.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2005-10, Domestic Reinvestment Plans and Other Guidance under Section 965.

Abstract: This notice provides guidance concerning new section 965 of the Internal Revenue Code (Code). It sets forth general principles and specific guidance on domestic reinvestment plans and on investments in the United States described in section 965(b)(4)(B). The Treasury Department and the Internal Revenue Service (IRS) intend to issue additional notices providing guidance concerning section 965, including rules relating to the foreign tax credit and expense allocation, rules for adjusting the calculation of the base period amounts to take into account mergers, acquisitions and spin-offs, and rules regarding controlled groups.

Affected Public: Private Sector: Businesses and other for-profits.

Estimated Annual Burden Hours: 3,750,000.

OMB Number: 1545-2207.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2011-26, Additional First Year Depreciation Deduction.

Abstract: This revenue procedure provides guidance under § 2022(a) of the Small Business Jobs Act of 2010, Public Law 111-240, 124 Stat. 2504 (September 27, 2010) (SBJA), and § 401(a) and (b) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111-312, 124 Stat. 3296 (December 17, 2010) (TRUIRJA). Sections 2022(a) of the SBJA and 401(a) of the TRUIRJA amend § 168(k)(2) of the Internal Revenue Code by extending the placed-in-service date for property to qualify for the 50-percent additional first year depreciation deduction. Section 401(b) of the TRUIRJA amends § 168(k) by adding § 168(k)(5) that temporarily allows a 100-percent additional first year depreciation deduction for certain new property.

Affected Public: Private Sector: Businesses and other for-profits.
Estimated Annual Burden Hours: 125,000.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2014-29094 Filed 12-11-14; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Performance Review Board Members

AGENCY: Corporate Senior Executive Management Office, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB)

members. This notice announces the appointment of persons to serve on the PRB of the Department of Veterans Affairs.

DATES: *Effective Date:* December 12, 2014.

ADDRESSES: Corporate Senior Executive Management Office, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT:

Contact Tia N. Butler, Executive Director, Corporate Senior Executive Management Office (052), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461-7865. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The membership of the Department of Veterans Affairs Performance Review Board is as follows:

Gina Farrisee (Chair)

A. Jacy Thurmond, Jr.

Danny Pummill

Patricia C. Vandenberg

Ron Walters

Arthur Gonzalez

Elisa Basnight

Georgia Coffey

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on December 9, 2014, for publication.

Dated: December 10, 2014.

William F. Russo,

Acting Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2014-29262 Filed 12-11-14; 8:45 am]

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Part II

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1466

Environmental Quality Incentives Program (EQIP); Final Rule

DEPARTMENT OF AGRICULTURE**Commodity Credit Corporation****7 CFR Part 1466**

[Docket No. NRCS–2014–0007]

RIN 0578–AA62

Environmental Quality Incentives Program (EQIP)

AGENCY: Natural Resources Conservation Service and the Commodity Credit Corporation, United States Department of Agriculture.

ACTION: Interim rule with request for comment.

SUMMARY: This interim rule with request for comment amends the existing Environmental Quality Incentives Program (EQIP) regulation to incorporate programmatic changes as authorized by amendments in the Agricultural Act of 2014 (2014 Act).

DATES: *Effective Date:* This rule is effective December 12, 2014.

Comment Date: Submit comments on or before February 10, 2015.

ADDRESSES: You may submit comments using one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments for Docket No. NRCS–2014–0007.

- U.S. mail or hand delivery: Public Comments Processing, Attn: Docket No. NRCS–2014–0007, Regulatory and Agency Policy Team, Strategic Planning and Accountability, U.S. Department of Agriculture, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Building 1–1112D, Beltsville, MD 20705.

NRCS will post all comments on: <http://www.regulations.gov>. Personal information provided with comments will be posted. If your comment includes your address, phone number, email address, or other personal identifying information, please be aware that your entire comment, including this personal information, will be made publicly available. Do not include personal information with your comment submission if you do not wish for it to be made public.

FOR FURTHER INFORMATION CONTACT: Mark Rose, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; telephone: (202) 720–1845; Fax: (202) 720–4265.

Persons with disabilities who require alternate means for communication (Braille, large print, audio tape, etc.)

should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:**Regulatory Certifications***Executive Order 12866 and 13563*

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Upon implementation of this rule the Natural Resources Conservation Service intends to conduct a retrospective review of this rule with the purpose of improving program performance, and better understanding the longevity of conservation implementation.

The Office of Management and Budget (OMB) designated this interim rule with request for comment a significant regulatory action. The administrative record is available for public inspection at the U.S. Department of Agriculture, Natural Resources Conservation Service, Room 5831 South Building, 1400 Independence Avenue SW., Washington, DC 20250–2890. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of the regulatory certifications section of this preamble, and a copy of the analysis is available upon request from the Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue SW., Room 5237 South Building, Washington, DC 20250–2890 or electronically at: <http://www.nrcs.usda.gov/programs/eqip/> under the *EQIP Rules and Notices with Supporting Documents* title.

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this interim rule, we invite your comments on how to make the provisions easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?

- Does the rule contain technical language or jargon that is not clear?

- Is the material logically organized?

- Would changing the grouping or order of sections or adding headings make the rule easier to understand?

- Could we improve clarity by adding tables, lists, or diagrams?

- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?

- What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) (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. NRCS did not prepare a regulatory flexibility analysis for this rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. Even so, NRCS has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. NRCS made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Congressional Review Act

Section 1246(c) of the Food Security Act of 1985 (the 1985 Act), as amended by Section 2608 of the Agricultural Act of 2014, requires that the Secretary use the authority in section 808(2) of title 5, United States Code, which allows an agency to forego Congressional Review Act usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. NRCS hereby determines that it has good cause to do so in order to meet the Congressional intent to have the conservation programs, authorized or amended under Title XII of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to forgo delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly prior to planting season. For

these reasons, this rule is effective upon publication in the **Federal Register**.

Environmental Analysis

NRCS has prepared a programmatic Environmental Assessment (EA) in association with the EQIP rulemaking to aid in its compliance with the National Environmental Policy Act when implementing site-specific actions with EQIP funds (40 CFR 1501.3(b)). The analysis has determined that there will not be a significant impact to the human environment and as a result, an Environmental Impact Statement is not required to be prepared (40 CFR 1508.13). The EA and Finding of No Significant Impact (FONSI) are available for review and comment for 30 days from the date of publication of this interim rule in the **Federal Register**. NRCS will consider this input and determine whether there is any new information provided that is relevant to environmental concerns and bearing on the proposed action or its impacts that warrant supplementing or revising the current available draft of the EQIP EA and FONSI. A copy of the EA and FONSI may be obtained from the following Web site: <http://www.nrcs.usda.gov/ea>. A hard copy may also be obtained in one of the following ways: (1) Send an email to andree.duvarney@wdc.usda.gov with "Request for EA" in the subject line, or (2) mail a written request to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, P.O. Box 2890, Washington, DC 20013–2890. Comments on the environmental analysis from the public should be specific and reference that comments provided are on the EQIP EA and FONSI. Public comment on the environmental analysis only may be submitted by any of the following means: (1) Email comments to andree.duvarney@wdc.usda.gov, (2) go to <http://www.regulations.gov> and follow the instructions for submitting comments for Docket No. NRCS–2014–0007, or (3) mail written comments to: National Environmental Coordinator, Natural Resources Conservation Service, Ecological Sciences Division, P.O. Box 2890, Washington, DC 20013–2890.

Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the interim rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The national target of setting aside 5 percent of EQIP funds for socially disadvantaged farmers or ranchers and an additional 5 percent of EQIP funds for beginning

farmers or ranchers; and prioritizing veterans that are socially disadvantaged farmers or ranchers and beginning farmer or ranchers is expected to increase participation among these groups.

The data presented in the Civil Rights Impact Analysis indicate producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that EQIP will continue to be administered in a nondiscriminatory manner. Outreach and communication strategies are in place to ensure all producers will be provided the same information to allow them to make informed compliance decisions regarding the use of their lands that will affect their participation in U.S. Department of Agriculture (USDA) programs. NRCS conservation programs apply to all persons equally regardless of their race, color, national origin, gender, sex, or disability status. Therefore, this interim rule portends no adverse civil rights implications for women, minorities, and persons with disabilities.

Paperwork Reduction Act

Section 1246 of the Food Security Act of 1985 (the 1985 Act), as amended by the Agricultural Act of 2014 (2014 Act), requires that implementation of programs authorized by Title XII of the 1985 Act be made without regard to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim rule.

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act and the Freedom to E-File Act, which require government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS has developed an online application and information system for public use.

Executive Order 13175

This interim rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications,

including regulations, legislative comments or proposed legislation, and other policy statements or actions that may have substantial direct effects on: (1) One or more Indian Tribes, (2) the relationship between the Federal Government and Indian Tribes, or (3) the distribution of power and responsibilities between the Federal Government and Indian Tribes. NRCS has assessed the impact of this interim rule on Indian Tribes and determined that this rule does not have Tribal implications that require Tribal consultation under E.O. 13175. The rule neither imposes substantial direct compliance costs on Tribal governments nor preempts Tribal law. The agency has developed an outreach/collaboration plan that it will implement as it develops its Farm Bill policy. If a Tribe requests consultation, NRCS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA requires agencies to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and Tribal governments or the private sector. Therefore, a statement under section 202 of the UMRA is not required.

Executive Order 13132

NRCS has considered this interim rule in accordance with Executive Order 13132, issued August 4, 1999. NRCS has determined that the interim rule conforms with the Federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, on the relationship between the Federal Government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, NRCS concludes that this interim rule does not have Federalism implications.

Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to section 304 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103–354), USDA has estimated that this regulation will not have an annual impact on the economy of \$100,000,000 in 1994 dollars, and therefore, is not a major regulation. Therefore, a risk analysis was not conducted.

Executive Order 13211

This rule is not a significant regulatory action subject to Executive Order 13211, Energy Effects.

Registration and Reporting Requirements of the Federal Funding and Transparency Act of 2006

OMB published two regulations, codified at 2 CFR part 25 and 2 CFR part 170, to assist agencies and recipients of Federal financial assistance in complying with the Federal Funding Accountability and Transparency Act of 2006 (FFATA) (Pub. L. 109–282, as amended). Both regulations have implementation requirements effective as of October 1, 2010.

The regulations at 2 CFR part 25 require, with some exceptions, recipients of Federal financial assistance to apply for and receive a Dun and Bradstreet Universal Numbering Systems (DUNS) number and register in the Central Contractor Registry (CCR). The regulations at 2 CFR part 170 establish new requirements for Federal financial assistance applicants, recipients, and subrecipients. The regulation provides standard wording that each agency must include in its awarding of financial assistance that requires recipients to report information about first-tier subawards and executive compensation under those awards.

NRCS has determined that 2 CFR part 25 and 2 CFR part 170 applies to EQIP financial assistance provided to entities. Therefore, NRCS has incorporated, by reference, these registration and reporting requirements into the EQIP regulations and will continue to include the requisite provisions as part of its financial assistance contracts.

Regulatory Impact Analysis—Executive Summary

Pursuant to Executive Order 12866, Regulatory Planning and Review, NRCS has conducted a Regulatory Impact

Analysis (RIA) of the Environmental Quality Incentives Program (EQIP) as pursuant to the changes of the 2014 Act.

In considering alternatives for implementing EQIP, USDA followed the legislative intent to maximize beneficial conservation impacts, address natural resource concerns, establish an open participatory process, and provide flexible assistance to producers who apply appropriate conservation measures to comply with Federal State, and Tribal environmental requirements. Because EQIP is a voluntary program, the program will not impose any obligation or burden upon agricultural producers who choose not to participate. The program has been authorized by the Congress at \$8 billion over the 5-year period beginning in fiscal years (FY) 2014 through 2018, with annual amounts of \$1.35 billion in FY 2014, \$1.60 billion in FY 2015, \$1.65 billion in FY 2016, \$1.65 billion in FY 2017, and \$1.75 billion in FY 2018. The program had been previously authorized with annual amounts of \$1.200 billion for FY 2008, \$1.337 billion in FY 2009, \$1.450 billion in FY 2010, \$1.589 billion in FY 2011, and \$1.750 billion in FY 2012 through FY 2014. Despite this authorization EQIP received only \$6.2 billion in funding over the five-year period from FY2009–FY2013. Funds received annually over this period were \$1.05 billion in FY 2009, \$1.18 billion in FY 2010, \$1.24 billion in FY 2011, \$1.38 billion in FY 2012 and \$1.29 billion in FY 2013. The 1985 Act, as amended by 2014 Act, makes several changes to EQIP. Please note, since EQIP is funded with CCC funds and not appropriated funds, NRCS uses the term “obligational cap” in the Regulatory Analysis to identify the funding limits that were placed on EQIP imposed by various appropriations acts.

The changes include consolidating elements of the former Wildlife Habitat Incentives Program (WHIP) into EQIP, expanding participation among military veteran farmers or ranchers, requiring that funds provided in advance that are not expended during the 90-day period beginning on the date of receipt of funds be returned, establishing an overall payment limitation over fiscal years 2014–2018 of \$450,000, providing that EQIP funding authorized by the 2014 Act remains available until expended, and requiring that at least 5 percent of available EQIP funds to be targeted for wildlife conservation practices for each fiscal year 2014–2018. This 5 percent for wildlife habitat practices is based upon the total EQIP funding allocated as financial assistance available nationally for producer contracts. Based upon historical expenditures of wildlife-

related practices in both WHIP and EQIP, and with emphasis to prioritize funding applications that address wildlife resource concerns, the agency anticipates that the actual funding associated with developing wildlife habitat through EQIP will exceed the 5 percent national target mandated by statute. NRCS monitors this funding target throughout the fiscal year and will reallocate funding if determined necessary to ensure the mandatory target is met. There are 7 percent of EQIP funds also available for eligible Regional Conservation Partnership Program (RCPP) contracts. Additional explanation regarding funding pools and EQIP program priorities is provided in the “Background” section of the Preamble.

EQIP technical and financial assistance facilitates the adoption of conservation practices that address natural resource concerns. Those practices improve on-site resource conditions and produce offsite environmental benefits for the public. Water erosion conservation practices reduce the flow of pollutants off of fields, thus improving freshwater and marine water quality including protecting fish habitat, enhancing aquatic recreation opportunities, and reducing sedimentation of reservoirs, streams, and drainage channels. More efficient irrigation practices conserve scarce water, making it available for other uses. Wind erosion control practices improve air quality, and some practices increase carbon in the soil profile. Wildlife habitat conservation practices increase wildlife habitat, enhance scenic value, and provide opportunities for recreation. NRCS has added and adopted a definition for *habitat development* to encompass the conservation practices that support the wildlife habitat activities authorized by Section 1240B(g) by the 2014 Act. The term, originally defined in the WHIP regulation, is added to EQIP at 1466.3 “Definitions”. The definition, consistent with the EQIP authority to assist with implementation of conservation practices which include the specific technical purpose of habitat development, provides for the conservation of wildlife species.

Other impacts of conservation practices may accrue to the producer. For example, the maintenance of the long-term productivity of the land, improved irrigation efficiency, improved grazing productivity, more efficient crop use of animal waste and fertilizer, and increased profits from energy conservation.

Most of this rule’s impacts consist of transfer payments from the Federal

government to producers. While those transfers create incentives that very likely cause changes in the way society uses its resources, we lack data with which to quantify the resulting social costs or benefits. Given the existing limitation and lack of data, NRCS will investigate ways to quantify the incremental benefits obtained from this program. Despite the limitations on our ability to quantify and estimate the value of social costs or benefits from the implementation of conservation practices, EQIP as amended under the 2014 Act is expected to positively affect natural resources and mitigate environmental degradation. Results from the national Conservation Effects Assessment Project conducted by NRCS demonstrate that implementation of the types of conservation practices funded

under EQIP reduce sediment and nutrient loss from agricultural fields and improve water quality nationwide. Because data is limited on the natural resource impact from the EQIP program, NRCS seeks public comment on how the agency should estimate the public value of conservation resulting from assistance provided through EQIP.

The Agriculture Act of 2014 increases EQIP funding over the amount appropriated by Congress over the previous five-year period from FY 2009–FY2013 by 29 percent to \$8.0 billion. It is estimated that the conservation practices implemented with this funding will continue to contribute to reductions of water erosion and wind erosion on cropland, pasture and rangeland, reduce nutrient losses to streams, rivers, lakes and estuaries

increase wildlife habitat, and provide other private and public environmental benefits. It is also expected that continued implementation of practices which treat and manage animal waste through EQIP will directly contribute to improvements in water quality and associated improvements in air quality, for example, from reduction in emissions such as methane. These and other practices include secondary benefits that help sequester carbon and capture greenhouse gases which contribute to climate change. NRCS estimates that the cost,¹ from both public and private sources, of implementing the conservation practices with EQIP funding will be \$11.9 billion dollars (FY 2014–FY 2018). Cost estimates are presented in Table 1 below.

TABLE 1—PROJECTED TECHNICAL ASSISTANCE AND TRANSFER PAYMENTS, FY 2014–FY 2018¹

	NRCS technical assistance (million \$)	Transfer payment (million \$)	Public costs (million \$)	Private costs (million \$)	Total costs (million \$)
FY 2014	364.5	985.5	1,350.0	657.4	2,007.4
FY 2015	432.0	1,168.0	1,600.0	779.2	2,379.2
FY 2016	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2017	445.5	1,204.5	1,650.0	803.6	2,453.6
FY 2018	472.5	1,277.5	1,750.0	852.2	2,602.2
Total	2,160.0	5,840.0	8,000.0	3,896.0	11,896.0

¹ Based on a historical average participant cost share of 40 percent and a historical average technical assistance share of 27 percent.

RIA Conclusions

Program features of EQIP except for the increase in wildlife focus remain essentially unchanged from the 2008 Farm Bill. The increased funding over the period of FY 2014 to FY 2018 will increase the amount of conservation applied by agricultural producers to support continued improvement in the natural resource base—soil, water, air, and wildlife; and mitigate agriculture's potentially adverse effects on the environment. The statutory requirement that at least 5 percent of available EQIP funding be targeted to practices which address wildlife habitat will be met by focusing a portion of the funding on applications that address wildlife resource concerns.

Comments Invited

NRCS invites interested persons to participate in this rulemaking by submitting written comments or views about the changes made by this interim rule. The most helpful comments reference a specific portion of the regulation, explain the reason for any

recommended changes, and include supporting data and references to statutory language. All comments received on or before the closing date for comments will be considered. This regulation may be changed because of the comments received. The docket and associated comments, including any personal information provided, will be made available for public inspection at: www.regulations.gov.

Background

The Agricultural Act of 2014 (2014 Act) has reauthorized and amended the Environmental Quality Incentives Program (EQIP). EQIP is implemented under the general supervision and direction of the Chief of NRCS, who is a Vice President of the Commodity Credit Corporation (CCC).

Through EQIP, NRCS provides assistance to agricultural producers to conserve and enhance soil, water, air, plants, animals (including wildlife), energy and related natural resources on their land. Eligible lands include cropland, grassland, rangeland, pasture,

wetlands, nonindustrial private forest land, and other agricultural land on which agricultural or forest-related products or livestock are produced and natural resource concerns may be addressed. Participation in the program is voluntary.

The information below demonstrates how NRCS provides assistance through EQIP to enhance natural resources. The type of assistance NRCS provides includes:

- Technical and financial assistance to help producers change tillage practices that enhance soil resources by sustaining tillth, moisture control, nutrients and overall soil health.
- assistance to replace or improve the management of irrigation systems to conserve scarce water resources. EQIP is also used to help producers manage nutrient applications to protect water quality.
- assistance with managing grazing to assure adequate forage is available and to sustain plant biodiversity and protect rare species. These practices help

¹ Public costs include total technical assistance (TA) and financial assistance (FA) funds outlined

in the Congressional Budget Office's (CBO) scoring

of the 2014 Act. Private costs are out-of-pocket costs paid voluntarily by participants.

maintain watershed health and enhance water quality.

- assistance to help producers apply energy efficient practices that reduce energy consumption (*e.g.*, reduced tillage conserves fuel, energy efficient lighting).

- assistance to help producers implement conservation practices that sequester carbon or capture methane emissions and greenhouse gases which contribute to climate change.

- assistance to help producers implement over 160 conservation practices on their land to sustain and improve the health of natural resources and provide public benefits.

Under EQIP, NRCS provides technical and financial assistance to implement conservation practices in a manner that promotes agricultural production, forest management, and environmental quality as compatible goals; optimize conservation benefits; and help agricultural producers meet Federal, State, and local environmental requirements. Conservation benefits are reflected in the differences between anticipated effects of treatment in comparison to existing or benchmark conditions. Differences may be expressed by narrative, quantitative, visual, or other means. Estimated or projected impacts are used as a basis for making informed conservation decisions by applicants and NRCS to help determine which projects to approve for EQIP assistance. While NRCS currently lacks data with which to quantify the impacts, it will investigate ways to quantify the incremental benefits obtained from this program.

NRCS first allocated \$130 million in EQIP funds in 1996. Since the program began through fiscal year (FY) 2013, NRCS has entered into 559,275 contracts to provide over \$9.8 billion in financial assistance to help agricultural producers apply conservation practices. The agency has evaluated 18 years of program implementation and has assessed opportunities to improve program administration. The changes in this interim rule are the result of this evaluation and the statutory changes authorized by the 2014 Act.

Section 2203 of the 2014 Act consolidated the Wildlife Habitat Incentive Program (WHIP) purposes into EQIP by revising section 1240B(f) and (g) of the EQIP statute to authorize at least 5 percent of program payments for practices targeted to benefit wildlife habitat, including conservation practices that support the restoration, development, and improvement of wildlife habitat on eligible land.

The EQIP statute requires the agency to the greatest extent practicable, to

group applications of similar crop or livestock operations for evaluation purposes or otherwise evaluate applications relative to other applications for similar farming operations. NRCS utilizes funding pools to meet this requirement and to target EQIP funding to priority resource concerns such as for the development of wildlife habitat or for water quality issues associated with animal feeding operations. Based upon priorities established with recommendations by State Technical Committees, priorities identified in state, regional or national plans and initiatives, and from reports of at-risk wildlife species and designations of threatened or endangered species, State Conservationists allocate available funds to a funding pool where applications from eligible producers compete.

Each application submitted for consideration in a given funding pool is ranked using evaluation criteria which provide a relative score that reflects the expected environmental benefit of the proposed project. State Conservationists also have the authority to prioritize applications for ranking which results in only the highest priority applications being ranked and considered for funding. Applications are accepted from producers on a continuous basis; however NRCS announces funding cut-off deadlines where all ranked applications within a funding pool are considered for funding based upon the ranking scores and availability of funds. Nearly all funding pools are established each fiscal year to address identified resource priorities, have multiple applicants to compete for limited funding, and meet legislative intent to address priority issues in a cost effective process. Each fiscal year, State Conservationists publish program priorities, available funding pools and associated ranking criteria to State program Web sites available at: <http://www.nrcs.usda.gov/wps/portal/nrcs/sitenav/national/states/>. State Conservationists are required to allocate funds to each application pool and may adjust funding between pools to address shortages or to redistribute surplus funds. Legislatively created funding levels such as the requirement to provide at least 60% of the funding for livestock and 5% of the funding for wildlife, are met as national goals through funding pool opportunities established by State Conservationists.

The changes made by the 2014 Act include, but are not limited to:

- Eliminating the requirement that contract must remain in place for a minimum of one year after last practice

implemented, but keeps the requirement that the contract term is not to exceed ten years;

- Consolidating elements of WHIP into EQIP and repeals WHIP authority, and establishing for each year of FY 2014 to FY 2018 that at least 5 percent of available EQIP funds will be targeted for wildlife-related conservation practices;

- Replacing rolling six-year payment limitation with payment limitation for FY 2014 to FY 2018;

- Requiring Conservation Innovation Grants (CIG) reporting no later than December 31, 2014, and every two years thereafter;

- Establishing the payment limitation at \$450,000 and eliminates the payment limitation waiver authority;

- Modifying the special rule for foregone income payments for certain associated management practices and resource concern priorities;

- Increasing the advance payments available to eligible historically underserved participants to purchase material or contract services from 30 percent to up to 50 percent;

- Providing flexibility for repayment of advance payment if not expended within 90 days;

- Authorizing funding for EQIP at:
 - \$1,350,000,000 for FY 2014
 - \$1,600,000,000 for FY 2015
 - \$1,650,000,000 for FY 2016
 - \$1,650,000,000 for FY 2017
 - \$1,750,000,000 for FY 2018
- Providing that EQIP funding remains available until expended.

The fundamental purpose of the program, assisting agricultural producers to implement conservation practices to provide environmental benefits, has not changed. Revisions to the program have focused primarily on expanding participation among historically underserved populations, including special priority for beginning agricultural producers and socially disadvantaged producers with preference provided under these special priorities for individuals who are veteran farmers or ranchers. The interim rule adjusts the program regulations to correspond to new statutory language. It also includes changes to streamline program implementation and make the participant's contract responsibilities clearer and more transparent. NRCS is also removing definitions for terms that are not used in the regulation and making other editorial adjustments.

Summary of Changes to EQIP Made by the 2014 Act

The regulation is organized into three subparts: Subpart A—General Provisions; Subpart B—Contracts; and

Subpart C—General Administration. The basic structure of the regulation has not changed; however, NRCS is moving the sections related to conservation practices and technical service providers (TSP) to Subpart A from Subpart B. Below is a summary of the changes made to each subpart based on the changes made to EQIP by the 2014 Act.

Part 1466, Subpart A—General Provisions

Section 1466.1, “Applicability,” sets forth the purpose, scope, and objectives of EQIP. Pursuant to section 2208 of the 2014 Act, the interim rule updates § 1466.1 to clarify those eligible program applicants and applicable regulations for contracts enrolled in EQIP prior to the effective date of the 2014 Act are not impacted by changes made by the act.

Section 1466.2, “Administration,” describes the roles of NRCS, State Technical Committees, and local working groups. The 2014 Act amendments did not affect the regulatory provisions at § 1466.2. However, NRCS added reference to Tribal Conservation Advisory Councils as a contributor to the locally led conservation effort.

The 2014 Act identifies EQIP as a covered program under the Regional Conservation Partnership Program (RCPP) authorized by Subtitle I of Title XII of the 1985 Act and authorizes the Chief to waive nonstatutory discretionary provisions and operational procedures where the Chief determines the waiver will further the purposes of EQIP. RCPP operates through the authority of other NRCS conservation programs and provides specific authority for NRCS to adjust nonstatutory discretionary provisions. Therefore, NRCS is adding language to this section of the CFR to incorporate these changes. This language is needed to facilitate RCPP implementation using EQIP in RCPP partner project areas.

Section 1466.3, “Definitions,” sets forth definitions for terms used throughout this regulation. NRCS is amending several definitions to conform to the 2014 Act amendments, including the consolidation of WHIP, and to address other administrative matters. Specifically, this interim rule amends § 1466.3 by adding or modifying the following definitions: “Conservation benefit” means “the improved condition of a natural resource concern resulting from the implementation of a conservation practice.”

NRCS amends the definitions of “producer” and “applicant” to remove an incorrect citation. In the interim rule published January 15, 2009, NRCS

amended the definition of “applicant” to include the Food, Conservation, and Energy Act of 2008’s (2008 Act) terminology but kept the reference to an “agricultural or forestry operation as defined in part 1400 of this chapter.” The definition of “producer” is clarified and revised to remove reference to 7 CFR part 1400.

“*Producer*” means a person, legal entity, Indian Tribe, or joint operation who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

“*Applicant*” means a producer who has requested in writing to participate in EQIP.

NRCS amends the definition of “at-risk species” to incorporate the definition used in the WHIP regulation at 7 CFR 636.3.

NRCS adds and defines the new term, “veteran farmer or rancher,” consistent with the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)).

NRCS amends the term “National Organic Program” to include the reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*). The 2014 Act combined the statutory definition of the National Organic Program into the statutory definition of “organic system plan” by adding the statutory reference to the definition of “organic system plan” and removing the separate definition. NRCS maintains the separate definition for the National Organic Program in the regulation for clarification purposes.

NRCS amends the term “organic system plan” to incorporate the statutory reference to the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*). The organic system plan is defined as a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The organic system plan includes written plans concerning all aspects of agricultural production or handling.

NRCS also adds a definition for “wildlife habitat” to more fully incorporate WHIP purposes into EQIP implementation. This new definition corresponds with the definition of “wildlife habitat” used at 7 CFR part 636.

Section 1466.6, “Program Requirements,” (previously numbered § 1466.8) sets forth land and applicant eligibility and the amount of EQIP funding to be used for livestock production and historically underserved producers. NRCS updates § 1466.6

consistent with the updates made to the definitions at § 1466.3.

Paragraphs (d) and (e), which address funding thresholds, have been removed. The funding threshold that at least 60 percent of EQIP assistance be targeted to conservation practices related to livestock production and the 5 percent funding pool for beginning farmers or ranchers and socially disadvantaged farmers or ranchers are established by statute and are binding requirements upon the NRCS. Agency policy requires NRCS State Conservationists to establish at least one funding pool for eligible beginning farmers or ranchers and one funding pool for socially disadvantaged farmers or ranchers. This allows applicants meeting these requirements to compete for EQIP funds separately from all other program opportunities. Thus, regulatory provisions are not necessary in order to give these provisions effect. Similarly, the 2014 Act requires that at least 5 percent of EQIP assistance be targeted towards conservation practices with a specific purpose related to wildlife habitat. NRCS will track this new funding requirement by identifying in its contract data base those conservation practices where wildlife habitat is the primary purposes. Out of more than 160 existing conservation practice standards, 16 have wildlife habitat as a primary purpose and approximately another 45 standards are often used to benefit wildlife. Examples of standards with a primary wildlife focus include:

- Early Successional Habitat Development/Management—used for early successional species such as the Golden Winged Warbler or New England Cottontail. This practice standard includes planting and vegetation management.
- Wetland Restoration—used to develop habitat for the variety of wetland-dependent species, from amphibians to migratory waterbirds. This practice standard includes structural, grading, planting, and water management.
- Stream Habitat Improvement and Management—used for many aquatic species, including salmon. This practice standard includes instream work such as building redds, pools and riffles, establishing woody debris, and vegetation management.
- Upland Wildlife Habitat

Management—used often in a system of practices for a wide variety of terrestrial species. Often, NRCS adds this conservation practice to a conservation plan to ensure other practices (*e.g.*, fence) are wildlife-friendly.

Additionally, other practices are used in certain situations to accomplish

specific wildlife objectives. Reducing sedimentation often improves aquatic habitat. Pasture and hay land planting, fencing, and ponds can provide recreational benefits (Smith, 1996). The NRCS Prescribed Grazing (528) conservation practice standard is essential in facilitating the development and maintenance of habitat to benefit the lesser prairie-chicken, and the Gunnison sage grouse, both listed as threatened under the Endangered Species Act. Every plan developed by NRCS under either the Lesser Prairie Chicken Initiative or the Sage Grouse Initiative, where grazing will occur, requires the use of Prescribed Grazing. To accommodate situations such as this, the Chief may also evaluate additional conservation practices related to NRCS landscape wildlife initiatives in determining whether 5 percent of EQIP funding was used to benefit wildlife. State Conservationists have authority to focus EQIP to meet locally established priorities to target at-risk species and listed species based upon input from technical committees and to determine the specific context or scenarios under which the practices must be applied to achieve the desired wildlife benefits.

Due to other changes in the interim rule, the provisions related to the EQIP plan of operations section that previously appeared at § 1466.9 now appear at § 1466.7. Section 1466.7 now describes the requirements of the EQIP plan of operations, which is a component of the EQIP contract. Section 2204 of the 2014 Act replaced the term “environmental benefits” with “conservation benefits.” Therefore, NRCS amends the provisions to replace the term “environmental objectives” with the term “conservation objectives” every place it occurs in the section.

Due to other changes in the interim rule, the provisions related to the EQIP plan of operations section that previously appeared at § 1466.10 now appear at § 1466.8. Section 1466.8, “Conservation practices,” now describes how NRCS determines eligible conservation practices. NRCS makes a minor editorial change in paragraph (a) to clarify that the term “practice” used in the second sentence means “conservation practice” as defined in § 1466.3. Additionally, NRCS amends paragraph (d) to reference “conservation benefits” instead of “environmental benefits” consistent with the statutory change made by section 2204 of the 2014 Act. Finally, NRCS adds a new paragraph (e) to ensure that State Conservationists target EQIP funds to wildlife habitat consistent with the additional wildlife habitat purposes incorporated into EQIP by section 2203

of the 2014 Act. Technical Service Providers (TSP) provisions previously numbered § 1466.11 are now at located at § 1466.9.

Part 1466, Subpart B—Contracts

Section 1466.20, “Application for contracts and selecting applications,” addresses how producer applications are submitted and selected for funding. NRCS updates the language throughout § 1466.20 to reference “conservation benefits” instead of “environmental benefits,” consistent with the amendment made by section 2204 of the 2014 Act. NRCS also updates the terms used throughout § 1466.20 to correspond to the updates to the terms in § 1466.3 Definitions. To reduce administrative burden and improve timely delivery of program benefits, NRCS also removes the nonstatutory requirement in § 1466.20(b)(5) that EQIP applications \$150,000 or greater require the review and approval of the Regional Conservationist. Since the term Regional Conservationist is not used in any other section of this rule other than in regards to the above requirement to be removed, the definition is also removed from § 1466.3.

Section 1466.21, “Contract requirements,” identifies elements contained within an EQIP contract and the responsibilities of the participant who is party to the EQIP contract. This section also addresses EQIP contract funding limitations. To receive payment, an applicant must enter into an EQIP contract. The EQIP contract identifies all financially supported conservation practices to be implemented, their timing and sequence, and the operation and maintenance (O&M) needed to maintain the conservation practice for its intended lifespan. NRCS amends paragraph (b)(2) to change the duration of the term of an EQIP contract to correspond with the change to the length of the contract term made by section 2203 of the 2014 Act. In particular, an EQIP contract will have a term for no more than ten years. Since EQIP only makes payment for the implementation of conservation practices, and does not provide annual or rental payments, EQIP contracts are not renewed. NRCS amends this section by replacing “within the agricultural or forestry operation” with “on the enrolled land” consistent with the change made by section 2205 of the 2014 Act that replaced “farm, ranch, or forest” with “enrolled” at section 1240D of the EQIP statute.

NRCS continues to use a contract funding limitation to manage program payment limitations. Consistent with

statutory payment limitation requirements, NRCS retains the administrative authority to limit the maximum contract amount to equal the person/legal entity payment limitation. Specific payment limitations are addressed in § 1466.24, EQIP Payments.

Section 1466.22, “Conservation practice operation and maintenance,” addresses the participant’s responsibility for conservation practice operation and maintenance. NRCS replaces the term “environmental benefits” with “conservation benefits” consistent with section 2204 of the 2014 Act.

Section 1466.23, “Payment rates,” addresses payment rates and payment eligibility. NRCS replaces the reference to “environmental benefits” with “conservation benefits” at paragraph (a)(4), consistent with section 2204 of the 2014 Act. Section 2203 of the 2014 Act revises the list of factors that NRCS may consider significant when determining the amount and rate of payment for income foregone to: Soil health; water quality and quantity improvement; nutrient management; pest management; air quality improvement; wildlife habitat development, including pollinator habitat; and invasive species management. NRCS revises this section to incorporate these changes made by section 2203.

For participants who NRCS identifies meet the definition of historically underserved producers, in accordance with § 1466.3, NRCS may award the applicable payment rate and an additional payment rate that is not less than 25 percent above the applicable payment rate, provided this increase does not exceed 90 percent of the estimated incurred costs and 100 percent of income foregone associated with the conservation practice. NRCS amends this section to clarify that veteran farmers or ranchers may also be awarded the special payment rate for historically underserved producers consistent with the addition of veteran farmers and ranchers by section 2203 of the 2014 Act.

NRCS also revises this section to clarify that NRCS will reduce the applicable payment rate to which a producer is entitled if the producer receives financial contributions for the implementation of a conservation practice from other USDA sources. The 2008 Act had revised section 1240B(d)(5) of the 1985 Act to specify that any non-Federal assistance that a producer receives should not impact the level of financial assistance a producer receives for EQIP participation. The January 2009 interim final rule had not

updated this; therefore, NRCS is making the adjustment in this interim rule.

Section 1466.24, "EQIP payments," provides direction on payment eligibility and payment limitations. Section 2206 of the 2014 Act amended section 1240G of the 1985 Act to replace the current \$300,000 payment limitation with a \$450,000 payment limitation and to apply the new payment limitation for a specific time period of FY 2014 through FY 2018, replacing the rolling 6-year period. NRCS amends paragraph (a) to incorporate this specific payment limitation for EQIP payments received during FY 2014 through FY 2018. The 2014 Act did not change the payment limitations associated with EQIP support of organic operations or those transitioning to organic production per section 1240(B) of the 1985 Act (\$20,000 per year or \$80,000 during any six year period). Therefore, the Agency will enforce both payment limitations applicable to all program participants as cited in § 1466.24.

Section 1466.24 is also to use simplified regulatory references, such as replacing "part 1400 of this chapter" with "7 CFR part 1400." Paragraph (c)(10) incorporates the flexibility provided by the amendments made by section 2203 of the 2014 Act to how advance payments may be made to historically underserved producers. In particular, advance funds paid to program participants must be expended within 90 days from receipt of funds or returned to NRCS within a reasonable time as determined by NRCS and eligibility for advance payment is contingent upon the participant obtaining an NRCS approved practice design.

Section 1466.27, "Conservation Innovation Grants," sets forth the policies and procedures related to awarding grants under the CIG provision at section 1240H of the 1985 Act. Section 2207 of the 2014 Act added a reporting requirement for NRCS. In particular, NRCS must report not later than December 31, 2014, and every two years thereafter, to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives a report on the status of projects funded under the section, including funding awarded; project results; and incorporation of project findings, such as new technology and innovative approaches, into NRCS conservation efforts. A new paragraph has been added at § 1466.27(j) to address this reporting requirement.

Part 1466, Subpart C—General Administration

Subpart C of the EQIP regulation addresses a participant's responsibility to comply with regulatory measures, to provide NRCS access to lands enrolled in the program for compliance monitoring during the term of the contract and other general program matters. The 2014 Act changes do not impact the regulatory provisions at Subpart C.

Summary of Changes to EQIP for Administrative Clarification and Reducing Administrative Complexity

NRCS is clarifying a few administrative provisions. Additionally, NRCS is simplifying the administrative complexity of the EQIP rule by clarifying and streamlining the regulation to focus upon only those provisions that relate to conservation program participants rights and responsibilities under the programs. Topics are organized below in alphabetical order.

Animal Feeding Operations (AFOs) (§§ 1466.3, 1466.7, and 1466.21)

Section 1240E(a)(3) of the 1985 Act authorizes payments for AFOs provided that the producer submits a plan of operations that provides for development and implementation of a comprehensive nutrient management plan (CNMP), if applicable. The 2002 Act removed an existing restriction for EQIP to provide assistance to large confined livestock feeding operations. Neither the 2008 Act nor the 2014 Act made modifications to these provisions. However, to improve the clarity of the regulation regarding AFO CNMP requirements, NRCS is updating the EQIP rule to incorporate a definition for AFOs and is revising the definition of CNMP to state that these are conservation plans developed specifically for an AFO.

Consistent with these updates, NRCS is revising § 1466.7, EQIP plan of operations, to clarify that if an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to develop and implement a CNMP by the end of the contract period which will be verified by NRCS. Finally, § 1466.21, Contract requirements, is being updated to state that a CNMP should be implemented when an EQIP contracts includes an animal waste facility on an AFO.

Conservation Innovation Grants (§ 1466.27)

The CIG component of EQIP stimulates the development and

adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection in conjunction with agricultural production. The regulations for CIG are found at 7 CFR 1466.27. CIG grants are administered in accordance with Departmental and government-wide requirements for financial assistance awards.

NRCS is adding a definition for cooperative agreement to clarify that both grant agreements and cooperative agreements may be used. NRCS is also removing the provisions at 7 CFR 1466.27(c)(1) and 1466.27(f) that require CIG funding opportunities to be published in the **Federal Register**. Since this provision was first incorporated, the Federal Government adopted the Grants.gov portal through which funding opportunities are announced. Therefore, such announcements are no longer required to be published in the **Federal Register**. NRCS has also made several adjustments to this section to explain the financial responsibilities of a grantee. NRCS also deleted paragraphs (h)(5) and (6) referring to internal agency processes for state-level grants. Subsections (j) and (k), related to patents and inventions and violations, were struck because the matter discussed is covered in other parts of the CFR.

Consultation With Conservation Districts (§ 1466.26)

Section 1466.26 authorizes NRCS to consult with conservation districts in contract termination decisions. However, section 1619 of the 2008 Act imposes limitations on the disclosure of certain types of information provided by an agriculture producer. Therefore, this section has been removed though NRCS will continue to work closely with its conservation district partners in the implementation of EQIP and its other conservation programs.

Definition of Terms (§ 1466.3)

The definition of "beginning farmer or rancher" has been revised to reflect the authority of the Food Security Act of 1985 and amendment from the 2008 Act which added nonindustrial private forest land (NIPF) as specifically eligible for EQIP. The revision is also consistent with Departmental regulation. The revised definition now reads as:

Beginning farmer or rancher means a person or legal entity who:

(1) Has not operated a farm or ranch, or NIPF, or who has operated a farm, ranch, or NIPF for not more than 10 consecutive years. This requirement applies to all members of an entity who

will materially and substantially participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Conservation practice:

NRCS has amended the definition of conservation practice to clarify that approved conservation practices are listed in the NRCS Field Office Technical Guide.

Estimated income foregone:

For clarification, NRCS has expanded the definition to clarify the elements that are used in its calculation. Therefore, the definition now reads: “*Estimated income foregone* means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income (\$/unit/year) lost from implementing a conservation practice which results in a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice. Foregone income will not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production.”

Environmental Credits (§ 1466.36)

NRCS recognizes the increased interest among agricultural producers to be able to participate in environmental service markets. The policy in this section is not new. Minor editorial changes are made to § 1466.36.

Irrigation History Requirement (§ 1466.8—as Renumbered)

NRCS has received numerous comments since publication of the EQIP

interim final rule in January 2009 related to the topic of irrigation. These comments have focused upon the irrigation history requirement in EQIP that is used to determine whether proposed irrigation related practices will result in water conservation or water savings.

A requirement of EQIP is to provide a positive conservation benefit to address a resource concern, which for the purpose of a cropland irrigation practice, is water conservation. Whether water conservation objectives have been achieved is often determined through a calculation of water savings based upon the difference in amount of water used before and after implementation of the irrigation practice, thus providing an estimate of water saved or conserved.

Without evidence of existing irrigation, it is difficult to justify funding to implement a water conservation practice if there is no documentation of past water use and therefore savings. Funding practices to facilitate new irrigation practices that do not currently exist would use more water than previously and tend to defeat the purpose of the program to provide a conservation benefit.

Historically, USDA and NRCS conservation programs have received overall support for the rule and policy requirements to provide evidence that land has been irrigated 2 of the past 5 years to ensure that both a natural resource concern will be addressed by EQIP assistance and that EQIP assistance does not result in adverse impacts to aquifer depletion or surface streams experiencing decreased flow. However, the strict irrigation history requirement may have inadvertently disadvantaged some individuals or groups and there may be specific situations where adjustment of the requirement may be appropriate.

Some producers, especially limited resource and socially disadvantaged producers, cannot benefit fully from EQIP assistance because of difficulty meeting this irrigation history requirement for reasons beyond their control. There are situations where producers cannot document historical use of irrigation on some lands, such as Tribal lands, and therefore, cannot meet or document the irrigation history requirement. Additionally, producers who do not have extensive structural irrigation delivery systems use non-mechanized irrigation methods and do not maintain records for these irrigation applications.

Between October 2010 and January 2011, NRCS participated in seven Interagency Tribal consultation meetings held across the nation. The

effort was coordinated by the USDA Office of Tribal Relations and provided an opportunity for Tribal leaders to comment in person on the programs authorized by the Food, Conservation, and Energy Act of 2008. NRCS staff presented program overviews to attending Tribal Representatives that provided them with a better understanding of program details.

The EQIP irrigation history requirement was among the top ten issues raised by the Tribal representatives during the Interagency Tribal consultation meetings. The Tribal representatives identified that the irrigation history requirement raised barriers to Tribal participation in EQIP due to drought, incomplete irrigation pipelines, or loss of water use rights or access to water.

Therefore, NRCS is modifying the EQIP regulation to address the irrigation history requirement through introduction of a waiver provision. In particular, NRCS has determined that it is appropriate, pursuant to the Secretary’s authority under 16 U.S.C. 3844 to address barriers to participation by historically underserved producers, to incorporate a limited waiver to the irrigation history requirement under the EQIP regulation.

NRCS believes that a narrowly-tailored waiver provision will address these participation barriers in a manner that ensures EQIP continues to meet its statutory purposes through fully addressing natural resource concerns on eligible land. The new waiver provision will address two different circumstances described more fully below: (1) one circumstance is particular to limited resource and socially disadvantaged producers, including individual Indian producers; and (2) one circumstance is particular to Indian lands, as defined by the EQIP regulation, that have been designated as “permanently irrigable” “by the Bureau of Indian Affairs.

For circumstances related to limited resource and socially-disadvantaged producers, this rule provides that the NRCS Chief may waive the irrigation history requirement where, for reasons beyond the control of the producer, the producer could not irrigate the land but there exists an identified natural resource concern. More specifically, the water-conservation or irrigation-related conservation practice must address the natural resource concern through the successful and cost-effective implementation of other practices that address soil quality and erosion resource concerns, and all other program requirements can be met.

The waiver authority will only be available to limited resource and

socially-disadvantaged producers, including individual Indian tribal producers, who wish to install an efficient irrigation system as a means to assist with the adoption of sustainable agricultural production methods, as determined by the Chief, and such adoption will not adversely impact limited surface water or groundwater supplies. Sustainable production methods may include the establishment of cover crops and irrigation water management as part of no-till production or organic production systems needed to ensure a positive trend in the soil condition index. To ensure that the waiver does not result in converting land into more intensive uses such as converting pasture to cropland, this rule also provides that a producer who seeks a waiver must also be able to establish that the land has been in active agricultural production (cropped, hayed, or grazed) four of the last six years.

NRCS establishes these limitations for availability of the waiver based on several reasons. First, EQIP eligibility requires that any practice funded will address identified natural resource concerns related to agricultural production. Therefore, absent documentation of irrigation history, the proposed irrigation practice must directly facilitate the successful implementation of a practice that addresses an identified natural resource concern (such as soil quality improvements or erosion control) as part of a resource management system.

To minimize any potential negative impacts upon surface and ground water supplies, NRCS will evaluate the impact of granting a waiver, both individually and cumulatively, prior to approval and incorporate any necessary limitations to ensure that such impact is minimized. Criteria used to evaluate the potential impact of a waiver on existing water supplies will be developed by NRCS, and the agency is using this rulemaking as an opportunity to obtain public input on the availability of a waiver and the criteria for granting and evaluating the impact of such waivers.

For example, the impacts upon water supplies could be based on, but not necessarily limited to, the following sample criteria:

- For groundwater systems, the aquifer must not be declining in elevation or in yield;
- For surface water diversions east of the 100th meridian, a legal right to use surface water must be in possession of the applicant. The surface water source would need to be documented as meeting all other legal water rights 8 out of 10 of the last years; and

- For surface water diversions west of the 100th meridian, the surface water source must be shown to have met all state-designated beneficial uses for which legal rights are held 5 out of the last 10 years.

Waivers will not be granted in areas that have been subject to water shortages. Additional criteria may include the extent of the acreage being placed under irrigation, and NRCS seeks specific public comment about whether acreage limitations should also be amongst the criteria applied to limit the potential impact to existing water supplies. For example, NRCS could limit its approval of waivers to where less than 50 acres of cropland are to be irrigated with an efficient irrigation system meeting NRCS practice standards. The 50-acre limitation criteria would be based upon the standard field size that can be irrigated with a center pivot.

Finally, NRCS establishes the four of the last six years agricultural production history as a means to ensure that land is not converted into more intensive uses that significantly impact water resources, and is patterned after recognized statutory cropping history requirements under the Conservation Reserve and Conservation Stewardship Programs.

Additionally, NRCS may also authorize a waiver of the irrigation history requirement for circumstances faced by federally recognized Indian Tribes. The Bureau of Indian Affairs (BIA) has categorized various Tribal lands as “permanently irrigable.” These lands include lands that were known historically to be previously irrigated, or where there were plans to establish irrigation facilities though approved projects that were never constructed. Another situation is that the planned irrigation practices were constructed, but were inappropriate for the associated management practices or were not finished completely, and thus were not utilized for the intended purpose or need.

In some circumstances, these lands were previously irrigated, but for various reasons, deteriorated where irrigation delivery became unfeasible or resulted in litigation concerning water rights which prevented the Indian tribe’s lands from actually being irrigated. Often, affected producers on these Tribal lands are required to and continue to pay operation and maintenance fees for the irrigation delivery facilities even when no irrigation water is being delivered. These lands, once water rights and delivery issues have been resolved, can and likely will be under irrigation

production and meet the intent of statute to conserve and efficiently use available water.

Again, to minimize any potential increased negative impact upon surface and groundwater water supplies, NRCS will evaluate the impact of granting a waiver, both individually and cumulatively, prior to approval and incorporate any necessary limitations to ensure that such impact is minimized. Criteria used to evaluate the potential impact of a waiver on existing water supplies will be developed by NRCS, and the agency is using this rulemaking as an opportunity to obtain public input on the availability of a waiver and the criteria for granting and evaluating the impact of such waivers. Waivers will not be granted in areas that have been subject to water shortages during the previous full irrigation season.

When a waiver is being considered for land proposed for the EQIP program that has been designated permanently irrigable by the BIA, the impacts upon water supplies could be based on, but not necessarily limited to, the following sample criteria:

- Whether water rights are secured and legal;
- For sources of irrigation from groundwater, the aquifer is not declining in either elevation or yield. There may be situations where although there is a declining aquifer, a Tribal entity has a water right that is senior to many of the other groundwater rights. These cases will be evaluated individually; and
- For surface water sources, the Tribal water rights are such that they would have resulted in full-volume delivery 5 out of the last 10 years.

Such criteria may also include the extent of the acreage being placed under irrigation, and NRCS also seeks specific public comment about whether acreage limitations should also be amongst the criteria applied to evaluating whether a waiver on Tribal land is appropriate. For example, NRCS could limit the waiver to 200 acres/Tribe, basing the 200-acre limitation upon allowance of four of the standard 50-acre fields that can be irrigated with a center pivot. NRCS believes that such criteria could focus EQIP assistance to Tribal operations that do not have the financial resources necessary to implement water conservation measures on their own and thus EQIP assistance is needed.

EQIP’s water conservation purposes can be furthered by granting a waiver for irrigation-related assistance on Indian lands classified as permanently irrigable with existing irrigation-related facilities, and where the producer has been paying

operation and maintenance fees for irrigation water delivery.

NRCS believes the new waiver with these two categories of producers will balance the need for EQIP assistance by producers who have not been able to establish an irrigation history with ensuring that implementation of a waiver does not have an unintended consequence of increasing depletion of limited surface or groundwater resources. NRCS requests public comment on the availability of a waiver and the criteria for granting such waivers. This rulemaking amends the EQIP regulation by incorporating a waiver provision at 7 CFR 1466.8(c).

Outreach (§ 1466.5—as Renumbered)

To improve clarity of this interim rule, NRCS has amended the language in § 1466.5 (as renumbered) to read as follows:

“NRCS will establish program outreach activities at the national, State, Tribal, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders. NRCS provides outreach so as not to limit producer participation because of size or type of operation or production system, including small-scale, specialty crop and organic production.”

NRCS provides further guidance in agency policy that special emphasis will be made in all information activities to provide conservation assistance, program outreach, and access to limited resource farmers or ranchers, socially disadvantaged farmers or ranchers, small-scale farmers or ranchers, beginning farmers or ranchers, Tribal members, Alaska Natives, Pacific Islanders, producers with disabilities, veteran farmers or ranchers, and other producers with historically low participation rates in conservation programs. Procedures will adhere to national outreach policy guidance in *GM Title 230 Part 406*. Special emphasis outreach efforts could include, but not be limited to:

(a) Establishing special outreach activities at the national, State, Tribal, and local levels; and

(b) Providing special accommodations, to the extent possible, to assure that producers are aware,

informed, and have access to information and assistance, such as:

(1) Using language spoken by the intended audience;

(2) Using appropriate media sources to reach the intended audience; and

(3) Partnering with nongovernmental organizations to assist in reaching more potential applicants.

Practice Costs, Payment Rates, and Payment Schedules (§ 1466.23)

The process for documenting estimated incurred costs for conservation practices implemented through program support is an iterative process that begins with technical requirements of the practice standard, development of geographically based regional scenarios, identification of associated components and costs, and a quality control process for review and publication of resulting payment schedules used to support final payment rates. The process for documentation of estimated costs in payment schedules provides the following benefits to ensure accurate and timely delivery of program benefits:

(i) Provide transparency and timely payment rate information to program applicants and agency partners,

(ii) Ensure that payment schedules are consistent with program authority,

(iii) Provide a consistent, reliable, and defensible method for documenting eligible costs,

(iv) Provide flexibility which reflects cost variation across the Nation,

(v) Uses established and accepted economic geographic areas aligned with States and regions based on farm employment data, crop costs, and other economic factors,

(vi) Ensure payment rates and financial assistance are consistent with the definition, purpose, and requirements of approved conservation practice technical standards,

(vii) Provide producers, through use of standardized cost estimates rather than detailed invoicing, simpler program application, contract administration, and request for program payments, and

(viii) Support agency efforts to reduce State and field staff workload associated with administrative matters allowing more time for conservation planning, technical assistance, and practice implementation.

NRCS believes that payment rates are best established through a nationally guided payment schedule process with State Conservationists, in consultation with the State Technical Committee, Tribal Conservation Advisory Council, and local working groups setting payment percentages which determine

the final payment rate. The current regulation provides that “Practice payment rates greater than 50 percent for estimated costs incurred . . . are to be approved by the Chief or designee.” This provision related directly to previous statutory authority to make cost-share and incentive program payments. The 2008 Farm Bill eliminated authority for cost-share and incentive payments and established maximum payment limitations of 75 percent of estimated incurred costs and up to 90 percent of estimated incurred costs for historically underserved participant program payments. As a result the need for establishing cost-share percentages to calculate contract payments was eliminated. The nationally guided payment schedule process establishes controls to assure that these payment limitations are not exceeded in determination of program payment rates and therefore the need for agency review of these percentages are no longer needed.

NRCS makes a revision to the rule to clarify when payment rates may be reduced as a result of the agency entering into a formal agreement with a partner who provides payments to producers participating in EQIP. Section 1466.23(b)(4) is added as follows: “When the agency enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief must adjust NRCS program payment percentages to provide practice payment rates to an amount such that the total financial assistance to the participant from NRCS and the partner does not exceed the amount needed to encourage voluntary adoption of the practice.”

NRCS makes a technical correction in its cross-reference in § 1466.24(c)(1) to cite correctly to subparts in 7 CFR part 1400.

State Technical Committee as Identified in the EQIP Rule (§ 1466.2)

In order to clarify the role of the State Technical Committee and further align the EQIP rule with the State Technical Committee rule (7 CFR part 610), NRCS has revised § 1466.2(b).

Technical Service Providers as Appearing in the EQIP Rule (§ 1466.9—as Renumbered)

NRCS is making several adjustments to ensure that its references to TSPs in the EQIP regulation are consistent with the TSP regulation at 7 CFR part 652 by stating examples of eligible services. Additionally, due to other changes in the interim rule, the provisions that previously appeared at § 1466.11 regarding TSPs will now appear at

§ 1466.9. NRCS also changed the definition of TSPs to clarify the process of becoming a TSP.

Transparency (§ 1466.20)

Government transparency is furthered by public access to various government documents and information. NRCS supports open government to the extent authorized by law. Several statutory provisions limit the disclosure of Federal information where the release of such information may adversely affect an individual's privacy or other confidential matters. In particular, release of EQIP documents is governed by the Freedom of Information Act (FOIA), the Privacy Act, section 1619 of the 2008 Act, and section 1244 of the 1985 Act. NRCS will provide as much transparency as possible concerning funding usage while adhering to the FOIA and Privacy Act requirements. Section 1619 of the 2008 Act prohibits NRCS from releasing any information specific to a producer's operation, practice, or the land itself in order to participate in USDA programs. NRCS will continue to aggregate information about EQIP including kinds of practices and extent and funding associated with contacts at the State and national levels. Section 1466.20(b)(6) of the EQIP rule specifies that NRCS will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how EQIP is implemented in a State. At the national level, NRCS posts information concerning EQIP at: www.nrcs.usda.gov/programs/EQIP.

Tribal Issues (Sections Throughout Interim Rule)

Between October 2010 and January 2011, NRCS participated in seven interagency Tribal consultation meetings held across the Nation. The effort was coordinated by the USDA Office of Tribal Relations and provided an opportunity for Tribal leaders to comment in person on the 2008 Act programs. NRCS participated again in Tribal consultation meetings in April 2014.

In response, NRCS has made several adjustments to the EQIP rule. The term Tribal Conservation Advisory Council was added wherever applicable to more accurately portray relationships of these bodies in providing advice to the State Conservationist. The term Indian Tribes and Tribal were included throughout the regulation to ensure clarity in program delivery, and language was added to ensure more clarity concerning NRCS' relationship with the Bureau of Indian Affairs (BIA) at § 1466.6(b)(3). NRCS has also incorporated provisions

to clarify to that payment and contract limitations do not apply to Indian Tribes but apply to individual Tribal member(s) at § 1466.24(a). The removal of the maximum limitation for contracts with Indian Tribes facilitates the ability of NRCS to address the natural resource concerns faced by Indian producers on tribal lands by allowing the larger Tribal parcels with multiple producers to be administered under a single contract. NRCS anticipates removal of this barrier will improve efficiency and delivery of program benefits to Tribes.

Other EQIP Adjustments

The following changes to § 1466.3 definitions were made to clarify program administration and ensure consistency in program implementation:

- **Indian Tribe:** NRCS has included the word "pueblo" in the definition of Indian tribe. Although pueblo is encompassed in the term other organized group or community, NRCS is adding the term to provide additional clarity to the interim rule that pueblos are included as one of these recognized communities consistent with Departmental regulation.
- **Limited resource farmer or rancher:** NRCS amends the term, "limited resource farmer or rancher," by replacing the reference to "\$155,200" with "the current indexed value." Using data provided by the various Federal agencies, NRCS establishes the value used for determining limited resource farmer and rancher which is calculated each fiscal year to reflect inflation, income, agricultural prices, poverty levels, and other factors. Details regarding the kind of data used and formula calculations are found at <http://www.lrftool.sc.egov.usda.gov/About.aspx>. NRCS adjusts the EQIP definition to correspond with the definition used more widely throughout the Department. NRCS also adds clarity by identifying when a legal entity or joint operation meets the requirements to be considered a limited resource farmer or rancher.

- **Priority resource concern:** NRCS revises the term "priority resource concern" to align program terminology with other conservation programs administered by NRCS by clarifying that a priority resource concern is a "natural" resource concern.

- **Resource concern:** In order to be consistent with other NRCS financial assistance programs, NRCS has amended the definition for resource concern.

NRCS makes the following additional administrative changes:

National Priorities—§ 1466.4

Section 1466.4 National Priorities, identifies the national priorities for program implementation. Prior to the publication of the January 2009 interim final rule, NRCS identified these national priorities through public feedback in order to ensure that the stated national priorities reflected the most pressing natural resource needs. NRCS makes three minor adjustments to § 1466.4. The first is to add energy conservation as one of the resource concerns addressed through EQIP which was not specifically addressed in the January 2009 interim rule. Although energy conservation was included as a purpose for EQIP in the 2008 Act, at the time, neither the agency nor industry had developed the tools needed to develop plans and practices which address this concern. Pursuant to the 2008 Act's authorization of the use of EQIP to address on-farm energy conservation benefits, NRCS has implemented the "EQIP On-Farm Energy Initiative" to enable a producer to identify ways to conserve energy on the farm through an Agricultural Energy Management Plan, also known as an on-farm energy audit, and by providing financial and technical assistance to help the producer implement various measures and practices recommended in an on-farm energy audit. The other two changes are to replace "resource concern" with "natural resource concern" and clarifying that promotion of at-risk species habitat conservation includes the development and improvement of wildlife habitat. NRCS has established the national priorities to address natural resource concerns associated with enhancements to soil quality, water quality and quantity, plant health, energy conservation, wildlife habitat, air quality, and related resource concerns, that may be addressed through EQIP.

National and State Allocation Management Sections—§§ 1466.5 and 1466.6

NRCS is removing these two sections as they relate to internal fund allocation management which are internal agency administrative procedures and do not affect the rights and responsibilities of EQIP participants. NRCS has utilized a formula for allocation of EQIP funds to States based upon factors established at § 1466.5. Based upon both internal and external comment, NRCS recognized that the existing process did not adequately identify priority resource needs, the locally led process, or information available at the State level which could provide more

comprehensive data to make allocation decisions. In FY 2011, the agency developed a new allocation process based upon State-generated assessments of priority natural resource needs and associated work necessary to address identified resource concerns. These State-developed assessments, following national guidance to assure accuracy and consistency, were reviewed with partners, stakeholders, other agencies, and others to quantify resource needs, priorities, agency goals, workload and available resources, and program opportunities to support direct requests from State Conservationists. These requests were submitted to agency leadership for review, and final EQIP allocations were based upon all requests and needs. This approach provides flexibility to address nationally and locally important natural resource concerns and provides a more reliable and accurate estimate of each State's needs, which in turn can be used to better inform the allocation process. The Agency will use a nationally consistent method to document resource needs and provide a foundation for establishing priorities within States. Inputs may include National Resources Inventory (NRI) land use data, NRI soil erosion estimates, NRI Rangeland Resource Assessment rangeland health data, NRI CEAP soil organic carbon data, and various attributes from the Soil Survey Geographic (SSURGO) database. These and other data layers may be used to calculate critical acres by State and identified natural resource concerns.

§§ 1466.8 Through 1466.11

These sections are re-numbered in this interim rule to reflect the changes made by the removal of the administrative allocation sections. The provisions that previously appeared at §§ 1466.8 through 1466.11 are now found at §§ 1466.6 through 1466.9.

Conservation Practice Operation and Maintenance—§ 1466.22

In order to clarify NRCS operating procedures, NRCS has amended § 1466.22(c) to state as follows: "Conservation practices installed before the contract execution, but included in the contract to obtain the conservation benefits agreed upon, must be operated and maintained as specified in the contract and [Operation and Maintenance] agreement."

Finally, throughout 7 CFR part 1466, NRCS simplifies the regulatory cross-references by replacing language such as "part 1400 of this chapter" with "7 CFR part 1400."

Summary of Request for Comments

NRCS seeks general comments related to how to make the provisions easier to understand. In addition, NRCS seeks public comment related to the changes made to the EQIP regulation by this interim rule, including seeking comment:

- As identified in the Executive Summary, on how the agency should estimate the public value of conservation resulting from assistance provided through EQIP;
- as set out in Section 1466.3, on the definition of conservation benefits; and
- about the irrigation waiver requirement, and, about whether acreage limitations should also be amongst the criteria applied to limit the potential impact to existing water supplies, whether acreage limitations should also be amongst the criteria applied to evaluating whether a waiver on Tribal land is appropriate, and on the availability of granting such a waiver under certain conditions.

List of Subjects in 7 CFR Part 1466

Agricultural operations, Conservation practices, Conservation payments, Natural resources, Payment rates, Contract, Animal feeding operations, Soil and water conservation, Soil quality, Water quality and water conservation, Wildlife, and Forestry management.

Regulatory Changes

- For the reasons stated in the preamble, the Natural Resources Conservation Service and the Commodity Credit Corporation revise part 1466 of Title 7 of the Code of Federal Regulations (CFR) to read as follows:

PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

Subpart A—General Provisions

Sec.

- 1466.1 Applicability.
- 1466.2 Administration.
- 1466.3 Definitions.
- 1466.4 National priorities.
- 1466.5 Outreach activities.
- 1466.6 Program requirements.
- 1466.7 EQIP plan of operations.
- 1466.8 Conservation practices.
- 1466.9 Technical services provided by qualified personnel not affiliated with USDA.

Subpart B—Contracts and Payment

- 1466.20 Applications for contracts and selecting applications.
- 1466.21 Contract requirements.
- 1466.22 Conservation practice operation and maintenance.
- 1466.23 Payment rates.
- 1466.24 EQIP payments.

- 1466.25 Contract modifications and transfers of land.
- 1466.26 Contract violations and terminations.
- 1466.27 Conservation Innovation Grants.

Subpart C—General Administration

- 1466.30 Appeals.
- 1466.31 Compliance with regulatory measures.
- 1466.32 Access to operating unit.
- 1466.33 Equitable relief.
- 1466.34 Offsets and assignments.
- 1466.35 Misrepresentation and scheme and device.
- 1466.36 Environmental credits for conservation improvements.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839–8.

Subpart A—General Provisions

§ 1466.1 Applicability.

(a) The purposes of the Environmental Quality Incentives Program (EQIP) are to promote agricultural production, forest management, and environmental quality as compatible goals, and to optimize environmental benefits. Through EQIP, NRCS provides technical and financial assistance to eligible agricultural producers, including nonindustrial private forest landowners (NIPF) and Indian Tribes, to help implement conservation practices which address soil, water, and air quality; wildlife habitat; surface and groundwater conservation; energy conservation; and related resource concerns. EQIP's financial and technical assistance helps producers comply with environmental regulations and enhance agricultural and forested lands in a cost-effective and environmentally beneficial manner. The purposes of the program are achieved by planning and implementing conservation practices on eligible land.

(b) EQIP is available in any of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, Virgin Islands of the United States, American Samoa, and Commonwealth of the Northern Mariana Islands.

(c) Contracts enrolled into EQIP prior to February 7, 2014, are subject to the regulations in effect the date prior to February 7, 2014.

§ 1466.2 Administration.

(a) The funds, facilities, and authorities of the CCC are available to NRCS for carrying out EQIP. Accordingly, where NRCS is mentioned in this part, it also refers to the CCC's funds, facilities, and authorities where applicable.

(b) NRCS supports locally-led conservation by soliciting input from the State Technical Committee and the Tribal Conservation Advisory Council at the State level, and local working

groups at the county, parish, or Tribal level to advise NRCS on issues relating to EQIP implementation.

Recommendations from the State Technical Committee and the Tribal Conservation Advisory Council may include but are not limited to:

- (1) Recommendation for program priorities and criteria;
- (2) Identification of priority resource concerns;
- (3) Recommendation of which conservation practices will be effective to treat identified priority resource concerns; and
- (4) Recommendation of program payment percentages for payment schedules.

(c) No delegation in the administration of this part to lower organizational levels will preclude the Chief from making any determinations under this part, re-delegating to other organizational levels, or from reversing or modifying any determination made under this part. The Chief may modify or waive a discretionary provision of this part with respect to contracts entered into under the Regional Conservation Partnership Program (RCPP), if the Chief determines that such an adjustment is necessary to achieve the purposes of EQIP. Consistent with section 1271C(c)(3) of the 2014 Act, the Chief may also waive the applicability of the Adjusted Gross Income (AGI) limitation in section 1001D(b)(2) of the Food Security Act of 1985 for program participants if the Chief determines that the waiver is necessary to fulfill RCPP objectives.

(d) NRCS may enter into agreements with other Federal or State agencies, Indian Tribes, conservation districts, units of local government, public or private organizations, and individuals to assist NRCS with implementation of the program in this part.

§ 1466.3 Definitions.

The following definitions will apply to this part and all documents issued in accordance with this part, unless specified otherwise:

Agricultural land means cropland, grassland, rangeland, pasture, and other agricultural land, on which agricultural and forest-related products or livestock are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock.

Agricultural operation means a parcel or parcels of land whether contiguous or noncontiguous, which the producer is listed as the operator or owner/operator

in the Farm Service Agency (FSA) record system, which is under the effective control of the producer at the time the producer applies for a contract, and which is operated by the producer with equipment, labor, management, and production, forestry, or cultivation practices that are substantially separate from other operations.

Animal feeding operation (AFO) means an agricultural operation where animals are kept and raised in confined situations. AFOs congregate animals, feed, manure, dead animals, and production operations on a small land area. Feed is brought to the animals rather than the animals grazing or otherwise seeking feed in pastures, fields, or on rangeland. An AFO is a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

- (1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and
- (2) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Animal waste storage or treatment facility means a structural conservation practice, implemented on an AFO consistent with the requirements of a Comprehensive Nutrient Management Plan (CNMP) and Field Office Technical Guide (FOTG), which is used for storing, treating, or handling animal waste or byproducts, such as animal carcasses.

Applicant means a producer who has requested in writing to participate in EQIP.

At-risk species means any plant or animal species listed as threatened or endangered; proposed or candidate for listing under the Endangered Species Act; a species listed as threatened or endangered under State law or Tribal law on Tribal land; State or Tribal land species of conservation concern; or other plant or animal species or community, as determined by the State Conservationist, with advice from the State Technical Committee or Tribal Conservation Advisory Council, that has undergone, or is likely to undergo, population decline and may become imperiled without direct intervention.

Beginning farmer or rancher means a person, Indian Tribe, Tribal corporation, or legal entity who:

- (1) Has not operated a farm or ranch, or NIPF, or who has operated a farm, ranch, or NIPF for not more than ten consecutive years. This requirement applies to all members of an entity, who will materially and substantially

participate in the operation of the farm or ranch.

(2) In the case of a contract with an individual, individually, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(3) In the case of a contract with an entity or joint operation, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

Chief means the Chief of NRCS, United States Department of Agriculture (USDA), or designee.

Comprehensive Nutrient Management Plan means a conservation plan that is specifically for an AFO. A CNMP identifies conservation practices and management activities which, when implemented as part of a conservation system, will manage sufficient quantities of manure, waste water, or organic by-products associated with a waste management facility. A CNMP incorporates practices to use animal manure and organic by-products as a beneficial resource while protecting all natural resources including water and air quality associated with an AFO. A CNMP is developed to assist an AFO owner/operator in meeting all applicable local, Tribal, State, and Federal water quality goals or regulations. For nutrient impaired stream segments or water bodies, additional management activities or conservation practices may be required by local, Tribal, State, or Federal water quality goals or regulations.

Conservation benefit means the improved condition of a natural resource concern resulting from the implementation of a conservation practice.

Conservation district means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land

conservation committee,” “natural resource district,” or similar name.

Conservation Innovation Grants (CIG) means competitive grants made under EQIP to individuals, Indian Tribes, and governmental and nongovernmental organizations to stimulate and transfer innovative technologies and approaches, to leverage Federal funds, and to enhance and protect the environment in conjunction with agricultural production and forest management.

Conservation practice means one or more conservation improvements and activities, including structural practices, land management practices, vegetative practices, forest management practices, and other improvements that achieve the program purposes, including such items as CNMPS, agricultural energy management plans, dryland transition plans, forest management plans, integrated pest management, and other plans or activities determined acceptable by the Chief. Approved conservation practices are listed in the NRCS FOTG.

Contract means a legal document that specifies the rights and obligations of any participant accepted into the program. An EQIP contract is a binding agreement for the transfer of assistance from USDA to the participant to share in the costs of implementing conservation practices.

Cost-effectiveness means the least costly option for achieving a given set of conservation objectives to address a resource concern.

Enrolled land means the land area identified and included in the program contract at the time when funds have been obligated.

EQIP plan of operations means the document that identifies the location and timing of conservation practices that the participant agrees to implement on eligible land enrolled in the program in order to address the priority resource concerns, optimize environmental benefit, and address program purposes as defined in § 1466.1. The EQIP plan of operations is part of the EQIP contract.

Estimated income foregone means an estimate of the net income loss associated with the adoption of a conservation practice. Along with other estimated incurred costs, foregone income is one of the costs associated with practice implementation as recorded in a payment schedule. NRCS calculates foregone income as the average annual net income (\$/unit/year) lost from implementing a conservation practice which results in a change in land use or land taken out of production or the opportunity cost associated with the adoption of a conservation practice.

Foregone income will not include losses of income due to disaster or other events unrelated to the conservation practice such as risk associated with agricultural production.

Field office technical guide (FOTG) means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and implementation of conservation practices. It contains detailed information on the quality standards to achieve conservation of soil, water, air, plant, energy, and animal resources applicable to the local area for which it is prepared.

Forest management plan means a site-specific plan that is prepared by a professional resource manager, in consultation with the participant, and is approved by the State Conservationist. Forest management plans may include a forest stewardship plan, as specified in section 5 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103a); another practice plan approved by the State Forester or Indian Tribe; or another plan determined appropriate by the State Conservationist. The plan is intended to comply with Federal, State, Tribal, and local laws, regulations, and permit requirements.

Habitat development means the application of conservation practices to establish, improve, protect, enhance, or restore the conditions of the land for the specific purpose of improving conditions for fish and wildlife.

Historically underserved producer means a person, joint operation, legal entity, or Indian Tribe who is a beginning farmer or rancher, socially disadvantaged farmer or rancher, or limited resource farmer or rancher.

Indian land means:

(1) Land held in trust by the United States for individual Indians or Indian Tribes; or

(2) Land, the title to which is held by individual Indians or Indian Tribes subject to Federal restrictions against alienation or encumbrance; or

(3) Land which is subject to rights of use, occupancy and/or benefit of certain Indian Tribes; or

(4) Land held in fee title by an Indian, Indian family, or Indian Tribe.

Indian Tribe means any Indian Tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Integrated pest management means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks.

Joint operation means, as defined in part 7 CFR 1400, a general partnership, joint venture, or other similar business organization in which the members are jointly and severally liable for the obligations of the organization.

Legal entity means, as defined in 7 CFR 1400, an entity created under Federal or State law that:

- (1) Owns land or an agricultural commodity, product, or livestock; or
- (2) Produces an agricultural commodity, product, or livestock.

Lifespan means the period of time during which a conservation practice or activity should be maintained and used for the intended purpose.

Limited resource farmer or rancher means either:

- (1) Individual Producer:
 - (i) A person with direct or indirect gross farm sales not more than the current indexed value in each of the previous two fiscal years (adjusted for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service), and
 - (ii) Has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous two years (to be determined annually using Commerce Department Data), or
- (2) A legal entity or joint operation if all individual members independently qualify under paragraph (1) of this definition.

Liquidated damages means a sum of money stipulated in the EQIP contract that the participant agrees to pay NRCS if the participant fails to adequately complete the terms of the contract. The sum represents an estimate of the technical assistance expenses incurred to service the contract, and reflects the difficulties of proof of loss and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

Livestock means all domesticated animals produced on farms or ranches, as determined by the Chief.

Livestock production means farm or ranch operations involving the production, growing, raising, or reproduction of domesticated livestock or livestock products.

Local working group means the advisory body as defined in part 610 of this title.

National Organic Program means the national program established under the

Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*), administered by the Agricultural Marketing Service, which regulates the standards for any farm, wild crop harvesting, or handling operation that wants to sell an agricultural product as organically produced.

National priorities means resource issues identified by the Chief, with advice from other Federal agencies, Indian Tribes, and State Conservationists, which will be used to determine the distribution of EQIP funds and guide local EQIP implementation.

Natural Resources Conservation Service is an agency of USDA, which has responsibility for administering EQIP using the funds, facilities, and authorities of the CCC.

Nonindustrial private forest land means rural land, as determined by the Secretary, that has existing tree cover or is suitable for growing trees; and is owned by any nonindustrial private individual, group, association, corporation, Indian Tribe, or other private legal entity that has definitive decision-making authority over the land.

Operation and maintenance (O&M) means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during the conservation practice lifespan. Operation includes the administration, management, and performance of nonmaintenance actions needed to keep the completed practice functioning as intended. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

O&M agreement means the document that, in conjunction with the EQIP plan of operations, specifies the operation and maintenance responsibilities of the participant for conservation practices installed with EQIP assistance.

Organic system plan (OSP) means a management plan for organic production or for an organic handling operation that has been agreed to by the producer or handler and the certifying agent. The OSP includes all written plans that govern all aspects of agricultural production or handling as required under the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*).

Participant means an applicant that has entered into an EQIP contract who incurs the cost of practice implementation, will receive payment or is responsible for implementing the

terms and conditions of an EQIP contract.

Payment means financial assistance provided to the participant based on the estimated costs incurred in performing or implementing conservation practices, including costs for: planning, design, materials, equipment, installation, labor, management, or training, as well as the estimated income foregone by the producer for designated conservation practices.

Person means, as defined in 7 CFR part 1400, an individual, natural person, and does not include a legal entity.

Priority resource concern means a natural resource concern that is identified by the State Conservationist, in consultation with the State Technical Committee or Tribal Conservation Advisory Council, as a priority for a State, Tribal, local, geographic area, or watershed level.

Producer means a person, legal entity, Indian Tribe, or joint operation who NRCS determines is engaged in agricultural production or forestry management on the agricultural operation.

Resource concern means a specific natural resource problem that represents a significant concern in a State or region and is likely to be addressed through the implementation of conservation practices or activities by producers according to NRCS technical standards.

Socially disadvantaged farmer or rancher means a producer who is a member of a group whose members have been subjected to racial or ethnic prejudices without regard to its members' individual qualities. For an entity, at least 50 percent ownership in the business entity must be held by socially disadvantaged individuals.

State Conservationist means the NRCS employee authorized to implement EQIP and direct and supervise NRCS activities in a State, Caribbean Area, or Pacific Island Areas.

State Technical Committee means a committee established by NRCS in a State pursuant to 7 CFR part 610, subpart C.

Structural practice means a conservation practice, including a vegetative practice, that involves establishing, constructing, or installing a site-specific measure to conserve and protect a resource from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, animal waste management facilities, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filter strips, critical area plantings, tree plantings, establishment

or improvement of wildlife habitat, and capping of abandoned wells.

Technical assistance means technical expertise, information, training, education, and tools necessary for a producer to be able to successfully implement, operate, and maintain conservation practices to ensure the conservation of natural resources on land active in agricultural, forestry, or related uses. These technical services include the following:

(1) Technical services provided directly to farmers, ranchers, Indian Tribes, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of conservation practices; and

(2) Technical infrastructure, including activities, processes, tools, and agency functions needed to support delivery of technical services, such as technical standards, resource inventories, training, education, data, technology, monitoring, and effects analyses.

Technical service provider (TSP) means an individual, private-sector entity, Indian Tribe, or public agency either:

(1) Certified by NRCS pursuant to 7 CFR part 652 and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contributions agreement, or cooperative agreement with the Department.

Tribal Conservation Advisory Council means, in lieu of or in addition to forming a Tribal conservation district, an Indian Tribe may elect to designate an advisory council to provide input on NRCS programs and the conservation needs of the Tribe and Tribal producers. The advisory council may be an existing Tribal committee or department, and may also constitute an association of member Tribes organized to provide direct consultation to NRCS at the State, regional, and national levels to provide input on NRCS rules, policies, and programs and their impacts on Tribes.

Veteran farmer or rancher means a producer who meets the definition in section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 2279(e)).

Wildlife means non-domesticated birds, fishes, reptiles, amphibians, invertebrates, and mammals.

Wildlife habitat means the aquatic and terrestrial environments required for fish and wildlife to complete their life cycles, providing air, food, cover, water, and spatial requirements.

§ 1466.4 National priorities.

(a) The following national priorities, consistent with statutory resources concerns that include soil quality, water quality and quantity, plants, energy, wildlife habitat, air quality, and related natural resource concerns, may be used in EQIP implementation:

(1) Reductions of nonpoint source pollution, such as nutrients, sediment, pesticides, or excess salinity in impaired watersheds consistent with total maximum daily loads (TMDL) where available; the reduction of surface and groundwater contamination; and the reduction of contamination from agricultural sources, such as animal feeding operations;

(2) Conservation of ground and surface water resources;

(3) Reduction of emissions, such as particulate matter, nitrogen oxides, volatile organic compounds, and ozone precursors and depleters that contribute to air quality impairment violations of National Ambient Air Quality Standards;

(4) Reduction in soil erosion and sedimentation from unacceptable levels on agricultural land;

(5) Promotion of at-risk species habitat conservation including development and improvement of wildlife habitat; and

(6) Energy conservation to help save fuel, improve efficiency of water use, maintain production, and protect soil and water resources by more efficiently using fertilizers and pesticides.

(b) In consultation with other Federal agencies and Indian Tribes, NRCS may undertake periodic reviews of the national priorities and the effects of program delivery at the State and local levels to adapt the program to address emerging resource issues. NRCS may:

(1) Use the national priorities to guide the allocation of EQIP funds to the NRCS State offices;

(2) Use the national priorities in conjunction with State, Indian Tribes, and local priorities to assist with prioritization and selection of EQIP applications; and

(3) Periodically review and update the national priorities utilizing input from the public, Indian Tribes, other Federal and State agencies, and affected stakeholders to ensure that the program continues to address priority resource concerns.

§ 1466.5 Outreach activities.

NRCS will establish program outreach activities at the national, State, Tribal, and local levels in order to ensure that producers whose land has environmental problems and priority resource concerns are aware and

informed that they may be eligible to apply for program assistance. Special outreach will be made to eligible producers with historically low participation rates, including but not restricted to, limited resource, socially disadvantaged, small-scale, or beginning farmers or ranchers, veteran farmers or ranchers, Indian Tribes, Alaska Natives, and Pacific Islanders. NRCS provides outreach so as not to limit producer participation because of size or type of operation, or production system, including small-scale, specialty crop, and organic production.

§ 1466.6 Program requirements.

(a) Program participation is voluntary. An applicant must develop an EQIP plan of operations for the eligible land to be treated that serves as the basis for the EQIP contract. Under EQIP, NRCS provides its participants with technical assistance and payments to plan and apply needed conservation practices.

(b) To be eligible to participate in EQIP, an applicant must:

(1) Be in compliance with the highly erodible land and wetland conservation provisions found at part 12 of this title;

(2) Must be a producer as determined by NRCS;

(3) Have control of the land for the term of the proposed contract unless an exception is made by the Chief in the case of land administered by the Bureau of Indian Affairs (BIA), Indian lands, or other instances in which the Chief determines that there is sufficient assurance of control;

(i) The Chief may determine that land administered by BIA, Indian land, or other such circumstances provides sufficient assurance of control, and

(ii) If the applicant is a tenant of the land involved in agricultural production or forestry management, the applicant will provide the Chief with the written concurrence of the landowner in order to apply a structural practice;

(4) Agree to implement the EQIP plan of operations according to the provisions and conditions established in the EQIP contract, including the EQIP contract appendix;

(5) Submit an EQIP plan of operations or plan developed for the purposes of acquiring an air or water quality permit, provided these plans contain elements equivalent to those elements required by an EQIP plan of operations and are acceptable to NRCS as being consistent with the purposes of the program;

(6) Supply information, as required by NRCS, to determine eligibility for the program, including but not limited to, information to verify the applicant's status as a limited resource, beginning farmer or rancher, and payment

eligibility as established by 7 CFR part 1400;

(7) Comply with applicable registration and reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282, as amended), and 2 CFR parts 25 and 170; and

(8) Provide a list of all members of the legal entity and embedded entities along with members' tax identification numbers and percentage interest in the entity.

(c) Eligible land includes cropland, grassland, rangeland, pasture, NIPF, and other land on which agricultural products, livestock, or forest-related products are produced and resource concerns may be addressed. Other agricultural lands include cropped woodland, marshes, incidental areas included in the agricultural operation, and other types of agricultural land used for production of livestock. However, land may be considered for enrollment in EQIP only if NRCS determines that the land is:

(1) Privately owned land; or

(2) Publicly owned land where:

(i) The land is a working component of the participant's agricultural and forestry operation,

(ii) The participant has control of the land for the term of the contract, and

(iii) The conservation practices to be implemented on the public land are necessary and will contribute to an improvement in the identified resource concern; or

(3) Indian land.

§ 1466.7 EQIP plan of operations.

(a) All conservation practices in the EQIP plan of operations must be approved by NRCS and developed and carried out in accordance with the applicable NRCS planning and FOTG technical requirements.

(b) The participant is responsible for implementing the EQIP plan of operations according to the approved implementation schedule.

(c) The EQIP plan of operations must include:

(1) A description of the participant's specific conservation objectives to be achieved;

(2) To the extent practicable, the quantitative or qualitative goals for achieving the participant's conservation and natural resource objectives;

(3) A description of one or more conservation practices in the conservation management system, including conservation planning, design, or installation activities to be implemented to achieve the conservation objectives;

(4) A description of the schedule for implementing the conservation

practices, including timing, sequence, operation, and maintenance; and

(5) Information that will enable evaluation of the effectiveness of the plan in achieving the conservation objectives.

(d) If an EQIP plan of operations includes an animal waste storage or treatment facility to be implemented on an AFO, the participant must agree to develop and implement a CNMP by the end of the contract period.

(e) If an EQIP plan of operations includes conservation practices that address forest land related resource concerns, the participant must develop and implement a forest management plan by the end of the contract period.

(f) A participant may receive assistance to implement an EQIP plan of operations which includes irrigation related practices to address a water conservation resource concern only if the assistance will facilitate a reduction in ground or surface water use on the agricultural operation, unless the producer is participating in a watershed-wide project, as approved by the State Conservationist, which will effectively conserve water in accordance with § 1466.20.

§ 1466.8 Conservation practices.

(a) NRCS will determine the conservation practices for which participants may receive program payments. NRCS will provide a list of eligible practices to the public as approved in the NRCS FOTG.

(b) Payment will not be made to a participant for conservation practice that:

- (1) Either the applicant or another producer has initiated or implemented prior to application for the program; or
- (2) Has been initiated or implemented prior to contract approval, unless a waiver was granted by the Chief prior to the practice implementation.

(c) A participant will be eligible for payments for water conservation and irrigation related conservation practices only on land that has been irrigated for 2 of the last 5 years prior to application for assistance. This irrigation history requirement may be waived for circumstances as determined by the Chief.

(d) Where new technologies or management approaches that provide a high potential for optimizing conservation benefits have been developed, NRCS may approve interim conservation practice standards that incorporate the new technologies and provide financial assistance for pilot work to evaluate and assess the performance, efficiency, and

effectiveness of the new technology or management approach.

(e) NRCS will at least annually consult with State Technical Committees, Tribal Conservation Advisory Councils, local work groups, and other stakeholders to identify conservation practices with appropriate purposes and the criteria for their application to address priorities to establish wildlife habitat including:

- (1) Upland wildlife habitat;
- (2) Wetland wildlife habitat;
- (3) Habitat for threatened and endangered species;
- (4) Fish habitat;
- (5) Habitat on pivot corners and other irregular areas of a field, and
- (6) Other types of wildlife habitat, as determined by NRCS.

§ 1466.9 Technical services provided by qualified personnel not affiliated with USDA.

(a) NRCS may use the services of qualified third party technical service providers in its delivery of EQIP technical assistance in accordance with 7 CFR part 652.

(b) Participants may obtain technical services from certified technical service providers in accordance with 7 CFR part 652.

(c) NRCS retains approval authority of work done by non-NRCS personnel for the purpose of approving EQIP payments.

Subpart B—Contracts and Payment

§ 1466.20 Application for contracts and selecting applications.

(a) In evaluating EQIP applications, NRCS, with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working group takes into account the following guidelines:

(1) Any producer who has eligible land may submit an application for participation in EQIP. Applications may be accepted on a continuous basis throughout the year. Producers who are members of a joint operation may file a single application for ranking purposes for the joint operation.

(2) NRCS, to the greatest extent practicable, will group applications of similar crop, forestry, and livestock operations for evaluation purposes.

(b) In selecting EQIP applications, NRCS, with advice from the State Technical Committee, Tribal Conservation Advisory Council, or local working group, may establish ranking pools to address a specific resource concern, geographic area, or agricultural operation type or develop a ranking process to prioritize applications for funding that address national, State, and

local priority resource concerns, taking into account the following guidelines:

(1) NRCS will periodically select the highest ranked applications for funding based on applicant eligibility, fund availability, and the NRCS ranking process. NRCS will rank all applications according to the following factors related to conservation benefits to address identified resource concerns through implementation of conservation practices:

(i) The degree of cost-effectiveness of the proposed conservation practices,

(ii) The magnitude of the expected conservation benefits resulting from the conservation treatment and the priority of the resource concerns that have been identified at the local, State, and national levels,

(iii) How effectively and comprehensively the project addresses the designated resource concern or resource concerns,

(iv) Use of conservation practices that provide long-term conservation enhancements,

(v) Compliance with Federal, State, Tribal, or local regulatory requirements concerning soil, water, and air quality; wildlife habitat; and ground and surface water conservation,

(vi) Willingness of the applicant to complete all conservation practices in an expedited manner,

(vii) The ability to improve existing conservation practices or systems which are in place at the time the application is accepted, or that complete a conservation system, and

(viii) Other locally defined pertinent factors, such as the location of the conservation practice, the extent of natural resource degradation, and the degree of cooperation by local producers to achieve environmental improvements.

(2) For applications that include water conservation or irrigation-related practices, and consistent with State law in which the applicant's eligible land is located, NRCS may give priority to those applications that:

(i) Result in a reduction in water use in the agricultural operation, or

(ii) Include an agreement by the applicant not to use any associated water savings to bring new land (other than incidental land needed for efficient operations) under irrigation production unless the producer is participating in a watershed-wide project that will effectively conserve water. NRCS may designate eligible watershed-wide projects that effectively conserve water, using the following criteria:

(A) The project area has a current, comprehensive water resource assessment,

(B) The project plan has demonstrated effective water conservation management strategies, and

(C) The project sponsors have consulted relevant State and local agencies.

(3) If NRCS determines that the conservation benefits of two or more applications for payments are comparable, NRCS may not assign a higher priority to the application solely because it would present the least cost to the program.

(4) The ranking score may not give preferential treatment to applications based on size of the operation, income generated from the operation, type of operation, or other factors not related to conservation benefits to address a resource concern unless authorized in this rule.

(5) The ranking process will determine the order in which applications will be selected for EQIP. The approving authority for EQIP contracts will be NRCS.

(6) NRCS will make available to the public all information regarding priority resource concerns, the list of eligible practices, payment rates, and how EQIP is implemented in a State.

§ 1466.21 Contract requirements.

(a) In order for a participant to receive payments, the participant must enter into a contract agreeing to implement one or more conservation practices. Payment for technical services may be included in the contract pursuant to requirements of this part.

(b) An EQIP contract will:

(1) Identify all conservation practices to be implemented, the timing of practice installation, the operation and maintenance requirements for the practices, and applicable payments allocated to the practices under the contract;

(2) Have a term for not more than 10 years;

(3) Incorporate all provisions as required by law or statute, including requirements that the participant will:

(i) Not implement any practices on the enrolled land that would defeat the program's purposes,

(ii) Refund any program payments received with interest, and forfeit any future payments under the program, on the violation of a term or condition of the contract, consistent with the provisions of § 1466.26,

(iii) Refund all program payments received on the transfer of the right and interest of the producer in land subject to the contract, unless the transferee of the right and interest agrees to assume all obligations, including operation and maintenance of the EQIP contract's

conservation practices, consistent with the provisions of § 1466.25,

(iv) Develop and implement a CNMP when the EQIP contract includes an animal waste management facility on an AFO by the end of the contract period,

(v) Implement a forest management plan when the EQIP plan of operations includes forest-related practices that address resource concerns on NIPF,

(vi) Supply information as may be required by NRCS to determine compliance with contract and program requirements, and

(vii) Specify the participant's responsibilities for operation and maintenance of the applied conservation practices, consistent with the provisions of § 1466.22; and

(4) Specify any other provision determined necessary or appropriate by NRCS to achieve the technical requirements of a practice or purposes of the program.

(c) The participant must start at least one financially assisted practice within the first 12 months of signing a contract. If a participant, for reasons beyond their control, is unable to start conservation practice within the first year of the contract, the participant can request a modification from NRCS.

(d) Each contract will be limited to no more than \$450,000, unless the contract is with an Indian Tribe. Contracts related to organic operations are also subject to payment limitations pursuant to § 1466.24(b).

§ 1466.22 Conservation practice operation and maintenance (O&M).

(a) The contract will incorporate the O&M agreement that addresses the operation and maintenance of conservation practices applied under the contract.

(b) NRCS expects the participant to operate and maintain each conservation practice installed under the contract for its intended purpose for the conservation practice lifespan as specified in the O&M agreement.

(c) Conservation practices installed before the contract execution, but included in the contract to obtain the conservation benefits agreed upon, must be operated and maintained as specified in the contract and O&M agreement.

(d) NRCS may periodically inspect the conservation practice during the contract duration as specified in the O&M agreement to ensure that operation and maintenance requirements are being carried out and that the conservation practice is fulfilling its intended objectives.

(e) If NRCS finds during the contract that a participant is not operating and maintaining practices in an appropriate

manner, NRCS may terminate and request a refund of payments made for that conservation practice under the contract.

§ 1466.23 Payment rates.

(a) NRCS will develop a list of conservation practices eligible for payment under the program, which considers:

(1) The conservation practice cost-effectiveness, implementation efficiency, and innovation;

(2) The degree and effectiveness in treating priority resource concerns;

(3) The number of resource concerns the practice will address;

(4) The longevity of the practice's conservation benefit;

(5) The conservation practice's ability to assist producers in meeting regulatory requirements; and

(6) Other pertinent local considerations.

(b) The Chief will determine the process and methodology used for development, review, and approval of payment schedules to support accurate and cost-effective delivery of program benefits, including determination of estimated incurred costs and income foregone associated with implementation of all financially-supported conservation practices or activities.

(1) A payment to a participant for performing a practice may not exceed, as determined by NRCS, the following maximum payment percentages:

(i) Estimated costs of 75 percent incurred by implementing the conservation practice,

(ii) Estimated income foregone is 100 percent, or

(iii) Both conditions in paragraphs (b)(1)(i) and (ii) of this section, where a producer incurs costs in implementing a conservation practice and foregoes income related to that practice implementation, and

(iv) In determining the amount and rate of estimated income foregone, NRCS may assign higher significance to conservation practices which promote:

(A) Soil health;

(B) Water quality and quantity improvement;

(C) Nutrient management;

(D) Pest management;

(E) Air quality improvement;

(F) Wildlife habitat development, including pollinator habitat;

(G) Invasive species management; and

(H) Other natural resource concerns of regional or national significance, as determined by NRCS.

(2) Notwithstanding paragraph (b)(1) of this section, a participant that meets the definition of a veteran farmer or

rancher or the definition a historically underserved producer under § 1466.3 may be awarded the applicable payment rate and an additional rate that is not less than 25 percent above the applicable rate, provided this increase does not exceed 90 percent of the incurred costs estimated for the conservation practice.

(3) The payments to a participant through EQIP will be reduced proportionately below the contracted payment rate established by the Chief, so that the total combined payments for a conservation practice from EQIP and other USDA sources will not exceed 100 percent of the estimated costs incurred for implementing or performing the conservation practice.

(4) When the agency enters into a formal agreement with partners who provide financial support to help implement program initiatives, the Chief must adjust NRCS program payment percentages to provide practice payment rates to an amount such that the total financial assistance to the participant from NRCS and the partner does not exceed the amount needed to encourage voluntary adoption of the practice. The formal agreement must be approved by NRCS prior to announcement of the program initiative and adjusted payment rates.

(5) NRCS may provide payments for conservation practices on some or all of the operations of a participant related to organic production and the transition to organic production. Payments may not be provided for any costs associated with organic certification, enterprise costs associated with transition to organic production, or for practices or activities that are eligible for financial assistance under the National Organic Program (7 U.S.C. 6523).

§ 1466.24 EQIP payments.

(a) Except for contracts entered into prior to February 7, 2014, which are subject to regulations and contract requirements in effect prior to February 7, 2014, or as provided in paragraph (b) of this section, the total amount of payments paid to a person or legal entity under this part may not exceed an aggregate of \$450,000, directly or indirectly, for all contracts entered into during fiscal years 2014 through 2018. Payments received for technical assistance will be excluded from this limitation. The limitation in this subsection cannot be waived.

(b) Payments for conservation practices related to organic production to a person or legal entity, directly or indirectly, may not exceed in aggregate \$20,000 per fiscal year or \$80,000 during any 6-year period.

(c) To determine eligibility for payments, NRCS will use the following criteria:

(1) The provisions in 7 CFR part 1400, Payment Limitation and Payment Eligibility.

(2) States, political subdivisions, and entities thereof are not considered to be producers eligible for payment.

(3) To be eligible to receive an EQIP payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' social security numbers and percentage interest in the joint operation or legal entity.

(4) Contracts with Indian Tribes are not subject to payment or contract limitations. Indian Tribes will certify in writing that no one individual, directly or indirectly, will receive more than the payment limitation. Certification provided at the time of enrollment will cover the entire contract period. The Tribal entity must also provide, upon request from NRCS, a listing of individuals and payment made, by Social Security number or other unique identification number, during the previous year for calculation of overall payment limitations.

(i) Payment limitations apply to individual Tribal member(s) when applying and subsequently being granted a contract as an individual(s). American Indians, Alaska Natives, and Pacific Islanders may use another unique identification number for each individual eligible for payment.

(ii) Any individual Tribal member that is identified utilizing a unique identification number as an alternative to a tax identification number will utilize only that identifier for all contracts to which the individual Tribal member receives a payment directly or indirectly.

(5) To be eligible to receive a payment, all legal entities or persons applying, either alone or as part of a joint operation, must provide a tax identification number and percentage interest in the legal entity. In accordance with 7 CFR part 1400, an applicant applying as a joint operation or legal entity must provide a list of all members of the legal entity and joint operation and associated embedded entities, along with the members' Social Security numbers and percentage of

interest in the joint operation or legal entity.

(6) Any cooperative association of producers that markets commodities for producers will not be considered to be a person eligible for payment.

(7) Eligibility for payments in accordance with part 7 CFR part 1400, average adjusted gross income limitation, will be determined prior to contract approval.

(8) To be eligible for payments for conservation practices related to organic production or the transition to organic production:

(i) Participants who are USDA certified organic producers will implement conservation practices that are consistent with an approved organic system plan (OSP), and

(ii) Participants who are transitioning to organic production (including participants who are exempt from certification as defined by the Organic Foods Production Act of 1990) will develop an OSP and implement conservation practices that are consistent with OSP requirements and purposes of the program.

(9) A participant will not be eligible for payments for conservation practices on eligible land if the participant receives payments or other benefits for the same practice to address the same resource concern on the same land under any other conservation program administered by USDA.

(10) NRCS may issue advance payments to participants that are historically underserved producers up to 50 percent of the anticipated amount of the costs incurred for the purpose of purchasing materials or services to implement a conservation practice. Eligibility for advance payment is contingent upon the requirement that the participant must obtain an NRCS approved practice design prior to approval of the advance payment. Advance funds paid to program participants must be expended within 90 days from receipt of funds or returned to NRCS within a reasonable time as determined by NRCS.

(11) Before NRCS will approve and issue any EQIP payment, the participant must certify that the conservation practice has been completed in accordance with contract requirements, and NRCS or an approved TSP must certify that the practice has been carried out in accordance with the applicable NRCS FOTG technical standards.

§ 1466.25 Contract modifications and transfers of land.

(a) The participant and NRCS may modify a contract if both parties agree to the contract modification, the

contract continues to meet the purposes of the program, and the contract modification is approved by NRCS.

(b) It is the participant's responsibility to notify NRCS when the participant anticipates either the voluntary or involuntary loss of control of the land covered by an EQIP contract.

(c) The participant and NRCS may agree to transfer a contract to another party.

(1) To receive an EQIP payment, the transferee must be determined by NRCS to be eligible to participate in EQIP and must assume full responsibility under the contract, including the O&M agreement for those conservation practices already installed and those conservation practices to be installed as a condition of the contract.

(2) If the transferee is ineligible or refuses to accept future payments, NRCS will terminate the contract and may require the transferor to refund or forfeit all payments received.

(d) NRCS may require a participant to refund all or a portion of any financial assistance provided under EQIP if the participant sells or loses control of the land covered by an EQIP contract and the new owner or controller is not eligible to participate in the program or refuses to assume responsibility under the contract.

(e) In the event a conservation practice fails through no fault of the participant, NRCS may issue payments to re-establish the practice, at the rates established in accordance with § 1466.23, provided such payments do not exceed the payment limitation requirements as set forth § 1466.24.

§ 1466.26 Contract violations and terminations.

(a) NRCS may terminate a contract:

(1) Without the consent of the participant where it determines that the participant violated the contract; or

(2) With the consent of the participant if NRCS determines that the termination is in the public interest.

(b) NRCS may allow a participant in a contract terminated in accordance with the provisions of paragraph (a) to retain a portion of any payments received appropriate to the effort the participant has made to comply with the contract, or in cases of hardship, where forces beyond the participant's control prevented compliance with the contract. The condition that is the basis for the participant's inability to comply with the contract must not have existed at the time the contract was executed by the participant. If a participant believes that such a hardship condition exists, the participant may submit a request with NRCS for relief pursuant to this

paragraph and any such request must contain documentation sufficient for NRCS to make a determination that this hardship condition exists.

(c) If NRCS determines that a participant is in violation of the terms of a contract, O&M agreement, or documents incorporated by reference into the contract, NRCS may give the participant a period of time, as determined by NRCS, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues to be in violation, NRCS may terminate the EQIP contract in accordance with § 1466.26(e).

(d) Notwithstanding the provisions of paragraph (c) of this section, a contract termination will be effective immediately upon a determination by NRCS that the participant:

(1) Has submitted false information or filed a false claim;

(2) Engaged in any act, scheme, or device for which a finding of ineligibility for payments is permitted under the provisions of § 1466.35, or

(3) Incurred a violation of the contract provisions that cannot be corrected in a timeframe established by NRCS.

(e) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights to future payments under the contract, pay liquidated damages, and refund all or part of the payments received, plus interest.

(1) NRCS may require a participant to provide only a partial refund of the payments received if a previously installed conservation practice can function independently and is not adversely affected by the violation or the absence of other conservation practices that would have been installed under the contract.

(2) NRCS may reduce or waive the liquidated damages depending upon the circumstances of the case.

(3) When terminating a contract, NRCS may reduce the amount of money owed by the participant by a proportion that reflects the good faith effort of the participant to comply with the contract or the existence of hardships beyond the participant's control that have prevented compliance with the contract.

(f) NRCS may terminate a contract that provides payments to a participant for conservation practices related to organic production, if NRCS determines that the participant is not implementing practices according to provisions of the contract agreement or does not meet provisions of this part.

§ 1466.27 Conservation Innovation Grants.

(a) In addition to the terms defined in § 1466.3, the following definitions will be applicable to this section:

(1) *EQIP eligible* means any farming entity, land, and practice that meets the definitions of EQIP as defined in 7 CFR part 1466.

(2) *Grant agreement* means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law and substantial Federal involvement is not anticipated.

(3) *Grant Review Board* consists of representatives of NRCS staff as determined by the Chief.

(4) *Technical Peer Review Panel* means a panel consisting of Federal and non-Federal technical advisors who possess expertise in a discipline or disciplines deemed important to provide a technical evaluation of project proposals submitted under the funding opportunity announcement.

(5) *Project* means the activities as defined within the scope of the grant agreement or cooperative agreement.

(6) *Project director* means the individual responsible for the technical direction and management of the project as designated in the application.

(7) *On-farm conservation research* means an investigation conducted to answer a specified conservation-related question using a statistically valid design, while employing farm scale equipment on farm fields.

(b) *Purpose and scope.* (1) The purpose of Conservation Innovation Grants (CIG) is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection in conjunction with agricultural production. Notwithstanding any limitation of this part, NRCS will administer CIG in accordance with this section. Unless otherwise provided for in this section, grants under CIG are subject to the provisions of 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(2) Applications for CIG are accepted from the 50 States, District of Columbia, Caribbean Area (Puerto Rico and Virgin Islands of the United States), and Pacific Islands Area (Guam, American Samoa, and Commonwealth of the Northern Mariana Islands).

(3) Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in grants.gov or successor Federal grants portal. In addition, at the Chief's discretion, each State may implement a separate State-level component of CIG.

(4) Applications for CIG should demonstrate the use of innovative approaches and technologies to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG will fund projects that promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals and guides or to the private sector. Technologies and approaches eligible for funding in a project's geographic area through EQIP are not eligible for CIG funding except where the use of those technologies and approaches demonstrates clear innovation. The burden falls on the applicant to sufficiently describe the innovative features of the proposed technology or approach.

(5) For the purposes of CIG, the proposed innovative project or activity must promote environmental protection or natural resources enhancement, and encompass development and pilot field testing, on-farm research and demonstration, evaluation, and/or implementation of:

(i) Conservation adoption incentive systems, including market-based systems, or

(ii) Promising conservation technologies, practices, systems, procedures, or approaches.

(6) Projects or activities under CIG must comply with all Federal, State, and local regulations throughout the duration of the project and:

(i) Make use of proven technology or a technology that has been studied sufficiently to indicate a high probability for success,

(ii) Demonstrate, evaluate, or verify environmental (soil, water, air, plants, energy and animal) effectiveness, utility, affordability, and usability of conservation technology in the field,

(iii) Adapt conservation technologies, management, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption,

(iv) Introduce conservation systems, approaches, and procedures from another geographic area or agricultural sector, or

(v) Demonstrate transferability of knowledge.

(c)(1) CIG funding will be available for single- or multi-year projects. Funding for CIG will be announced in grants.gov or a Federal grant portal through an Announcement for Program Funding (APF). The Chief will determine the funding level for CIG on an annual basis. Funds for CIG are derived from funds made available for EQIP. The Chief may establish funding limits for individual grants.

(2) Selected applicants may receive grants or cooperative agreements of up to 50 percent of the total project cost not to exceed the Federal project cap. Applicants must provide non-Federal funding equal to the amount of Federal funds requested. Non-Federal funds must be derived from cash and/or in-kind sources.

(3) CIG is designed to provide financial assistance to grantees. Procurement of any technical assistance required to carry out a project is the responsibility of the grantee. Technical oversight for grant projects will be provided by a Federal technical representative who will be designated by NRCS.

(d) CIG applications must describe the use of innovative approaches or technologies to address a natural resource conservation concern or concerns. The resource concerns for CIG will be identified by the Chief and may change each year. The resource concerns will be published in the APF.

(e)(1) To be eligible, CIG applicants must be an Indian Tribe, State or local unit of government, nongovernmental organization, or individual.

(2) To be eligible, projects must involve landowners who meet the eligibility requirements of § 1466.6(b)(1) through (3). All agricultural producers receiving a direct or indirect payment through participation in a CIG project must meet those eligibility requirements.

(3) Up to 10 percent of the total funds available for CIG may be set aside for applications from historically underserved producers or veteran farmers or ranchers, or a community-based organization comprised of or representing these entities. Funds not awarded from the set-aside pool will revert back into the general CIG funding pool.

(f) The CIG APF will contain guidance on how to apply for the grants competition. CIG will be advertised through the NRCS Web site and grants.gov or other Federal grants portal. Grant applications will be available on the NRCS Web site or by contacting NRCS at the address provided in the

APF. CIG grant applications will consist of standard cover sheet and budget forms, in addition to a narrative project description and required legal declarations and certifications.

(g) Complete applications will be evaluated by a peer review panel based on the application evaluation criteria identified in the APF. Application evaluations will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for awards to the Chief, and the final selections will be made by the Chief. Grant or cooperative agreement awards will be made by the NRCS national office after selection of the grantees is made and after the grantee agrees to the terms and conditions of the NRCS Grant or cooperative agreement document.

(h)(1) NRCS has the option of implementing a State-level CIG component. A State program will follow the requirements of this section, except for those features described in this subsection.

(2) Funding availability, application, and submission information for State competitions will be announced through public notices (grants.gov or a successor Federal grants portal and on the State NRCS Web site), separately from the national program. The State component will emphasize projects that cover limited geographic areas including individual farms, multi-county areas, or small watersheds.

(3) The State Conservationist will determine the funding level for the state CIG competition, with individual grants not to exceed \$75,000.

(4) NRCS may choose to adhere to the CIG national resource concerns for a state or may select a subset of those concerns that more closely match the resource concerns of the State.

(i) Allocation of rights to patents and inventions shall be in accordance with 7 CFR 3019.36. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. In accordance with 7 CFR 3019.2, this provision will also apply to commercial organizations for the purposes of CIG. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

Subpart C—General Administration

§ 1466.30 Appeals.

A participant may obtain administrative review of an adverse

decision under EQIP in accordance with parts 11 and 614 of this title. Determination in matters of general applicability, such as payment rates, payment limits, the designation of identified priority resource concerns, and eligible conservation practices are not subject to appeal.

§ 1466.31 Compliance with regulatory measures.

Participants who carry out conservation practices will be responsible for obtaining the authorities, rights, easements, permits, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants will be responsible for compliance with all laws and for all effects or actions resulting from the participant's performance under the contract.

§ 1466.32 Access to operating unit.

Any authorized NRCS representative will have the right to enter an agricultural operation or tract for the purposes of determining eligibility and for ascertaining the accuracy of any representations related to contract performance. Access will include the right to provide technical assistance, determine eligibility, inspect any work undertaken under the contract, and collect information necessary to evaluate the conservation practice performance specified in the contract. The NRCS representative will make an effort to contact the participant prior to the exercising this provision.

§ 1466.33 Equitable relief.

(a) If a participant relied upon the advice or action of any authorized NRCS representative and did not know, or have reason to know, that the action or advice was improper or erroneous, NRCS may accept the advice or action as meeting program requirements and may grant relief, to the extent it is deemed desirable by NRCS, to provide a fair and equitable treatment because of the good-faith reliance on the part of the participant. The financial or technical liability for any action by a participant that was taken based on the advice of a NRCS certified non-USDA TSP is the responsibility of the certified TSP and will not be assumed by NRCS when

NRCS authorizes payment. Where a participant believes that detrimental reliance on the advice or action of a NRCS representative resulted in an ineligibility or program violation, but the participant believes that a good faith effort to comply was made, the participant may request equitable relief under § 635.3 in chapter VI of this title.

(b) If, during the term of an EQIP contract, a participant has been found in violation of a provision of the EQIP contract, the O&M agreement, or any document incorporated by reference through failure to fully comply with that provision, the participant may be eligible for equitable relief under § 635.4 in chapter VI of this title.

§ 1466.34 Offsets and assignments.

(a) Except as provided in paragraph (b) of this section, any payment or portion thereof to any person, joint venture, legal entity, or Tribe will be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the United States Government. The regulations governing offsets and withholdings found at part 1403 of this chapter will be applicable to contract payments.

(b) EQIP participants may assign any payments in accordance with part 1404 of this chapter.

§ 1466.35 Misrepresentation and scheme or device.

(a) A person, joint operation, legal entity, or Indian Tribe that is determined to have erroneously represented any fact affecting a program determination made in accordance with this part will not be entitled to contract payments and must refund to NRCS all payments, plus interest, determined in accordance with 7 CFR part 1403.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of the program;

(2) Made any fraudulent representation;

(3) Adopted any scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program; or

(4) Misrepresented any fact affecting a program determination, will refund to NRCS all payments, plus interest, determined in accordance with 7 CFR part 1403, received by such producer with respect to all contracts. The producer's interest in all contracts will be terminated.

§ 1466.36 Environmental credits for conservation improvements.

(a) A participant in EQIP may achieve environmental benefits that may qualify for environmental credits under an environmental credit-trading program. NRCS asserts no direct or indirect interest on these credits. However, NRCS retains the authority to ensure that EQIP purposes are met. In addition, any requirements or standards of an environmental market program in which an EQIP participant simultaneously enrolls to receive environmental credits must be compatible with the purposes and requirements of the EQIP contract and with this part.

(b) The participant must meet all O&M requirements for EQIP-funded activities, consistent with § 1466.21 and § 1466.22. Where activities required under an environmental credit agreement may affect the land and conservation practices under an EQIP contract, NRCS recommends that EQIP participants request assistance with the development of a compatibility assessment prior to entering into any credit agreement. The EQIP contract may be modified in accordance with policies outlined in § 1466.25, provided the modification meet EQIP purposes and is in compliance with this part.

(c) EQIP participants may not use EQIP funds to implement conservation practices and activities that the participant is required to establish as a result of a court order. EQIP funds may not be used to satisfy any mitigation requirement for which the EQIP participant is responsible.

Signed this 4th day of December 2014, in Washington, DC.

Jason A. Weller,

Vice President, Commodity Credit Corporation and Chief, Natural Resources Conservation Service.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 224

Endangered and Threatened Wildlife and Plants; Final Endangered Listing of Five Species of Sawfish Under the Endangered Species Act; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No 101004485–4999–03]

RIN 0648–XZ50

Endangered and Threatened Wildlife and Plants; Final Endangered Listing of Five Species of Sawfish Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue this final rule implementing our determination that the narrow sawfish (*Anoxypristis cuspidata*), dwarf sawfish (*Pristis clavata*),argetooth sawfish (collectively *Pristis pristis*; formerly *Pristis pristis*, *Pristis microdon*, and *Pristis perotteti*), green sawfish (*Pristis zijsron*), and the non-U.S. distinct population segment (DPS) of smalltooth sawfish (*Pristis pectinata*) are endangered species under the Endangered Species Act (ESA) of 1973, as amended. We also include a change in the scientific name forargetooth sawfish in this final rule to codify the taxonomic reclassification of *P. perotteti* to *P. pristis*. We are not designating critical habitat because the geographical areas occupied by the species are entirely outside U.S. jurisdiction and we have not identified any unoccupied areas within U.S. jurisdiction that are essential to the conservation of any of the five species. We have reviewed the status of the five species of sawfish, considered public and peer review comments, and conservation efforts being made to protect all five species, and we have made our determination based on the best available scientific and commercial data that all five species of sawfish—the narrow sawfish (*Anoxypristis cuspidata*), dwarf sawfish (*Pristis clavata*),argetooth sawfish (collectively *Pristis pristis*; formerly *Pristis pristis*, *Pristis microdon*, and *Pristis perotteti*), green sawfish (*Pristis zijsron*), and the non-U.S. DPS of smalltooth sawfish (*Pristis pectinata*)—are at risk of extinction throughout all of their ranges and should be listed as endangered species.

DATES: This final rule is effective January 12, 2015.

ADDRESSES: Information regarding this final rule may be obtained by contacting NMFS, Protected Resources Division,

263 13th Avenue South, St. Petersburg, Florida, 33701. The final rule and citation list are located on our Web site at http://sero.nmfs.noaa.gov/protected_resources/sawfish/index.html.

FOR FURTHER INFORMATION CONTACT:

Shelley Norton, NMFS, Southeast Regional Office (727) 824–5312 or Dr. Dwayne Meadows, NMFS, Office of Protected Resources (301) 427–8403.

SUPPLEMENTARY INFORMATION:**Background**

On September 10, 2010, we received a petition from the WildEarth Guardians (WEG) requesting we list six sawfish species—knifetooth, narrow, or pointed sawfish (*A. cuspidata*), hereinafter the narrow sawfish; dwarf or Queensland sawfish (*P. clavata*), hereinafter the dwarf sawfish;argetooth sawfish (*P. pristis* and *P. microdon*); green sawfish (*P. zijsron*); and the non-listed population(s) of smalltooth sawfish (*P. pectinata*)—as endangered or threatened under the ESA; or alternatively, list any distinct population segments (DPS) that exist under the ESA. On March 7, 2011, we published a 90-day finding (76 FR 12308) stating the petitioned action may be warranted for five of the six species. The five species were *A. cuspidata*, *P. clavata*, *P. microdon*, *P. zijsron*, and the non-listed population(s) of *P. pectinata*. Information in our records at the time indicated that *P. pristis*, as described in the petition, was not a valid species. Our 90-day finding requested information to inform our decision, and announced the initiation of status reviews for the five species. On June 4, 2013, we published a proposed rule (78 FR 33300) to list *A. cuspidata*, *P. clavata*, *P. pristis* (formerly *P. pristis*, *P. microdon*, and *P. perotteti*), *P. zijsron*, and the non-U.S. DPS of *P. pectinata* as endangered. We also included a change in the scientific name forargetooth sawfish in the proposed rule to codify the taxonomic reclassification of *P. perotteti* to *P. pristis*. Theargetooth sawfish (*P. perotteti*) was already listed as endangered on July 12, 2011 (76 FR 40822), but this listing decision concerns the entireargetooth sawfish (*P. pristis*) species as it is currently classified, which also includes the species formerly classified as *P. perotteti* and *P. microdon*. We did not propose to designate critical habitat because the geographical areas occupied by the species are entirely outside U.S. jurisdiction and we did not identify any unoccupied areas that are currently essential to the conservation of any of these species. We solicited public and peer reviewer comments on the proposed rule and also coordinated

outreach on the proposed rule with the Department of State to give notice to foreign nations where the species are believed to occur.

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a “species” under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a “species” as “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.” On February 7, 1996 (61 FR 4722), NMFS and the U.S. Fish and Wildlife Service (USFWS; collectively, the Services) adopted a policy identifying two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As stated in the DPS policy, Congress expressed its expectation that the Services would exercise their authority with regard to the use of DPSs sparingly and only when the biological evidence indicates such action is warranted.

Section 3 of the ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Thus we interpret an “endangered species” to be one that is presently in danger of extinction. A “threatened species,” is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction— either presently (endangered) or in the foreseeable future (threatened).

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D)

the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We are required to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation to protect the species.

Accordingly, we have followed a stepwise approach in making our listing determinations for *A. cuspidata*, *P. clavata*, *P. pristis* (formerly *P. pristis*, *P. microdon*, and *P. perotteti*), *P. zijsron*, and the non-U.S. DPS of *P. pectinata*. For the non-U.S. DPS of *P. pectinata* that may qualify as a DPS, we considered biological evidence, such as genetic information to determine if the population met the DPS policy criteria. Using the best available information gathered during the status reviews, we completed an extinction risk assessment using the general procedure of Wainwright and Kope (1999). We then assessed the threats affecting the status of each species using the five factors identified in section 4(a)(1) of the ESA, and then assessed public and peer reviewer comments.

Once we determined the threats, we assessed the efforts being made to protect each species to determine if these conservation efforts were adequate to mitigate the existing threats and alter extinction risk. We evaluated conservation efforts using the criteria outlined in the joint NMFS and U.S. Fish and Wildlife Service (USFWS) Policy for Evaluating Conservation Efforts (PECE; 68 FR 15100; March 28, 2003) to determine the certainty of implementation and effectiveness for future conservation efforts not yet fully implemented or effective. Finally, we re-assessed the extinction risk of each species after considering the existing conservation efforts.

In order to conduct a comprehensive review, NMFS Southeast Region Protected Resources Division and NMFS Southeast Fisheries Science Center staff members collaborated to identify the best available information. Unlike some of our previous 12-month findings, we did not develop a separate status review report. Instead, we presented all information available for these species in the proposed rule, and we present that information again, as modified by public comment on the proposed rule, in this *final rule*. We first discuss background information relative to all five species, and then we include descriptions of the natural history specific to each species.

Sawfish General Species Description

Sawfishes are a group of shark-like rays. Taxonomically, they are classified in the Family Pristidae (sawfishes), Order Rajiformes (skates, rays, and sawfishes), subclass (Elasmobranchii), and Class Chondrichthyes (cartilaginous fish). The overall body form of sawfishes is similar to sharks, but they are flattened dorso-ventrally. Sawfishes are covered with dermal denticles (teeth-like scales) and possess enlarged pectoral fins.

The most distinct characteristic of sawfishes is their large, flat, toothed rostrum or 'saw' with large teeth on each side. The rostral teeth are made from calcified tissue that is neither dentin nor enamel, though it is more similar to the latter (Bradford, 1957). Rostral teeth develop inside sockets on the rostrum and are held in place by strong fibers. Unlike sharks, sawfish rostral teeth are not replaced, although partially broken teeth may continue to grow (Miller, 1974). For some species of sawfish, the number of rostral teeth can vary by geographic region.

Sawfishes use their rostrum to locate, stun, and kill prey, generally small schooling fishes such as mullet, herring, shad, and sardines (Bigelow and Schroeder, 1953). Breder (1952), in summarizing the literature on observations of sawfish feeding behavior, noted that they attack fish by slashing sideways through schools of fish, and then impale the fish on their rostral teeth. Prey are subsequently scraped off their rostral teeth by rubbing the rostrum on the bottom and then ingesting the whole fish. Bigelow and Schroeder (1953) also report that sawfish feed on crustaceans and other benthic species. Recent studies indicate that sawfishes may use their toothed rostrum to sense their prey's electric fields (Wueringer *et al.*, 2011; 2012).

Sawfish species are distributed primarily in circumtropical shallow coastal waters that generally vary in salinity. While sawfishes are commonly found in shallow water, adults are known to also inhabit deeper waters (greater than 130 ft, 39.6 m). Some sawfishes are found in freshwater, with established populations in major rivers and lakes of South America, Africa, Australia, and Southeast Asia. The physical characteristics of habitat, such as salinity and temperature, likely influence a sawfish's movement patterns. Tides limit the physical habitat area available, which may explain movement into shallow water areas during specific tidal cycles (Blaber *et al.*, 1989).

Life history data on sawfishes are limited. Fertilization is internal by means of male claspers and reproduction is ovoviviparous; females carry eggs with a yolk sac that nourishes developing young until they hatch within the body. Sawfishes are born with a gelatinous substance around their rostral teeth to protect the mother during birth (Last and Stevens, 1994; Rainboth, 1996; Compagno and Last, 1999; Raje and Joshi, 2003; Field *et al.*, 2009). It is thought that most sawfishes breed every two years and have a gestation period of about four to five months (Bigelow and Schroeder, 1953; Thorson, 1976a). The number of young in a litter varies by species, as does the age at sexual maturity.

Like most chondrichthyes, sawfishes occupy the mid- to upper-level of their food web. Smaller sawfishes, including juveniles, may be preyed upon by larger sharks like the bull shark (*Carcharhinus leucas*), estuarine crocodiles (*Crocodylus porosus*), or alligators (*Alligator mississippiensis*). Sawfishes may use their saw as a weapon for defense against these predators (Brewer *et al.*, 1997; Wueringer *et al.*, 2009).

Previously, seven valid species of sawfish were recognized worldwide (Compagno, 1999). Compagno and Cook (1995) and Compagno (1999) identified these seven species of sawfish as *A. cuspidata* Latham 1794, *P. microdon* Latham 1794, *P. perotteti* Muller and Henle 1841, *P. pristis* Linnaeus 1758, *P. clavata* Garman 1906, *P. pectinata* Latham 1794, and *P. zijsron* Bleeker 1851. Since then, the taxonomy, delineation, and identification of these species have proven problematic (Oijen *et al.*, 2007; Wiley *et al.*, 2008; Wueringer *et al.*, 2009). Most recently, Faria *et al.* (2013) hypothesized that the taxonomic uncertainty occurred due to several factors: many original species descriptions were abbreviated, few holotypes are available for examination, reference material is not available for comparison in museum collections, and it is difficult to obtain fresh specimens because of the infrequent captures of all sawfishes. The majority of the confusion regarding taxonomic classification of *Pristidae* was related to the species *P. pristis*. To resolve questions regarding the taxonomy of pristids, Faria *et al.* (2013) used historical taxonomy, external morphology, and mitochondrial DNA (mtDNA) sequences (NADH-2 loci) to conclude that sawfishes have five species in two genera: *P. pristis*, *P. clavata*, *P. pectinata*, *P. zijsron*, and *A. cuspidata*. We accept this proposed taxonomy as the best available science.

Natural History of the Narrow Sawfish (*Anoxypristis cuspidata*)

Taxonomy and Morphology

The narrow sawfish was first described by Latham in 1794 as *P. cuspidatus*. It was later reclassified as *Anoxypristis* due to morphological differences from *Pristis* that include its narrow rostral saw, which lacks teeth on the first quarter of the saw closest to the head in adults, as well as the distinct shape of the lower lobe of the caudal fin (Compagno et al., 2006a). In juveniles, the portion of the rostrum without teeth is only about one-sixth of the saw length (Wueringer et al., 2009).

In addition, the narrow sawfish is characterized by dagger-shaped rostral teeth (Fowler, 1941; Blegvad and Loppenthin, 1944; Compagno and Last, 1999; Faria et al., 2013). The narrow sawfish also has a second pair of hollow cartilaginous tubes in its rostrum that are not present in other sawfishes. These canals contain an additional connection to the ampullae of Lorenzini (special sensory receptors) located on the underside of the rostrum (Wueringer et al., 2009).

Rostral tooth count varies for this species between 18 and 22 (Last and Stevens, 1994), 24 and 28 (Hussakof, 1912), and 27–32 (Miller, 1974). The total number of teeth has been found to vary by individual, region, and sex. Some studies report males having fewer rostral teeth than females, while others report the opposite (Last and Stevens, 1994; Compagno and Last, 1999). While total rostral tooth count is often inconsistent among individuals or studies, the number of teeth an individual has is fixed during development (Wueringer et al., 2009).

The pectoral fins of the narrow sawfish are narrow, short, and shark-like in shape. The first dorsal fin is located posterior to the insertion of the pelvic fins (Compagno and Last, 1999). Within the jaw, there are 94 teeth on the upper jaw and 102 on the lower jaw (Taniuchi et al., 1991a). The eyes are large and very close to the spiracles. Coloration is dark grey dorsally and whitish ventrally (Fowler, 1941; Compagno and Last, 1999).

Narrow sawfish are the only sawfish having tricuspid (three-pointed) denticles (White and Moy-Thomas, 1941). These denticles first appear on sawfish at 25.6 to 28 in (65 to 71 cm) total length (TL), after they are born. In general, the narrow sawfish is considered “naked” because denticle coverage in adults is often sporadic and widely spaced, usually only covering the rostrum and anterior fin margins, making the skin appear smooth (Fowler,

1941; Gloerfelt-Tarp and Kailola, 1984; Last and Stevens, 1994; Wueringer et al., 2009). Narrow sawfish also have buccopharyngeal denticles (tooth-like structures) present in their mouth. This species does not have tubercles or thorns on their skin (Deynat, 2005).

Habitat Use and Migration

The narrow sawfish is largely euryhaline and moves between estuarine and marine environments (Gloerfelt-Tarp and Kailola, 1984; Last, 2002; Compagno, 2002b; Compagno et al., 2006a; Peverell, 2008). It is generally found in inshore waters in depths of less than 130 ft (39.6 m) with salinities between 25 and 35 parts per thousand (ppt), spending most of its time near the substrate or in the water column over coastal flats (Compagno and Last, 1999; Last, 2002; Peverell, 2005; Peverell, 2008; Wueringer et al., 2009). While Smith (1936) described it as a possible freshwater species, there are only a few reports from freshwater (Taniuchi and Shimizu, 1991; Last and Compagno, 2002; Bonfil and Abdallah, 2004; Wueringer et al., 2009). We are not aware of any fresh or salt water tolerance studies on the species (Compagno, 2002a; Compagno, 2002b) and conclude its habitat is euryhaline.

In studies conducted by Peverell (2008), the narrow sawfish in the Gulf of Carpentaria, Australia, undergo an ontogenetic shift in habitat. Larger individuals were commonly encountered offshore, while smaller individuals were mostly found in inshore waters. Peverell (2008) also found females were more likely to be offshore compared to males, at least during the months of the study (February to May). This suggests that smaller narrow sawfish use the protection and prey abundance found in shallow, coastal waters (Dan et al., 1994; Peverell, 2005; Peverell, 2008).

Age and Growth

Two studies have been conducted on age and growth of narrow sawfish. Field et al. (2009) compared previously-aged vertebrae with aged rostral teeth and found a direct correlation up to age 6. After age 6, an individual's age was often underestimated using tooth growth bands as the teeth become worn over time (Field et al., 2009). Peverell (2008) then used aged vertebrae to develop more accurate growth curves for both sexes. While the maximum observed age of narrow sawfish from vertebrae was 9 years, the theoretical longevity was calculated at 27 years (Peverell, 2008). A 1-year-old animal has a saw length of approximately 4.5 in (11.5 cm). Female narrow sawfish begin

to mature at 8 ft 1 in (246 cm) TL and all are mature at 15 ft 5 in (470 cm) TL; males are mature at 8 ft (245 cm) TL (Pogonoski et al., 2002; Bonfil and Abdallah 2004; Peverell, 2005; 2008). The maximum recorded length of a narrow sawfish is 15 ft 5 in (4.7 m) TL, with unconfirmed records of 20 ft (6.1 m) TL (Last and Stevens, 1994; Compagno and Last, 1999; Pogonoski et al., 2002; Bonfil and Abdallah, 2004; Faria et al., 2013).

Reproduction

The narrow sawfish gives birth to a maximum of 23 pups in the spring. The total length (TL) of pups at birth is between 17–24 in (43–61 cm) (Compagno and Last, 1999; Peverell, 2005; 2008). The reproductive cycle is assumed to be annual, with an average of 12 pups per litter (Peverell, 2005; D'Anastasi, 2010). The number of pups is related to female body size, as smaller females produce fewer offspring than larger females (Compagno and Last, 1999). Preliminary genetic research suggests that the narrow sawfish may not have multiple fathers per litter (D'Anastasi, 2010).

Mating season may vary by geographic region. Female narrow sawfish captured in August (dry season) in the Gulf of Carpentaria, Australia, all contained large eggs indicating they were mature (Peverell, 2005). Mature males were also captured in similar locations during the same time of year (McDavitt, 2006). Although animals are sexually mature in the dry season, mating may not occur until the rainy season in March-May in the Indo-West Pacific (Raje and Joshi, 2003).

Age at maturity for narrow sawfish is 2 years for males and 3 years for females (Peverell, 2008). The intrinsic rate of population increase (rate of growth of the population) based on life history data from the exploited population in the Gulf of Carpentaria, Australia, has been estimated at 0.27 per year (Moreno Iturria, 2012), with a potential population doubling time of 2.6 years.

Diet and Feeding

Narrow sawfish feed on small fish and cuttlefish (Compagno and Last, 1999; Field et al., 2009) and likely on crustaceans, polychaetes, and amphipods (Raje and Joshi, 2003).

Population Structure

Genetic and morphological data support the division of the global species of narrow sawfish into populations. Based on gene sequence data, there is a very low level of gene flow between the northern Indian Ocean (n = 2) and west Pacific (n = 11)

populations. Four haplotypes (combinations of deoxyribonucleic acid sequences or DNA) were identified: northern Indian Ocean; Indonesian; New Guinean–Australian; and one specimen that lacked locality information, but had a northern Indian Ocean haplotype. Specimens collected from the Indian Ocean had a higher number of rostral teeth per side than those collected from the western Pacific (Faria *et al.*, 2013).

Field *et al.* (2009) examined the primary chemical elements of rostral teeth (*i.e.*, oxygen, calcium, and phosphorus) from narrow sawfish captured throughout Australia in an attempt to separate subpopulations based on the isotopes of these chemicals. They found distinctions between regions indicating two separate subpopulations within the Gulf of Carpentaria Australia: one in the west (Northern Territory) and one in the east (Queensland). Using isotopes to separate elasmobranch subpopulations is in its infancy, however, and, coupled with the limited number of samples, it is not clear whether these results agree with the above genetic studies of population structure. Isotopic signatures indicate the location where an animal spends most of its time and identifies its major prey resources and do not necessarily provide information on reproductive connectivity between regions. Therefore, we conclude that the best available information on isotopic signatures does not support separating narrow sawfish into subpopulations.

Distribution and Abundance

The narrow sawfish is found throughout the eastern and western portions of the Indian Ocean as well as much of the western Pacific Ocean. The range once extended from as far west as the Red Sea in Egypt and Somalia (M. McDavitt, National Legal Research Group, Inc. pers. comm. to IUCN, London, 2012) to as far north as Honshu, Japan, including India, Sri Lanka, and China (Blaber *et al.*, 1994; Last and Stevens, 1994; Compagno and Last, 1999; Compagno *et al.*, 2006a; Van Oijen *et al.*, 2007). The species has also been recorded in rivers in India, Burma, Malaysia, and Thailand (Compagno, 2002b).

While uncertain, the current status of narrow sawfish populations across its range has declined substantially from historic levels. The species was previously commonly reported throughout its range, but it is now becoming rare in catches by both commercial and recreational fishers (Brewer *et al.*, 2006; Compagno *et al.*, 2006a). To evaluate the current and

historic distribution and abundance of the narrow sawfish, we conducted an extensive search of peer-reviewed publications and technical reports, newspaper, and magazine articles. We also reviewed records from the Global Biodiversity Information Facility (GBIF) database (www.gbif.org). The results of that search are summarized by major geographic region.

Indian Ocean

The earliest reports of narrow sawfish in the Indian Ocean were from 1937 and 1938. Two sawfish were captured from the northern Indian Ocean (no specific location was reported). A third specimen was later caught in the same area (Blegvad and Loppenthin, 1944).

From areas in the western Indian Ocean around the Arabian Sea, three rostra were collected in 1938: Two near Bushire, Iran, presumably from the Gulf of Oman, and a third in Jask, Iran, also adjacent to the Gulf of Oman (Blegvad and Loppenthin, 1944). The most extensive report was 13 rostra from the Persian Gulf (one of those was from Iran) but it did not include date information. Four juveniles were recorded in Pakistan waters in 1975: Two females and two males (Faria *et al.*, 2013). The last published record of narrow sawfish from the western edge of the range, in the Straits of Hormuz, was in 1997 (A. Moore, RSK Environment Ltd., pers. comm. to IUCN, 2012).

Most records of narrow sawfish in the Indian Ocean are from the Bay of Bengal. In 1960 and 1961, 118 sawfish, mostly narrow sawfish, were captured during fishery surveys using gillnets and long lines (James, 1973). There are several additional records of rostra from Bangladesh in the 1960s (Faria *et al.*, 2013). One record from the California Academy of Sciences is from a fish market in Bangkok, Thailand in 1961. A narrow sawfish was used for a 1969 parasitological study in Bangladesh, but no further information was recorded (Moravec *et al.*, 2006). Faria *et al.* (2013) also reported one specimen from 1976, as well as 11 more records off India, but no dates were recorded. Narrow sawfish were recorded from the Kirachi West Wharf Fish Market in Pakistan in 1978 (GBIF Database). From 1982 to 1994, one juvenile female, one juvenile male, and three rostra were recorded in Pondicherry, India (Deynat, 2005). Two female neonate specimens were recorded in Sri Lanka, and three juveniles (two males and one female) from Malabar in Southwest India were also reported from 1982–1994 (Deynat, 2005). Between 1981 and 2000, in the Bay of Bengal, total elasmobranch landings records are dominated by rays

and include narrow sawfish (Raje and Joshi, 2003). Landings of narrow sawfish are currently reported from the Indian Ocean off India although they are infrequent (K.K. Bineesh, Marine Fisheries Research Institute, Department of Pelagic Fisheries, India, pers. comm. to IUCN, 2012).

Indo-Pacific Ocean (excluding Australia)

There are several accounts of narrow sawfish over time from various unspecified locations throughout the Indo-Pacific. One narrow sawfish specimen was recorded from Mabe, India in 1835, making it the oldest museum record from the region (GBIF Database). The first records of narrow sawfish were for juvenile males in 1852 and 1854 (Faria *et al.*, 2013). A female and male were recorded in 1867, but no exact location was specified (Faria *et al.*, 2013). In 1879, one male and one female were also recorded from Indonesia and four rostra were reported from China in 1898 (Faria *et al.*, 2013).

The next reports of narrow sawfish from the Indo-Pacific occurred in the 1930s. A female was reported in 1931 in Indonesia (no specific location), and a male was reported in Singapore in 1937 (Blegvad and Loppenthin, 1944). A narrow sawfish was caught in the Gulf of Thailand in March 1937 (Blegvad and Loppenthin, 1944). A single report from Papua New Guinea was recorded in 1938 (Faria *et al.*, 2013). In 1945, narrow sawfish were reported in the Chao Phraya River, Thailand and its tributaries (Smith, 1945). In 1952, two females were captured from Batavia, Semarang, Indonesia along with a third female without a rostrum (Van Oijen *et al.*, 2007).

Records of narrow sawfish throughout the Indo-Pacific were scattered and infrequent throughout the 1950s. Faria *et al.* (2013) recorded rostra from Papua New Guinea; two from 1955 and one each from 1966, 1980, and 2000. A male was caught in 1989 from the Oriomo River, Papua New Guinea (Taniuchi *et al.*, 1991b; Taniuchi and Shimizu, 1991; Taniuchi, 2002). There are other reports of narrow sawfish from Papua New Guinea around the Gulf of Papua and in Bootless Bay from the 1970s, but there are no recent records (Taniuchi *et al.*, 1991b). In a comprehensive literature search for the period 1923 to 1996 on the biodiversity of elasmobranchs in the South China Sea, Compagno (2002a) found no records of sawfishes. Yet, fresh dorsal and caudal fins of narrow sawfish were found during a survey of fish markets from 1996 to 1997 in Thailand (Manjaji, 2002b).

There are even fewer records of narrow sawfish from the Indo-Pacific over the last few decades. The only known specimen in the twenty-first century is a single report from New Guinea in 2001 (L. Harrison, IUCN, pers. comm. to John Carlson, NMFS, 2012).

Australia

Australia may have larger populations of narrow sawfish than any other area within the species' range (Peeverell, 2005). According to the GBIF Database for Australia flora and fauna, the first museum record of the narrow sawfish in Australia is from the Australia Museum in Townsville, Queensland in 1963. This database also lists observations of narrow sawfish throughout the 1980s, mostly recorded by the Commonwealth Scientific and Industrial Research Organization (CSIRO) Marine and Atmospheric Research group. One individual was observed in Western Australia in 1982 and in 1983. In 1984, CSIRO observed one narrow sawfish just west of Darwin, Northern Territory, and five in the Gulf of Carpentaria (three in the east and two in the northwest). Five additional records in 1984 were from the northwest tip of the western Gulf of Carpentaria, one from outside the Daly River, and three outside of Kakadu National Park. In 1985, two narrow sawfish were observed near Marchinbar Island, Northern Territory. In the eastern Gulf of Carpentaria, four narrow sawfish were observed in 1986, with single observations in 1987 and 1988. In 1988, a narrow sawfish was observed in Western Australia. Two narrow sawfish were reported from the Gulf of Carpentaria in 1990 (Blaber *et al.*, 1994). Single specimens were captured in 1991 from the west coast of Australia (Alexander, 1991), the Gulf of Carpentaria in 1995 (Brewer *et al.*, 1997), and the Arafura Sea in 1999 (Beveridge *et al.*, 2005). Faria *et al.* (2013) reported three rostra records from private collections in Australia from 1998–1999, but no other information on the collection location was reported.

Narrow sawfish have been reported in multiple studies between 2000 and 2011, mostly from northern Australia. In a bycatch reduction device study conducted in 2001 in the Gulf of Carpentaria, 25 narrow sawfish were captured in trawling gear (Brewer *et al.*, 2006). Later in 2001, a bycatch reduction device study conducted in the Queensland shallow-water eastern king prawn (*Penaeus plebejus*) trawl fishery did not capture a single specimen (Courtney *et al.*, 2006). The European Molecular Biology Lab recorded narrow sawfish in 2003 in the Northern Territory (GBIF database). A review of

fisheries data and records from 2000 to 2002, identified 74 offshore and 37 inshore records of narrow sawfish in the Gulf of Carpentaria (Peeverell, 2005). Between April 2004 and April 2005, 16 narrow sawfish were caught in the Gulf of Carpentaria during a trawl bycatch study; the mean catch rate was 0.16 sawfish per hour (Dell *et al.*, 2009). Observers on commercial fishing boats recorded nine captures of narrow sawfish in 2007 within the Great Barrier Reef World Heritage Area, Queensland, which accounted for 0.86 percent of the shark and ray catch in the commercial fisheries (Williams, 2007). Observers in the Northern Territory's Offshore Net and Line Fishery encountered several narrow sawfish from 2007 to 2010 (Davies, 2010). Data from the Kimberley (R. McAuley, Department of Fisheries, Western Australia, pers. comm. to Colin Simpfendorfer, 2012), the Northern Territory (Field *et al.*, 2009), the Gulf of Carpentaria (Peeverell, 2005), and parts of the Queensland east coast (Harry *et al.*, 2011) suggest viable subpopulations may remain locally, but at significantly lower levels compared to historic levels.

In summary, it appears the current range of narrow sawfish is restricted largely to Australia. Narrow sawfish are considered very rare in many places where evidence is available, including parts of India (Roy, 2010), Bangladesh (Roy, 2010), Burma (FIRMS, 2007–2012), Malaysia (including Borneo; Almada-Villela, 2002; Manjaji, 2002), Indonesia (White and Kyne, 2010), Thailand (CITES, 2007; Compagno, 2002a; Vidthayanon, 2002), and Singapore (CITES, 2007). In Australia, narrow sawfish are primarily located in the north. The most recent museum record for narrow sawfish in southern Australia was from New South Wales in the 1970s (Pogonoski *et al.*, 2002). Data from the Queensland Shark Control Program, conducted along the east coast of Queensland, from 1969 to 2003 show a clear decline in sawfish catch (although not species-specific) with the complete disappearance of sawfish in southern regions of Queensland by 1993 (Stevens *et al.*, 2005). Although we cannot rule out underreporting of narrow sawfish, especially in remote areas of its historic range, we conclude from the consistent lack of records that narrow sawfish have been severely depleted in numbers and their range has contracted.

Natural History of Dwarf Sawfish (*Pristis clavata*)

Taxonomy and Morphology

Due to its size and the geographic location where it was described, *P.*

clavata is referred to as the dwarf or the Queensland sawfish. The species was first described by Garman in 1906; however, it has often been confused with largetooth sawfish (Last and Stevens, 1994; Cook *et al.*, 2006; Morgan *et al.*, 2010a). This species can be distinguished from largetooth sawfish based on rostral tooth morphology (Thorburn *et al.*, 2007).

The dwarf sawfish is olive brown in color dorsally with a white underside. The rostrum of this species is quite short, with 19 to 23 rostral teeth that are moderately flattened, elongated, and peg-like. Studies indicate that this species does not display significant differences in the number of rostral teeth between males (19 to 23 teeth) and females (20 to 23 teeth) (Ishihara *et al.*, 1991a; Thorburn *et al.*, 2008; Morgan *et al.*, 2010a; Morgan *et al.*, 2011). The rostrum makes up 21 to 26 percent of the total length of the dwarf sawfish (Blaber *et al.*, 1989; Grant, 1991; Last and Stevens, 1994; Compagno and Last, 1999; Larson *et al.*, 2006; Wueringer *et al.*, 2009; Morgan *et al.*, 2011).

Morphologically, the origin of the first dorsal fin is slightly posterior to the insertion of the pelvic fins, and the second dorsal fin is smaller than the first. The pectoral fins are small compared to other sawfish species, and are "poorly developed" (Ishihara *et al.*, 1991a). There is no lower lobe on the caudal fin. Lateral and low keels are present along the base of the tail (Compagno and Last, 1999; Wueringer *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2011). Within the mouth are 82–84 tooth rows on the upper jaw. The total vertebrae number is 225–231. The dwarf sawfish has regularly overlapping monocuspidate denticles on its skin. As a result, there are no keels or furrows formed on the skin (Fowler, 1941; Last and Stevens, 1994; Deynat, 2005).

Habitat Use and Migration

The dwarf sawfish has been found along tropical coasts in marine and estuarine waters, mostly from northern Australia; it may inhabit similar habitats in other areas. Dwarf sawfish are reported on mudflats in water 6 ft 7 in to 9 ft 10 in (2 to 3 m) deep that is often turbid and influenced heavily by tides. Thorburn *et al.* (2008) reported dwarf sawfish occur in waters 2 to 22 ft (0.7 to 7 m) deep, while Stevens *et al.* (2008) recorded a maximum depth of 65 ft (20 m). This species has also been reported in rivers (Last and Stevens, 1994; Wueringer *et al.*, 2009; Morgan *et al.*, 2010a) and as commonly occurring in both brackish and freshwater, and in both marine and estuarine habitats (Rainboth, 1996; Thorburn *et al.*, 2008).

For example, two dwarf sawfish were found 31 miles (50 km) upstream from the mouth of the south Alligator River, Kakadu National Park, Northern Territory, Australia in 2013 at salinities of 0.12 and 7.64 ppt (P. Kyne, Charles Darwin University, pers. comm. to S. Norton, NMFS, June 2013).

Juvenile dwarf sawfish may use the estuaries associated with the Fitzroy River, Australia as nursery habitat for up to three years (Thorburn *et al.*, 2008). Dwarf sawfish are also known to use the Gulf of Carpentaria, Australia as nursery area in a variety of habitats (Gorham, 2006). However, physical characteristics such as salinity, temperature, and turbidity may limit seasonal movements (Blaber *et al.*, 1989).

Age and Growth

Dwarf sawfish are considered to be small compared to other sawfishes. Their maximum size has been reported as 4 ft 11 in (1.5 m) total length (TL) (Grant, 1991) and 4 ft 7 in (140 cm) TL (Last and Stevens, 1994; Rainboth, 1996; Compagno and Last, 1999). But more recently, much larger sizes have been reported, as high as 19.7 ft (6000 cm) TL (Peeverell, 2005). Specimens from Western Australia in 2008 indicate that females reach at least 10 ft 2 in (310 cm) TL (Morgan *et al.*, 2010a; Morgan *et al.*, 2011).

Thorburn *et al.* (2008) and Peeverell (2008) estimated age and growth for this species based on the number of vertebral rings and total length. The average growth estimates for dwarf sawfish are 16.1 in (41cm) TL in the first year, slowing to 9.4 in (24 cm) in the second year (Peeverell 2008). Thorburn *et al.* (2008) determined that animals close to 3 ft (90 cm) TL were age 1, those between 3.5 and 4 ft (110 cm and 120 cm) TL were age 2, and those around 5 ft (160 cm) TL were age 6. Peeverell (2008) reported dwarf sawfish between 2 ft 11 in and 3 ft 3 in (90 and 98 cm) TL were age 0, those between 3 ft 7 in and 5 ft 9 in (110 to 175 cm) TL were considered 1 to 3 years old, and those between 6 ft 7 in and 8 ft (201 to 244 cm) TL were considered 4 to 6 years old (Peeverell, 2008). Any dwarf sawfish over 9 ft 10 in (300 cm) TL is considered to be at least 9 years old (Morgan *et al.*, 2010a). The theoretical maximum age calculated from von Bertalanffy parameters for dwarf sawfish is 94 years (Peeverell, 2008).

Reproduction

There is little information available regarding the time or location of dwarf sawfish mating. It is hypothesized that dwarf sawfish move into estuarine or fresh waters to breed during the wet

season (Larson *et al.*, 2006), although no information on pupping habitat, gestation period, or litter size has been recorded (Morgan *et al.*, 2010a).

Dwarf sawfish are born between 2 ft 2 in and 2 ft 8 in (65 cm and 81 cm) TL (Morgan *et al.*, 2010a; Morgan *et al.*, 2011). Males become sexually mature between 9 ft 8 in and 10 ft (295 and 306 cm) TL with fully calcified claspers, though they may mature at smaller sizes, around 8 ft 5 in (255–260 cm) TL (Peeverell, 2005; Thorburn *et al.*, 2008; Last and Stevens, 2009; Morgan *et al.*, 2011). All males captured by Thorburn *et al.* (2008) less than 7 ft 5 in (226 cm) TL were immature; two females, both smaller than 3 ft 11 in (120 cm) TL, were also immature. There is little specific information about sexual maturation of females; females are considered immature at 6 ft 11 in (210 cm) TL (Peeverell, 2005; Peeverell, 2008; Morgan *et al.*, 2010a). Wueringer *et al.* (2009) indicates that neither males nor females are mature before 7 ft 8 in (233 cm) TL.

Intrinsic rates of population increase, based on life history data from Peeverell (2008), has been estimated to be about 0.10 per year (Moreno Iturria, 2012), with a potential population doubling time of 7.2 years.

Diet and Feeding

Dwarf sawfish, like other sawfishes, use their saw to stun small schooling fishes. They may also use the saw for rooting in the mud and sand for crustaceans and mollusks (Breder Jr., 1952; Raje and Joshi, 2003; Larson *et al.*, 2006; Last and Stevens, 2009). In Western Australia, the dwarf sawfish eats shrimp (*Natantia* spp.), mullet (*Mugilidae*), herring (*Clupeidae*), and croaker (*Sciaenidae*) (Thorburn *et al.*, 2008; Morgan *et al.*, 2010a).

Population Structure

Phillips *et al.* (2011) conducted a genetic study looking at mtDNA of dwarf sawfish and found no distinct difference in dwarf sawfish from Western Australia and those from the Gulf of Carpentaria in northern Australia. The genetic diversity of this species was moderate overall; however, dwarf sawfish from the Gulf of Carpentaria may have a lower genetic diversity than those of the west coast, possibly due to either a small sample size or a reduction in abundance (Phillips *et al.*, 2008). Further declines in abundance as well as genetic drift may result in reduced genetic diversity (Morgan *et al.*, 2010a; 2011).

Phillips *et al.* (2011) determined the populations of the dwarf sawfish are organized matrilineally (from mother to

daughter), indicating the possibility that females are philopatric (return to their birth place). While the genetic diversity of this species is considered low to moderate across Australia, haplotype diversity in the Gulf of Carpentaria was very low, but was greater in the west compared to the east. Low diversity among and within groups of dwarf sawfish may be detrimental (Phillips *et al.*, 2011).

Distribution and Abundance

Dwarf sawfish are thought to historically occur in the Indo-Pacific, western Pacific, and eastern Indian Oceans, with the population largely occurring in northern Australia (Last and Stevens, 1994; Last and Compagno, 2002; Compagno, 2002a; Compagno, 2002b; Thorburn *et al.*, 2008; Wueringer *et al.*, 2009; Morgan *et al.*, 2010a; Kyne *et al.*, 2013). While dwarf sawfish may have been historically more widespread throughout the Indo-West Pacific (Compagno and Last, 1999; Last and Stevens, 2009), there are questions regarding records outside of Australian waters (DSEWPaC 2011; Kyne *et al.*, 2013; GBIF database).

In an effort to gather more information on the species' historic and current range and abundance, we conducted an extensive search of peer-reviewed publications and technical reports, newspaper, and magazine articles. We also reviewed records from the Global Biodiversity Information Facility (GBIF) Database (www.gbif.com). A summary of those findings is presented by major geographic region.

Indian Ocean

Dwarf sawfish are considered extremely rare in the Indian Ocean and there are few records indicating its current presence (Last, 2002). Faria *et al.* (2013) report a female from the Réunion Islands, a female from an unidentified location in the Indian Ocean, and a museum record of a male from Bay of Bengal, India. A sawfish was landed at a port in Arabian Peninsula (presumably caught in the Gulf of Oman or the Arabian Gulf) in January of 2006. It may have been a dwarf sawfish, but identification could not be confirmed (Kyne *et al.*, 2013). There are no reports of dwarf sawfish from Sri Lanka in more than a decade, although they have been assumed to occur there (Last, 2002).

Indo-Pacific (excluding Australia)

Dwarf sawfish are considered very rare in Indonesia, with only a few records (Last, 2002). Faria *et al.* (2013) compiled most reports of dwarf sawfish in Indonesia; since the first record in 1894 from Borneo, there have been two

rostral saws in 1910 and five other rostra without date or length information. There is also one museum record of a dwarf sawfish from Papua New Guinea in 1828 (Kyne *et al.*, 2013).

Although reported historically, dwarf sawfish have not been found in any other areas in the Indo-Pacific in over a decade. Rainboth's (1996) guide to fishes of the Mekong reported a dwarf sawfish from the Mekong River Basin, Laos, in the early 1900s but no specimen exists to confirm this report. No sawfish of any species, including the dwarf sawfish, were reported from the South China Sea from 1923–1996 (Compagno, 2002a). Faria *et al.* (2013) reported on two specimens from the Pacific Ocean, but no specifics were provided.

Australia

The northern coast of Australia represents the geographic center of dwarf sawfish range that extends from Cape York, Queensland west to the Pilbara area in Western Australia (Compagno and Last, 1999; Last and Stevens, 2009; Kyne *et al.*, 2013). Dwarf sawfish may have occurred as far south as Cairns, but reports are lacking. Most records for dwarf sawfish are from the north and northwest areas of Australia.

The earliest record of dwarf sawfish in Australia is from 1877, but no specific location was recorded (Faria *et al.*, 2013). A single rostrum from a dwarf sawfish was found in 1916, but no other information was recorded. In 1945, a single specimen was reported from the Northern Territory, Australia (Stevens *et al.*, 2005). There is a single record of a dwarf sawfish from the Victoria River in 1964 that is currently housed at the Museum Victoria (GBIF Database).

Five female and five male dwarf sawfish (32 to 55 in; 82 to 140 cm TL) were captured in 1990 in the Pentecost River using gillnets (Taniuchi and Shimizu, 1991; Taniuchi, 2002). CSIRO recorded five dwarf sawfish in Western Australia in 1990 (GBIF Database). CSIRO also found one dwarf sawfish in Walker Creek (a tributary of the Gulf of Carpentaria) in 1991 (GBIF Database). In 1992, one specimen was found near Darwin, Northern Territory, Australia (GBIF Database). Between 1994 and 2010, almost 75 tissue samples were taken from live dwarf sawfish or dried rostra from the Gulf of Carpentaria and the northwest coast of Australia (Phillips *et al.*, 2011). In 1997, two specimens were collected near the mouth of Buffalo Creek in Darwin, Northern Territory (Chisholm and Whittington, 2000). In 2005, Naylor *et al.* (2005) collected one dwarf sawfish from Darwin, Australia. One dwarf

sawfish was captured in 1998 in the upper reaches of the Keep River Estuary (Larson, 1999; Gunn *et al.*, 2010). CSIRO reported one dwarf sawfish in Western Australia (GBIF Database). In 2006, the European Molecular Biology Lab reported the occurrence of three dwarf sawfish in Western Australia (GBIF Database). One interaction was reported between 2007 and 2010 by observers in the Northern Territory Offshore Net and Line Fishery (Davies, 2010). A single specimen from Queensland (northeastern Australia) is preserved at the Harvard Museum of Comparative Zoology (Fowler, 1941).

In a comprehensive survey of the Gulf of Carpentaria from 2001 to 2002 (Peeverell, 2005; 2008), indicated dwarf sawfish were concentrated in the west where 12 males and 10 females were captured. Most individuals caught in the inshore fishery were immature except for two mature males: 10 ft and 9 ft 8 in (306 cm and 296 cm) TL (Peeverell, 2005; 2008).

Within specific riverine basins in northwestern Australia, dwarf sawfish have been reported in various surveys. Forty-four dwarf sawfish were captured between October 2002 and July 2004, in the King Sound and the Robison, May, and Fitzroy Rivers (Thorburn *et al.*, 2008). Between 2001 and 2002, one dwarf sawfish was caught at the mouth of the Fitzroy River in Western Australia (Morgan *et al.*, 2004). Morgan *et al.* (2011) acquired 109 rostra from dwarf sawfish from the King Sound area that were part of museum or personal collections.

In summary, there is some uncertainty in the species identification of historic records of dwarf sawfish, however, it appears the dwarf sawfish has become extirpated from much of the Indo-Pacific region and from the eastern coast of Australia. An October 2001 study on the effectiveness of turtle-excluder devices in the prawn trawl fishery in Queensland, Australia, reported no dwarf sawfish (Courtney *et al.*, 2006). Dwarf sawfish are now considered rare in the Gulf of Carpentaria. It is likely the Kimberley region and Pilbara region (Western Australia) may be the last remaining areas for dwarf sawfish (P. Kyne, Charles Darwin University, pers. comm. to IUCN, 2012).

Natural History of the Largetooth Sawfish (*Pristis pristis*)

Taxonomy and Morphology

Many taxonomists have suggested classification of largetooth sawfish into a single circumtropical species given common morphological features of robust rostrum, origin of first dorsal fin

anterior to origin of pelvic fins, and presence of a caudal-fin lower lobe (Günther, 1870; Garman, 1913; Fowler, 1936; Poll, 1951; Dingerkus, 1983; Daget, 1984; Séret and McEachran, 1986; McEachran and Fechhelm, 1998; Carvalho *et al.*, 2007). The recent analysis by Faria *et al.* (2013) used mtDNA (mitochondrial deoxyribonucleic acid) and contemporary genetic analysis to argue that the previously classified *P. pristis*, *P. microdon*, and *P. perotteti* should now be considered one species named *P. pristis*. After reviewing Faria *et al.* (2013) and consulting other sawfish experts, we conclude, based on the best available information, that *P. pristis* applies to all the largetooth sawfishes previously identified as *P. pristis*, *P. microdon*, and *P. perotteti*.

The largetooth sawfish has a robust rostrum, noticeably widening posteriorly (width between the two posterior-most rostral teeth is 1.7 to 2 times the width between the second anterior-most rostral teeth). Rostral tooth counts are between 14 and 23 per side with grooves on the posterior margin. The body is robust with the origin of the first dorsal-fin anterior to the origin of the pelvic fin; dorsal fins are high and pointed with the height of the second dorsal fin greater than the first. The lower lobe of the caudal-fin is small, but well-defined, with the lower anterior margin about half as long as the upper anterior margin (Wallace, 1967; Taniuchi *et al.*, 1991a; Last and Stevens, 1994; Compagno and Last, 1999; Deynat, 2005; Wueringer *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2010b; Morgan *et al.*, 2011). The largetooth sawfish has buccopharyngeal denticles and regularly overlapping monocuspitate dermal denticles on its skin. The denticles are present on both dorsal and ventral portions of the body (Wallace, 1967; Deynat, 2005). Within the mouth, there are between 70 and 72 tooth rows on the upper jaw, and 64 to 68 tooth rows on the lower jaw. The number of vertebrae is between 226 and 228 (Morgan *et al.*, 2010a). Coloration of the largetooth sawfish is a reddish brown dorsally and dull white ventrally (Fowler, 1941; Wallace, 1967; Compagno *et al.*, 1989; Taniuchi *et al.*, 1991a; Compagno and Last, 1999; Chidlow, 2007).

Male and female largetooth sawfish differ in the number of rostral teeth. Using largetooth sawfish teeth collected from Papua New Guinea and Australia, Ishihara *et al.* (1991b) found males to have an average of 21 rostral teeth on the left and 22 on the right; females averaged 19 rostral teeth on both the left and the right side of the rostrum.

Rostrum length can vary between males and females (Wueringer *et al.*, 2009).

Habitat Use and Migration

Largetooth sawfish are found in coastal and inshore waters and are considered euryhaline (Compagno *et al.*, 1989; Last and Stevens, 1994; Compagno and Last, 1999; Chisholm and Whittington, 2000; Last, 2002; Compagno, 2002b; Peverell, 2005; Peverell, 2008; Wueringer *et al.*, 2009), being found in salinities ranging from 0 to 40 ppt (Thorburn *et al.*, 2007). The species has been found far upriver, often occupying freshwater lakes and pools; they are associated with freshwater more than any other sawfish species (Last and Stevens, 1994; Rainboth, 1996; Peter and Tan, 1997; Compagno and Last, 1999; Larson, 1999). Largetooth sawfish have even been observed in isolated fresh water billabongs or pools until floodwaters allow them to escape; juveniles often use these areas for multiple years as deepwater refuges (Gorham, 2006; Thorburn *et al.*, 2007; Wueringer *et al.*, 2009; Morgan *et al.*, 2010b). Similarly, largetooth sawfish have been found in Lake Nicaragua in depths up to 400 ft (122 m) and are found in deeper holes, occupying muddy or sandy bottoms (Thorson, 1982). Adults more often use marine habitats than juveniles, and are typically found in waters with salinity at 31 ppt (Wueringer *et al.*, 2009).

Despite the variety of habitats occupied, females have been found to be highly philopatric as indicated by mtDNA studies, while males often undergo long movements (Lack *et al.*, 2009; Phillips *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2010b; Morgan *et al.*, 2011). Largetooth sawfish occurred from the Caribbean and Gulf of Mexico south through Brazil, and in the United States, largetooth sawfish were reported in the Gulf of Mexico, mainly along the Texas coast (NMFS, 2010a). Largetooth sawfish were rarely reported in U.S. waters and may have been long-distance migrants from the Caribbean or Brazil (Feldheim *et al.*, 2011).

The physical characteristics of habitat strongly influence the movements of, and areas used by, largetooth sawfish. Recruitment of neonate largetooth sawfish was correlated with the rise in water levels during the wet season in Australia (Whitty *et al.*, 2009). A study of juvenile largetooth sawfish movements in the Fitzroy River in Australia found young-of-the-year using extremely shallow areas (0 to 1 ft 7 in or 0 to 0.49 m) up to 80 percent of the time, mostly to avoid predators (Thorburn *et al.*, 2007). Juvenile and adult largetooth sawfish also use rivers

(Compagno, 2002b; Gorham, 2006) and can be found in areas up to 248.5 miles (400 km) upstream (Morgan *et al.*, 2004; Chidlow, 2007). The space used on a day to day basis by largetooth sawfish increases with body length (Whitty *et al.*, 2009).

Age and Growth

There are several age and growth studies for the largetooth sawfish; results vary due to differences in aging techniques, data collection, or location. In Australia, largetooth sawfish are between 2 ft 6 in and 3 ft (76 and 91 cm) TL at birth, with females being slightly smaller than males on average (Chidlow, 2007; Morgan *et al.*, 2011). Thorson (1982) found pups at birth average 2 ft 4.7 in to 2 ft 7.5 in (73–80 cm) TL, with a growth rate of 1 ft 2 in to 1 ft 3 in (35–40) cm per year in Lake Nicaragua (NMFS, 2010a; Kyne and Feutry, 2013). Peverell (2008) found that largetooth sawfish in the Indo-West Pacific are born at 2 ft 4 in to 2 ft 11 in (72–90 cm) TL. Juveniles (age 1 to age at maturity) range in size from 2 ft 6 in to 9 ft (76 to 277 cm) TL (Morgan *et al.*, 2011).

Size at maturity in the Western Atlantic is estimated to be around 9 ft 10 in (300 cm) TL for both sexes at around age 8 (Lack *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2010b; NMFS, 2010; Morgan *et al.*, 2011; Kyne and Feutry, 2013). Thorson (1982) estimated age of maturity to be 10 years at 9 ft 10 in (300 cm) TL in Lake Nicaragua. Peverell (2008) estimated age at maturity in the Gulf of Carpentaria to be between 8 and 10 years. In the Indo-Pacific, males tend to mature earlier than other regions (9 ft 2 in (280 cm)) TL (Kyne and Feutry, 2013). Generally, males under 7 ft 7 in (230 cm) TL and females under 8 ft 10 in (270 cm) TL are considered immature (Whitty *et al.*, 2009; Wueringer *et al.*, 2009).

The largest recorded length of a largetooth sawfish is 22 ft 11 in (700 cm) TL (Compagno *et al.*, 1989). The largest largetooth sawfish recorded in the Kimberley, Queensland measured 21 ft 6 in (656 cm) TL (Compagno and Last, 1999). In other areas of Australia, largetooth sawfish can reach up to 15 ft (457 cm) and at least 11 ft 10 in (361 cm) TL (Fowler, 1941; Chidlow, 2007; Gunn *et al.*, 2010). Thorson (1982) estimated that largetooth sawfish in Lake Nicaragua only reach a maximum size of about 14 ft 1 in (430 cm) TL.

Age and growth for largetooth sawfish has been estimated by Tanaka (1991) who generated a von Bertalanffy growth model for specimens collected from Papua New Guinea and Australia. For both sexes combined, the theoretical

maximum size (L_{∞}) from the von Bertalanffy growth equation was calculated at 11 ft 11 in (363 cm) TL with a growth rate (K) of 0.066 per year. Largetooth sawfish grow around 7 in (18 cm) in the first year and 4 in (10 cm) by the tenth year (Tanaka, 1991). Thorson (1982a) estimated an early juvenile growth rate of 13–15 in (35 to 40 cm) per year and annual adult growth rate of 1 in (4.4 cm) per year based on largetooth from Lake Nicaragua. Simpendorfer (2000) estimated the theoretical maximum size of largetooth sawfish to be 14 ft 11 in (456 cm) TL with a growth rate (Brody growth coefficient K) of 0.089 per year based on Thorson's (1982) data from Lake Nicaragua. Peverell (2008) calculated that largetooth sawfish from the Gulf of Carpentaria, Australia grow 1 ft 8.5 in (52 cm) in the first year and 7 in (17 cm) during the fifth year. Maximum size was estimated at 20 ft 11 in (638 cm) TL with a growth rate (Brody growth coefficient K) of 0.08 per year from the von Bertalanffy equation (Peverell, 2008). Kyne and Feutry (2013) summarize maximum age estimates of 30 years in Lake Nicaragua and 35 years in the Gulf of Carpentaria. Based on the von Bertalanffy equation, growth slows at about 35 years or 19 ft 10 in (606 cm) TL (Kyne and Feutry, 2013).

Reproduction

Largetooth sawfish are thought to reproduce in freshwater environments (Compagno and Last, 1999; Last, 2002; Compagno, 2002b; Martin, 2005; Thorburn and Morgan, 2005; Compagno *et al.*, 2006b). Pupping seems to vary across the range, occurring during the wet season from May to July in the Indo-Pacific (Raje and Joshi, 2003), and from October to December in the western Atlantic and Lake Nicaragua (Thorson, 1976a; Kyne and Feutry, 2013).

The number of pups in a largetooth sawfish litter varies by location, possibly due to a number of factors. One of the earliest reproductive studies on largetooth sawfish by Thorson (1976a) reported the litter sizes of 67 females ranged between 1 to 13 pups and an embryonic sex ratio for this species is 0.86 males for every 1 female. Average number of pups is 7 (NMFS, 2010a; Kyne and Feutry, 2013). Thorson (1976a) also found that both ovaries appeared to be functional, with the left ovary producing more eggs. Estimates of litter size from other studies in the Indo-West Pacific (*e.g.*, Wilson, 1999; Moreno Iturria, 2012; Peverell, 2005) cannot be confirmed (Kyne and Feutry, 2013). Length of gestation for largetooth sawfish is approximately five months in Lake Nicaragua, with a biennial

reproduction cycle (Thorson 1976a; NMFS 2010a; Kyne and Feutry, 2013). In the Indo-West Pacific, largemouth sawfish may reproduce every year (Peverell, 2008).

Intrinsic rates of population growth vary tremendously throughout the species' range. Simpfendorfer (2000) estimated that the largemouth sawfish in Lake Nicaragua had an intrinsic rate of population growth of 0.05 to 0.07 per year, with a potential population doubling time of 10.3 to 13.6 years. Using data from Australia, rates of population increase for the Indo-Pacific were estimated to be around 0.12 per year (Moreno Iturria, 2012), with a population doubling time of approximately 5.8 years and a generation time of 14.6 years. Data from the western Atlantic Ocean indicate an intrinsic rate of increase of 0.03 per year, with a population doubling time of 23.3 years and a generation time of 17.2 years (Moreno Iturria, 2012). Annual natural mortality for the western Atlantic has been estimated at 0.07 to 0.16 (Simpfendorfer, 2000) and 0.14 to 0.15 per year (Moreno Iturria, 2012).

Diet and Feeding

Largemouth sawfish diet is predominantly fish, but varies depending on geographic area. Small fishes including seer fish, mackerels, ribbon fish, sciaenids, and pomfrets are likely main diet items of largemouth sawfish in the Indian Ocean (Devadoss, 1978; Rainboth, 1996; Raje and Joshi, 2003). Small sharks, mollusks, and crustaceans are also potential prey items (Devadoss, 1978; Rainboth, 1996; Raje and Joshi, 2003). Taniuchi *et al.* (1991a) found small fishes and shrimp in the stomachs of juveniles in Lake Murray, Papua New Guinea, while juveniles in Western Australia had catfish, cherabin, mollusks, and insect parts in their stomachs (Thorburn *et al.*, 2007; Whitty *et al.*, 2009; Morgan *et al.*, 2010a). Largemouth sawfish have also been found to feed on catfish, shrimp, croaker, small crustaceans, croaker, and mollusks (Chidlow, 2007; Thorburn *et al.*, 2007; Morgan *et al.*, 2010a; Morgan *et al.*, 2010b). Largemouth sawfish captured off South Africa had bony fish and shellfish as common diet items (Compagno *et al.*, 1989; Compagno and Last, 1999). In general, largemouth sawfish subsist on the most abundant small schooling fishes in the area (NMFS, 2010a).

Population Structure

Genetic analyses based on specific sequences of mitochondrial DNA indicated largemouth sawfish can be found in populations based on ocean

basin: Atlantic, Indo-West Pacific, and Eastern Pacific. There is also restricted flow of genes in largemouth sawfish between these geographic areas: Atlantic and Indo-West Pacific; Atlantic and eastern Pacific; and Indo-West Pacific and eastern Pacific (Faria *et al.*, 2013).

Genetic analyses based on a 480-base pair sequencing of the mtDNA gene NADH-2 sequence also revealed information indicating largemouth sawfish subpopulations. West and East Atlantic subpopulations differed as did samples from Australia and the wider Indian Ocean. Collectively, a total of 19 haplotypes were identified across largemouth sawfish: One east Pacific haplotype, 12 western Atlantic haplotypes, two eastern Atlantic haplotypes, one Indian Ocean haplotype, one Vietnamese-New Guinean haplotype, and two Australian haplotypes (Faria *et al.*, 2013). This fine-scale structuring by haplotypes was only partially corroborated by the regional variation in the number of rostral teeth. While the rostral tooth count differed significantly in largemouth sawfish collected from the western and eastern Atlantic Ocean, it did not vary significantly between specimens collected from the Indian Ocean and western Pacific (Faria *et al.*, 2013). Largemouth sawfish collected from the western Atlantic specimens had a higher rostral teeth count than those collected from the eastern Atlantic. Data from separate protein and genetics studies indicates some evidence of distinction among populations of largemouth sawfish in the Indo-Pacific. At a broad scale, Watabe (1991) found that there was limited genetic variability between samples taken from Australia and Papua New Guinea based on lactate dehydrogenase (LDH) isozyme patterns. Largemouth sawfish might be genetically subdivided within the Gulf of Carpentaria, Australia, with both eastern and western Gulf populations (Lack *et al.*, 2009).

Phillips *et al.* (2011) found that the population of largemouth sawfish in the Gulf of Carpentaria is different from animals on the west coast of Australia (Fitzroy River) based on mtDNA. Recent data (Phillips, 2012) suggests that matrilineal structuring is found at relatively small spatial scales within the Gulf of Carpentaria region (*i.e.*, this region contains more than one maternal 'population'), although the precise location and nature of population boundaries are unknown. The difference in the genetic structuring using markers with different modes of inheritance (maternal versus bi-parental) suggests that largemouth sawfish may have male-biased dispersal and females remaining

at, or returning to, their birth place to mate (Phillips *et al.*, 2009; Phillips, 2012). Phillips (2012) noted that the presence of male gene flow between populations in Australian waters suggests that a decline of males in one location could affect the abundance and genetic diversity of assemblages in other locations.

The genetic diversity for largemouth sawfish throughout Australia seems to be low to moderate. Genetic diversity was greater in the Gulf of Carpentaria than in Australian rivers, also suggesting potential philopatry: Animals return to or stay in their home range (Lack *et al.*, 2009). Yet, given limited sampling, additional research is needed to better understand potential population structure of largemouth sawfish in Australia (Lack *et al.*, 2009; Phillips *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2010b).

Distribution and Abundance

Largemouth sawfish have the largest historical range of all sawfishes. The species historically occurred throughout the Indo-Pacific near Southeast Asia and Australia and throughout the Indian Ocean to east Africa. Older literature notes the presence of this species in Zanzibar, Madagascar, India, and the southwest Pacific (Fowler, 1941; Wallace, 1967; Taniuchi *et al.*, 2003). Largemouth sawfish have also been noted in the Eastern Pacific Ocean from Mexico to Ecuador (Cook *et al.*, 2005) or possibly Peru (Chirichigno and Cornejo, 2001). In the Atlantic Ocean, largemouth sawfish inhabit warm temperate to tropical marine waters from Brazil to the Gulf of Mexico in the western Atlantic, and Namibia to Mauritania in the eastern Atlantic (Burgess *et al.*, 2009).

Given the recent taxonomic changes for largemouth sawfish, we examined all current and historic records of *P. microdon*, *P. perotteti*, and *P. pristis* for a comprehensive overview on distribution and abundance. We conducted an extensive search of peer-reviewed publications and technical reports, newspaper, records from the GBIF Database, and magazine articles. The results of that search are summarized below by major geographic region.

Indian Ocean

Largemouth sawfish historically occurred throughout the Indian Ocean; however, current records are rare for many areas. The earliest record of largemouth sawfish was in 1936 from Grand Lac near the Gulf of Aden, Indian Ocean (Kottelat, 1985). A second record in 1936 is from the Mangoky River, Madagascar (Taniuchi *et al.*, 2003).

Records from the 1960s and 1970s are largely from India and South Africa. One largemouth sawfish was reported from the confluence of the Lundi and Sabi Rivers, South Africa in 1960, over 200 miles (mi) inland (Jubb, 1967). Between 1964 and 1966, several largemouth sawfish were caught in the Zambesi River, South Africa during a general survey of rays and skates; largemouth sawfish have also been recorded in the shark nets off Durban, South Africa (Wallace, 1967). In 1966, a male (10 ft; 305 cm TL) was captured in a trawl net in the Gulf of Mannar, Sri Lanka (Gunn *et al.*, 2010). Largemouth sawfish were commonly caught between 1973 and 1974 in the Bay of Bengal during the wet season (July and September) but rarely during other times of the year. Largemouth sawfish were also reported in three major rivers that empty into the Bay of Bengal: The Pennaiyar, Paravananar, and Gadilam (Devadoss, 1978).

Current reports of largemouth sawfish throughout the Indian Ocean are isolated and rare. Largemouth sawfish were recorded in South Africa 1992 and 1993 between Nelson Mandela Bay and Cape Town. Eight additional observations are reported in South Africa but associated date information was not included (GBIF database). While the species could not be confirmed, a survey of fishing landing sites and interviews with 99 fishers in Kenya by Nyingi found 71 reports of sawfishes over the last 40 years (unpublished report from Dorothy Wanja Nyingi to J. Carlson, NMFS, 2007). The longest time series of largemouth sawfish catches is from the swimmer protection beach nets off Natal, South Africa with a yearly average capture rate of 0.2 sawfish per 0.6 mi (1 km) net per year from 1981 to 1990; since then only two specimens have been caught (CITES, 2007). Largemouth sawfish were reported in Cochin, India by the Central Marine Fisheries Research Institute in 1994, but no information about location, size, or number of animals is available (Dan *et al.*, 1994). Commercial landings of elasmobranchs from 1981 to 2000 in the Bay of Bengal were mostly rays with some largemouth sawfish (Raje and Joshi, 2003). In the Betsiboka River, Madagascar, four largemouth sawfish were caught in 2001. The most recent capture of a largemouth sawfish (18 ft; 550 cm TL) in India occurred on January 18, 2011, between Karnataka and Goa (www.mangalorean.com).

Indo-Pacific Ocean (Excluding Australia)

Many islands within the Indo-Pacific region contain suitable habitat for largemouth sawfish, but few reports are available, perhaps due to the lack of surveys or data reporting. The earliest records of largemouth sawfish from the Indo-Pacific are from a compilation study of elasmobranchs in the waters off Thailand that reports a largemouth sawfish in the Chao Phraya River and its tributaries in 1945 (Vidthayanon, 2002). In 1955, two largemouth sawfish were captured from Lake Sentani (present day Intan Jaya, Indonesia). Juvenile largemouth sawfish have also been reported around the same time in a freshwater river close to Genjem, Indonesia (Boeseman, 1956). In 1956, largemouth sawfish were recorded in Lake Sentani (present day Intan Jaya, Indonesia) (Boeseman, 1956; Thorson *et al.*, 1966). In a study by Munro (1967) in the Laloki River in the southeastern portion of New Guinea, no sawfish were captured. From 1967 to 1977, five largemouth sawfish were captured from the Indragiri River, Sumatra (Taniuchi, 2002). The presence of largemouth sawfish in the Mahakam River, Borneo was recorded in 1987 (Christensen, 1992). Three largemouth sawfish rostra were acquired from local fish markets in Sabah in 1996 (Manjaji, 2002a). Additional surveys of local fish markets indicate largemouth sawfish are still present in these areas, although locals have noticed a decline in their abundance (Manjaji, 2002a). In 1996, two specimens were found in Malaysia: One in Palau Nangka and one in Palau Besar (GBIF Database).

Multiple records of largemouth sawfish have occurred in areas throughout Papua New Guinea. From 1970 to 1971, Berra *et al.* (1975) collected five largemouth sawfish from the Laloki River, Papua New Guinea. Four largemouth sawfish were recorded in 1975 from the Fly River system, Papua New Guinea and one in 1979 in the northern part of Papua New Guinea near new Tangu (GBIF Database). In a survey of the Fly River system, Papua New Guinea, 23 individuals were captured in 1978 (Roberts, 1978; Taniuchi and Shimizu, 1991; Taniuchi *et al.*, 1991b; Taniuchi, 2002). There are two reports of largemouth sawfish in the 1980s in Papua New Guinea: One in 1987 and one in 1988 (GBIF Database). More recently, 36 largemouth sawfish were captured in September 1989 in Papua New Guinea (Taniuchi and Shimizu, 1991; Taniuchi, 2002).

The scarcity of records from Indo-Pacific led to an increased effort to

document species presence. Anecdotal evidence suggests that largemouth sawfishes have not been recorded in Indo-Pacific for more than 25 years (White and Last, 2010). Largemouth sawfish have not been recorded in the Mekong River, Laos for decades (Rainboth, 1996). In a comprehensive study compiled by Compagno (2002a), no sawfishes were found in the South China Sea between the years of 1923 and 1996. Data from 200 survey days at fish landing sites in eastern Indonesia between 2001 and 2005 recorded over 40,000 elasmobranchs, but only 2 largemouth sawfish (White and Dharmadi, 2007; Kyne and Feutry, 2013).

Australia

Australia may have a higher abundance of largemouth sawfish than other areas within the species' current range (Thorburn and Morgan, 2005; Field *et al.*, 2009). Despite their current abundance levels, we only identified a few historic records from Australia. The first record of a largemouth sawfish was in 1945 in the Northern Territory (Stevens *et al.*, 2005). There was a subsequent record in 1947, and two largemouth sawfish from the Gulf of Carpentaria, Queensland were reported in 1959 (GBIF Database). Faria *et al.* (2013) obtained a rostrum that was collected in Australia in 1960.

Since the 1980s, we found significantly more records of largemouth sawfish in Australia than other regions. A largemouth sawfish was captured from the Keep River, Australia in 1981 (Compagno and Last, 1999). Three largemouth sawfish were recorded in 1984 near Marchinbar Island, Northern Territory (GBIF Database). Blaber *et al.* (1990) found that largemouth sawfish were among the top twenty-five most abundant species in the trawl fisheries of Albatross Bay from 1986 to 1988. Three largemouth sawfish were reported from the Gulf of Carpentaria, Queensland: One in 1987 in Walker Creek, one in 1988 in the Gilbert River, and one in 1991 in Marrakai Creek, a tributary of the Adelaide River, Northern Territory (GBIF Database). Eight individuals were captured in the Leichhardt River in 2008 (Morgan *et al.*, 2010b). In a preliminary survey of the McArthur River, Northern Territory, Gorham (2006) reported two largemouth sawfish captured between 2002 and 2006. Surveys (Peverell, 2005; Gill *et al.*, 2006; Peverell, 2008) in the Gulf of Carpentaria found largemouth sawfish widely distributed throughout the eastern portion of the Gulf with most catches occurring near the mouth of

many rivers (Mitchell, *et al.*, 2005; 2008).

Juvenile largemouth sawfish in Australia use the Fitzroy River and other tributaries of King Sound (Morgan *et al.*, 2004) as nursery areas while adults are found more often offshore (Morgan *et al.*, 2010a). In Western Australia, besides the Fitzroy River and King Sound, the only other areas where juvenile sawfish have been recently recorded are in Willie Creek and Roebuck Bay (Gill *et al.*, 2006; Morgan *et al.*, 2011). Nursery areas for largemouth sawfish are also reported in northern Australia in the Gulf of Carpentaria (Gorham, 2006). Juvenile largemouth sawfish have been captured within the Adelaide River, Australia in 2013 (P. Kyne, Charles Darwin University, pers. comm., 2013). Abundance estimates for the largemouth sawfish from areas that support higher human populations may be declining (Taniuchi and Shimizu, 1991; Taniuchi *et al.*, 1991a; Morgan *et al.*, 2010a). Whitty *et al.* (2009) found that the population of juvenile largemouth sawfish in the Fitzroy River had declined; catch per unit effort was 56.7 sawfish per 100 hours in 2003 compared to 12.4 in 2009. There were no reported captures of largemouth sawfish in 2008 from the Roper River system, which drains into the western Gulf of Carpentaria, Northern Territory (Dally and Larson, 2008). No adult sawfish were captured in any of the prawn trawl fisheries in Queensland, Australia during the month of October 2001 (Courtney *et al.*, 2006).

Outside the northern and western areas of Australia, largemouth sawfish do occur but reports are less frequent. In southwestern Australian waters, one female sawfish was captured by a commercial shark fisherman in February 2003 east of Cape Naturaliste (Chidlow, 2007). Data from the Queensland, Australia Shark Control Program shows a clear decline in sawfish catch over a 30 year period from the 1960s, and the complete disappearance of sawfish in southern regions by 1993 (Stevens *et al.*, 2005).

Eastern Pacific

In the eastern Pacific, the historic range of largemouth sawfish was from Mazatlan, Mexico to Guayaquil, Ecuador (Cook *et al.*, 2005) or possibly Peru (Chirichigno and Cornejo, 2001). There is very little information on the population status in this region and few reports of capture records. The species has been reported in freshwater in the Tuyra, Culebra, Tilapa, Chucunaque, Bayeno, and Rio Sambu Rivers, and at the Balboa and Miraflores locks in the Panama Canal, Panama; in Rio San Juan,

Colombia; and in the Rio Goascoran, along the border of El Salvador and Honduras (Fowler, 1936, 1941; Beebe and Tee-Van, 1941; Bigelow and Schroeder, 1953; Thorson *et al.*, 1966a; Dahl, 1971; Thorson, 1974, 1976, 1982a, 1982b, 1987; Compagno and Cook, 1995; all as cited in Cook *et al.*, 2005). There are 4 records of largemouth sawfish south of Puerto Vallarta, Mexico in 1975, and several reports from Panama with no associated dates (GBIF Database). The only recent reports of largemouth sawfish in this area are anecdotal reports from Colombia, Nicaragua, and Panama (R. Graham, Wildlife Conservation Society, pers. comm. to IUCN, 2012).

Western Atlantic Ocean

In the western Atlantic Ocean, largemouth sawfish were widely distributed throughout the marine and estuarine waters in tropical and subtropical climates and historically found from Brazil through the Caribbean, Central America, the Gulf of Mexico, and seasonally into waters of the United States (Burgess *et al.*, 2009). Largemouth sawfish also occurred in freshwater habitats in Central and South America. Throughout the Caribbean Sea, the historical presence of the largemouth sawfish is uncertain and early records might have been misidentified smalltooth sawfish (G. Burgess, Florida Museum of Natural History, pers. comm. to IUCN, 2012).

Historic records of largemouth sawfish in the western north Atlantic have been previously reported in NMFS (2010a). Sawfish were documented in Central America in Nicaragua as early as 1529 by a Spanish chronicler (Gill and Bransford, 1877). This species was also historically reported in Nicaragua by Meek (1907), Regan (1908), Marden (1944), Bigelow and Schroeder (1953) and Hagberg (1968). Five largemouth sawfish were reported from a survey of Lake Izabal, Guatemala from 1946 to 1947, and sawfishes were reported to be important to inland fisheries (Saunders *et al.*, 1950). There is a single largemouth sawfish report from Honduras, but the true origin of the rostrum and the date of capture could not be confirmed (NMFS, 2010a).

In Atlantic drainages, largemouth sawfish has been found in freshwater at least 833 miles (1,340 km) from the ocean in the Amazon River system (Manacapuru, Brazil), as well as in Lake Nicaragua and the San Juan River; the Rio Coco, on the border of Nicaragua and Honduras; Rio Patuca, Honduras; Lago de Izabal, Rio Motagua, and Rio Dulce, Guatemala; and the Belize River, Belize. Largemouth sawfish are found in Mexican streams that flow into the Gulf

of Mexico; Las Lagunas Del Tortuguero, Rio Parismina, Rio Pacuare, and Rio Matina, Costa Rica; and the Rio San Juan and the Magdalena River, Colombia (Thorson, 1974, 1982b; Castro-Augiree, 1978 as cited in Thorson, 1982b; Compagno and Cook, 1995; C. Scharpf and M. McDavitt, National Legal Research Group, Inc., as cited in Cook *et al.*, 2005).

In the United States, largemouth sawfish were reported in the Gulf of Mexico mainly along the Texas coast east into Florida waters, though nearly all records of largemouth sawfish encountered in U.S. waters were limited to the Texas coast (NMFS, 2010a). Though reported in the United States, it appears that largemouth sawfish were never abundant, with approximately 39 confirmed records (33 in Texas) from 1910 through 1961.

The Amazon River basin and adjacent waters are traditionally the most abundant known range of largemouth sawfish in Brazil (Bates, 1964; Marlier, 1967; Furneau, 1969). Most of the records for which location is known originated in the state of Amazonas, which encompasses the middle section of the Amazon River basin along with the confluence of the Rio Negro and Rio Solimoes Rivers. The other known locations are from the states of Rio Grande do Norte, Sergipe, Bahia, Espirito Santo, Rio de Janeiro, Sao Paulo, Para, and Maranhao (NMFS, 2010a). Most records of largemouth sawfish in the Amazon River (Amazonia) predate 1974. The Magdalena River estuary was the primary source for largemouth sawfish encounters in Colombia from the 1940's (Miles, 1945), while other records originated from the Bahia de Cartagena and Isla de Salamanca (both marine), and Rio Sinu (freshwater) from the 1960's through the 1980's (Dahl, 1964; 1971; Frank and Rodriguez, 1976; Alvarez and Blanco, 1985). In other areas of South America, there are only single records from Guyana, French Guiana, and Trinidad from the late 1800's and early 1900's. Of the 5 records from Suriname, the most recent was 1962. Though thought to have once been abundant in some areas of Venezuela (Cervignon, 1966a, 1966b), the most recent confirmed records of largemouth sawfish from that country was in 1962.

Many records in the 1970's and 1980's are largely due to Thorson's (1982a, 1982b) research on the Lake Nicaragua-Rio San Juan system in Nicaragua and Costa Rica. Bussing (2002) indicated that this species was known to inhabit the Rio Tempisque and tributaries of the San Juan basin in Costa Rica. Following Thorson's (1982a, 1982b) studies,

records of largemouth sawfish in the western North Atlantic decline considerably. By 1981, Thorson (1982a) was unable to locate a single live specimen in the original areas he surveyed. There are no known Nicaraguan records of the largemouth sawfish outside of the Lake Nicaragua-Rio San Juan-Rio Colorado system (Burgess *et al.*, 2009), although largemouth sawfish are still captured incidentally by fishers netting for other species (McDavitt, 2002). Of the known largemouth sawfish reported from Mexico, most records are prior to 1978 (NMFS, 2010a). Caribbean records are very sparse (NMFS, 2010a). The last record of a largemouth sawfish in U.S. waters was in 1961 (Burgess *et al.*, 2009).

Most recent records for largemouth sawfish are in isolated areas. While many reports of largemouth sawfish from Brazil were from the 1980's and 1990's (Lessa, 1986; Martins-Juras *et al.*, 1987; Stride and Batista, 1992; Menni and Lessa, 1998; and Lessa *et al.*, 1999), recent records indicate largemouth sawfish are primarily found in fish markets near the Amazon-Orinoco estuaries (Charvet-Almeida, 2002; Burgess *et al.*, 2009). A Lake Nicaragua fisherman reports he encounters a few sawfish annually (McDavitt, 2002). Other records are rare for the area. Three recent occurrences were found in Internet searches, one being a 200 lb. (90.7 kg) specimen caught recreationally in Costa Rica (Burgess *et al.*, 2009). Though reported by Thorson *et al.* (1966a, 1966b) to be common throughout the area, there are no recent reports of encounters with sawfishes in Guatemala. Scientists in Colombia have not reported any sawfish sightings between 1999 and 2009 (Burgess *et al.*, 2009).

Eastern Atlantic Ocean

Historic records indicate that largemouth sawfish were once relatively common in the coastal estuaries along the west coast of Africa. Verified records exist from Senegal (1841–1902), Gambia (1885–1909), Guinea-Bissau (1912), Republic of Guinea (1965), Sierra Leone (date unknown), Liberia (1927), Côte d'Ivoire (1881–1923), Congo (1951–1958), Democratic Republic of the Congo (1951–1959), and Angola (1951). Most records, however, lacked species identification and locality data and may have been confused taxonomically with other species. Unpublished notes from a 1950's survey detail 12 largemouth sawfish from Mauritania, Senegal, Guinea, Côte d'Ivoire, and Nigeria, ranging in size from 35–275 in (89–700 cm) TL (Burgess *et al.*, 2009).

A more recent status review by Ballouard *et al.* (2006) reported that sawfishes, including the largemouth sawfish, were once common from Mauritania to the Republic of Guinea, but are now rarely captured or encountered. According to this report, the range of sawfishes has decreased to the Bissagos Archipelago (Guinea Bissau). The most recent sawfish encounters outside Guinea Bissau were in the 1990's in Mauritania, Senegal, Gambia, and the Republic of Guinea. The most recent documented largemouth sawfish capture was from 2005 in Nord de Caravela (Guinea Bissau), along with anecdotal accounts from fishers of captures off of two islands in the same area in 2008 (Burgess *et al.*, 2009).

In summary, on a global scale, largemouth sawfish appear to have been severely fragmented throughout their historic range into isolated populations of low abundance. Largemouth sawfish are now considered very rare in many places where evidence is available, including parts of East Africa, India, parts of the Indo-Pacific region, Central and South America and West Africa. Even within areas like Australia and Brazil, the species is primarily located in remote areas. Information from genetic studies indicates that largemouth sawfish display strong sex-biased dispersal patterns; with females exhibiting patterns of natal philopatry while males move more broadly between populations (Phillips *et al.*, 2011). Thus, the opportunity for re-establishment of these isolated populations is limited because any reduction in female abundance in one region is not likely to be replenished by movement from another region (Phillips, 2012).

Natural History of Green Sawfish (*Pristis zijsron*)

Taxonomy and Morphology

Pristis zijsron (Bleeker, 1851) is frequently known as the narrowmouth sawfish or the green sawfish. Synonymous names include *P. dubius* (Gloerfelt-Tarp and Kailola, 1984; Van Oijen *et al.*, 2007; Wueringer *et al.*, 2009). An alternative spelling for this species' scientific name (*P. zysron*) is found in older literature, due to either inconsistent writing or errors in translation or transcription (Van Oijen *et al.*, 2007).

The green sawfish has a narrow saw with 25–32 small, slender rostral teeth; tooth count may vary geographically (Marichamy, 1969; Last and Stevens, 1994; Morgan *et al.*, 2010a). Specimens collected along the west coast of Australia have 24–30 left rostral teeth

and 23–30 right rostral teeth (Morgan *et al.*, 2010a), although other reports are 23–34 (Morgan *et al.*, 2011). There have been no studies to determine sexual dimorphism from rostral tooth counts for green sawfish. The rostral teeth are generally denser near the base of the saw than at the apical part of the saw (Blegvad and Loppenthin, 1944). The total rostrum length is between 20.6–29.3 percent of the total length of the animal and may vary based on the number and size of individuals. In general, green sawfish have a greater rostrum length to total length ratio than other sawfish species (Morgan *et al.*, 2010a, 2011).

In terms of body morphology, the origin of the first dorsal fin on green sawfish is slightly posterior to the origin of pelvic fins. The lower caudal lobe is not well defined and there is no subterminal notch (Gloerfelt-Tarp and Kailola, 1984; Compagno *et al.*, 1989; Last and Stevens, 1994; Compagno and Last, 1999; Bonfil and Abdallah, 2004; Wueringer *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2011). The green sawfish has limited buccopharyngeal denticles and regularly overlapping monocuspidate dermal denticles on its skin. As a result, there are no keels or furrows formed on the skin (Deynat, 2005). The green sawfish is greenish brown dorsally and white ventrally. This species might be confused with the dwarf or smalltooth sawfish due to its similar size and range (Compagno *et al.*, 2006c).

Habitat Use and Migration

The green sawfish mostly uses inshore, marine habitats, but it has been found in freshwater environments (Gloerfelt-Tarp and Kailola, 1984; Compagno *et al.*, 1989; Compagno, 2002b; Stevens *et al.*, 2008; Wueringer *et al.*, 2009). In the Gilbert and Walsh Rivers of Queensland, Australia, specimens have been captured as far as 149 miles (240 km) upriver (Grant, 1991). However, Morgan *et al.* (2010a, 2011) report green sawfish do not move into freshwater for any portion of their lifecycle. Like most sawfishes, the green sawfish prefers muddy bottoms in estuarine environments (Last, 2002). The maximum depth recorded for this species is 131 ft (40 m) but it is often found in much shallower waters, around 16 ft (5 m; Compagno and Last, 1999; Wueringer *et al.*, 2009). Adults tend to spend more time in offshore waters in Australia, as indicated by interactions with the offshore Pilbara Fish Trawl Fishery, while juveniles prefer protected, inshore waters (Morgan *et al.*, 2010a; Morgan *et al.*, 2011).

Age and Growth

At birth pups are between 2 ft and 2 ft 7 in (61 and 80 cm) TL. At age 1 green sawfish are generally around 4 ft 3 in (130 cm) TL (Morgan *et al.*, 2010a). Peverell (2008) found between ages 1 and 5, green sawfish measure between 4 ft 2 in and 8 ft 5 in (128 and 257 cm) TL, based on the vertebral analysis of 6 individuals (Peverell, 2008; Morgan *et al.*, 2010a; Morgan *et al.*, 2011). A 12 ft 6 in (380 cm) TL green sawfish was found to be age 8, a 14 ft 4 in (438 cm) TL individual was found to be age 10, a 14 ft 9 in (449 cm) TL specimen was found to be age 16, and a 15 ft (482 cm) TL specimen was found to be age 18 (Peverell, 2008; Morgan *et al.*, 2011).

Adult green sawfish often reach 16 ft 5 in (5 m) TL, but may grow as large as 23 ft (7 m) TL (Compagno *et al.*, 1989; Grant, 1991; Last and Stevens, 1994; Compagno and Last, 1999; Bonfil and Abdallah, 2004; Compagno *et al.*, 2006c; Morgan *et al.*, 2010a). The largest green sawfish collected in Australia was estimated to be 19 ft 8 in (600 cm) TL based on a rostrum length of 5 ft 5 in (165.5 cm; Morgan *et al.*, 2010a; Morgan *et al.*, 2011).

Peverell (2008) completed an age and growth study for green sawfish using vertebral growth bands. Von Bertalanffy growth model parameters from both sexes combined resulted in estimated maximum theoretical size of 16 ft (482 cm) TL, relative growth rate of 0.12 per year and theoretical time at zero length of 1.12 yrs. The theoretical maximum age for this species is calculated to be 53 years (Peverell, 2008; Morgan *et al.*, 2010a).

Reproduction

Last and Stevens (2009) reported size at maturity for green sawfish at 9 ft 10 in (300 cm) TL, corresponding to age 9. In contrast, Peverell (2008) reported one mature individual of 12 ft 4 in (380 cm) TL and estimated its age as 9 yrs. Using the growth function from Peverell (2008) and assuming length of maturity at 118 in (300 cm), Moreno Iturria (2012) determined maturation is likely to occur at age 5. Demographic models based on life history data from the Gulf of Carpentaria indicate the generation time is 14.6 years, the intrinsic rate of population increase is 0.02 per year, and population doubling time is approximately 28 years (Moreno Iturria, 2012).

Green sawfish give birth to as many as 12 pups during the wet season (January through July); Last and Stevens, 1994; Peverell, 2008; Morgan *et al.*, 2010a, 2011). In Western Australia, females are known to pup in areas

between One Arm Point and Whim Creek, with limited data for all other areas (Morgan *et al.*, 2010a; Morgan *et al.*, 2011). The Gulf of Carpentaria, Australia is also a known nursery area for green sawfish (Gorham, 2006). It is not known where the green sawfish breed or their length of gestation.

Diet and Feeding

Like other sawfish, green sawfish use their rostra to stun small, schooling fishes, such as mullet, or use it to dig up benthic prey, including mollusks and crustaceans (Breder Jr., 1952; Rainboth, 1996; Raje and Joshi, 2003; Compagno *et al.*, 2006c; Last and Stevens, 2009). One specimen captured in 1967 in the Indian Ocean had jacks and razor fish (*Caranx* and *Centriscus*) species in its stomach (Marichamy, 1969). In Australia, the diet of this species often includes shrimp, croaker, salmon, glassfish, grunter, and ponyfish (Morgan *et al.*, 2010a).

Population Structure

Faria *et al.* (2013) found no global population structure for green sawfish in their genetic studies. However, geographical variation was found in the number of rostral teeth per side, suggesting some population structure may occur. Green sawfish from the Indian Ocean have a higher number of rostral teeth per side than those from western Pacific specimens (Faria *et al.*, 2013).

In Australia, genetic analysis found differences in green sawfish between the west coast, the east coast, and the Gulf of Carpentaria (Phillips *et al.*, 2011). Genetic data suggests these populations are structured matrilineally (from the mother to daughter) but there is no information on male gene flow at this time. These results may be indicative of philopatry where adult females return to or remain in the same area they were born (Morgan *et al.*, 2010a; Morgan *et al.*, 2011; Phillips *et al.*, 2011). Phillips *et al.* (2011) also found low levels of genetic diversity for green sawfish in the Gulf of Carpentaria, suggesting the population may have undergone a genetic bottleneck.

Distribution and Abundance

The green sawfish historically ranged throughout the Indo-West Pacific from South Africa northward along the east coast of Africa, through the Red Sea, Persian Gulf, Southern Asia, Indo-Australian archipelago, and east to Asia as far north as Taiwan and Southern China (Fowler, 1941; Blegvad and Løppenthin, 1944; Smith, 1945; Misra, 1969; Compagno *et al.*, 2002a, 2002b; Last and Stevens, 2009). Historic

records indicating species presence are available from India, Southeast Asia, Thailand, Malaysia, Indonesia, New South Wales, and Australia (Cavanagh *et al.*, 2003; Wueringer *et al.*, 2009; Morgan *et al.*, 2010a; Morgan *et al.*, 2011). Green sawfish have also been found in South Africa, the South China Sea, and the Persian Gulf (Fowler, 1941; Compagno *et al.*, 1989; Grant, 1991; Compagno and Last, 1999; Last, 2002; Compagno, 2002b; Morgan *et al.*, 2010a). To evaluate the current distribution and abundance of the green sawfish, we conducted an extensive search of peer-reviewed publications and technical reports, newspaper, magazine articles, and the GBIF Database. The results are summarized by geographic area.

Indian Ocean

Green sawfish are widely distributed throughout the Indian Ocean with the first record coming from Saudi Arabia in 1830 (GBIF Database). An additional record was reported from the Indian Ocean in the 1850s (GBIF Database). Several green sawfish were described near the Indian archipelago in the late 1800s (Van Oijen *et al.*, 2007).

Additional historical records include one female specimen captured in the Red Sea near Dollfus in 1929. In Egypt, two green sawfish rostra were found in 1938, and an additional rostrum was found on Henjam Island, Gulf of Oman (Blegvad and Løppenthin, 1994).

Unconfirmed reports of green sawfish are available from the Andaman and Nicobar Islands, India. In 1963, a male was captured at Port Blair, Gulf of Andaman (James, 1973). A female was captured in 1967, in the same area (Marichamy, 1969). One green sawfish was captured in the St. Lucia estuary, South Africa during a survey between 1975 and 1976 (Whitfield, 1999). In 1984, a green sawfish was observed in Trafalgar, South Africa (GBIF Database).

Despite historic records, there are few current records of green sawfish in the Indian Ocean. There are some reports of green sawfish from Iraq, Iran, South Africa, and Pakistan, but no dates are available (GBIF Database). We presume green sawfish are extremely rare or extirpated in the Indian Ocean based on the lack of current records.

Indo-Pacific Ocean (Excluding Australia)

The first description of the green sawfish was based on a rostral saw (Bleeker, 1851) from Bandjarmasin, Borneo (Van Oijen *et al.*, 2007). A juvenile male was captured in Amboine, Indonesia in 1856 (Deynat, 2005). An isolated saw from the Gulf of Thailand

was obtained in 1895 and estimated to be from a green sawfish 4 ft 8 in (143 cm) TL (Deynat, 2005). Eight specimens were sent to the Wistar Institute of Anatomy in 1898 from Baram, British North Borneo (Fowler, 1941). One green sawfish was reported from East Sepik, Papua New Guinea in 1929 (GBIF Database). In 1940, a green sawfish specimen was collected from Zamboanga, Philippines (GBIF Database).

Many islands within the Indo-Pacific region contain suitable habitat for sawfish, but few records are available, possibly due to the lack of surveys or data reporting. Before 1995, there were few local scientific studies on elasmobranchs, and only two species of freshwater rays had been recorded in Borneo. As a result, a great effort to document any unknown species was undertaken by Fowler (2002). Rostra and records were documented in the study, including several dried rostra of green sawfish from the Kinabatangan River area in the local markets of Sabah, Borneo; no collection specifics were provided. Locals also indicated that this species could often be found in the Labuk Bay area (Manjaji, 2002a) and in the country's freshwater systems (Manjaji, 2002b); they also reported a decline of sawfish populations overall.

Elsewhere in the Indo-Pacific region, few records of green sawfish have been reported. This species is currently considered endangered in Thailand by Vidthayanon (2002) and Compagno (2002a); they also reported no sawfish species from the South China Sea from 1923 to 1996. Anecdotal evidence suggests that sawfishes have not been recorded in Indonesia for more than 25 years (White and Last, 2010). Several reports of green sawfish exist from Malaysia, Indonesia, and New Zealand without any associated dates (GBIF Database).

Australia

In Australian waters, the earliest museum collection of the green sawfish was in 1913 in Llyod Bay, Queensland, Australia (GBIF Database). The Queensland Museum houses a green sawfish specimen collected in 1929 that was found in Moreton Bay, Queensland (Fowler, 1941). Two records exist of green sawfish collected in 1936 from Adelaide, South Australia (GBIF Database). We found very few records for green sawfish during the middle part of the last century. In the late 1970s and 1980s, reports of green sawfish began to occur again. In 1978, green sawfish were recorded in the Western Territory by CSIRO (GBIF Database). There are multiple observations in 1980 of green

sawfish in Australia: two from the Northern Territory, and one from the Gulf of Carpentaria (GBIF Database). A green sawfish was observed in the Gulf of Carpentaria in 1981 by CSIRO. Two were observed in Western Australia, one in 1982 and one in 1983 (GBIF Database). Two green sawfish were captured from Balgal, Queensland, Australia in 1985 (Beveridge and Campbell, 2005). In the Gulf of Carpentaria, two green sawfish were recorded in 1986, and one was recorded in 1987 (GBIF Database).

One green sawfish was caught in the southern portion of the Gulf of Carpentaria in late 1990 during a fish fauna survey (Blaber *et al.*, 1994). Alexander (1991) captured a female green sawfish from the west coast of Australia that was used for a morphological study. Between 1994 and 2010, almost 50 tissue samples were taken from live green sawfish or dried rostra from multiple areas around Australia, primarily the Gulf of Carpentaria and northwest and northeast coasts (Phillips *et al.*, 2011). In 1997, one green sawfish was found at the mouth of Buffalo Creek near Darwin, Northern Territory (Chisholm and Whittington, 2000). In a survey from 1999 through 2001 by White and Potter, (2004), one green sawfish was captured in Shark Bay, Queensland. In 1999, one green sawfish was captured by CSIRO from the Gulf of Carpentaria (GBIF Database). Peverell (2005, 2008) noted the green sawfish was one of the least encountered species in a survey from the Gulf of Carpentaria. In 2004, one green sawfish was reported near Darwin, Northern Territory by the European Molecular Biology Lab (GBIF Database). No green sawfish were captured from the Roper River system in 2008, which drains into the western Gulf of Carpentaria, Northern Territory (Dally and Larson, 2008). Some records have been reported for the east coast of Australia; one female green sawfish was acoustically tracked for 27 hours in May 2004 (Peverell and Pillans, 2004; Porteous, 2004). Peverell (2005, 2008) noted the green sawfish was one of the least encountered species in a survey from the Gulf of Carpentaria.

In summary, limited data makes it difficult to determine the current range and abundance of green sawfish. Nonetheless, given the uniqueness (size and physical characteristics) of the sawfish, we believe the lack of records in the areas where the species was historically found indicates the species is no longer present or has declined to extremely low levels. Extensive surveys at fish landing sites throughout Indonesia since 2001 have failed to

record the green sawfish (White pers. comm. to IUCN, 2012). There is some evidence from the Persian Gulf and Red Sea (*e.g.*, Sudan) of small but extant populations (A. Moore, RSK Environment Ltd., pers. comm. to IUCN, 2012). Green sawfish are currently found primarily along the northern coast of Australia, but all sawfish species have undergone significant declines in Australian waters. The southern extent of the range of green sawfishes in Australia has contracted (Harry *et al.*, 2011). Green sawfish have been reported as far south as Sydney, New South Wales, but are rarely found as far south as Townsville, Queensland (Porteous, 2004).

Natural History of the Non-Listed Population(s) of Smalltooth Sawfish (*Pristis pectinata*)

This section includes information from the listed U.S. DPS of smalltooth sawfish. The U.S. DPS of smalltooth sawfish was listed as endangered on April 1, 2003 (68 FR 15674). The basis of the U.S. DPS smalltooth sawfish listing was the significant differences in management across international borders. We discuss information from the U.S. DPS of smalltooth sawfish here because there is very little basic biological information on smalltooth sawfish found outside the U.S. We believe the information from the U.S. DPS is likely representative of the non-U.S. population of smalltooth sawfish and is useful for understanding its biology and extinction risk.

Taxonomy and Morphology

The smalltooth sawfish was first described as *Pristis pectinatus*, Latham 1794. The name was changed to the currently valid *P. pectinata* to match gender of the genus and species as required by the International Code of Zoological Nomenclature.

The smalltooth sawfish has a thick body with a moderately sized rostrum. As with many other sawfishes, tooth count varies by individual or region. While there is no reported difference in rostral tooth count between sexes, there have been reports of sexual dimorphism in tooth shape, with males having broader teeth than females (Wueringer *et al.*, 2009). Rostral teeth are denser near the apex of the saw than the base. Most studies report a rostral tooth count of 25 to 29 for smalltooth sawfish (Wueringer *et al.*, 2009). The saw may constitute up to one-fourth of the total body length (McEachran and De Carvalho, 2002).

The pectoral fins are broad and long with the origin of the first dorsal fin over or anterior to the origin of the

pelvic fins (Faria *et al.*, 2013). The lower caudal lobe is not well defined and lacks a ventral lobe (Wallace, 1967; Gloerfelt-Tarp and Kailola, 1984; Last and Stevens, 1994; Compagno and Last, 1999; Bonfil and Abdallah, 2004; Wueringer *et al.*, 2009). This species has between 228 and 232 vertebrae (Wallace, 1967).

The smalltooth sawfish has buccopharyngeal denticles and regularly overlapping monocuspidate (single-pointed) dermal denticles on their skin. As a result, there are no keels or furrows formed on the skin (Last and Stevens, 1994; Deynat, 2005). The body is an olive grey color dorsally, with a white ventral surface (Compagno *et al.*, 1989; Last and Stevens, 1994; Compagno and Last, 1999). This species may be confused with the narrow or green sawfish (Compagno, 2002b).

Habitat Use and Migration

All research on habitat use and migration has been conducted on the U.S. DPS of smalltooth sawfish. A summary of recent information (NMFS, 2010b) indicates smalltooth sawfish are generally found in shallow waters with varying salinity level that are associated with red mangroves (*Rhizophora mangle*). Juvenile sawfish appear to have small home ranges and limited movements. Simpfendorfer *et al.* (2011) reported smalltooth sawfish have an affinity for salinities between 18 and at least 24 ppt, suggesting movements are likely made, in part, to remain within this salinity range. Therefore, freshwater flow may affect the location of individuals within an estuary. Poulakis *et al.* (2011) found juvenile smalltooth sawfish had an affinity for water less than 3 ft (1.0 m) deep, water temperatures greater than 86 degrees Fahrenheit (30 degrees Celsius), dissolved oxygen greater than 6 mg per liter, and salinity between 18 and 30 ppt. Greater catch rates for smalltooth sawfish less than 1 year old were associated with shoreline habitats with overhanging vegetation such as mangroves. Poulakis *et al.* (2012) further determined daily activity space of smalltooth sawfish is less than 1 mi (0.7 km) of river distance. Hollensead (2012) reported smalltooth sawfish activity areas ranged in size from 837 square yards to 240,000 square yards to approximately 3 million square yards (0.0007 to 2.59 km²) with average range of movements of 2.3 yards to 6.67 yards (2.4 to 6.1 m) per minute. Hollensead (2012) also found no difference in activity area or range of movement between ebb and flood, or high and low tide. Smalltooth sawfish movements at night suggest possible nocturnal

foraging. Using a combination of data from pop-off archival transmitting tags across multiple institutional programs, movements and habitat use of adult smalltooth sawfish were determined in southern Florida and the Bahamas (Carlson *et al.*, 2013). Smalltooth sawfish generally remained in coastal waters at shallow depths less than 32 ft; (10 m) for more than 96 percent of the time that they were monitored. Smalltooth sawfish also remained in warm water temperatures of 71.6 to 82.4 degrees Fahrenheit (22 to 28 degrees Celsius) within the region where they were initially tagged. Tagged smalltooth sawfish traveled an average of 49 mi (80.2 km) from deployment to pop-off location during an average of 95 days. No smalltooth sawfish tagged in U.S. or Bahamian waters have been tracked to countries outside where they were tagged.

Age and Growth

There is no age and growth data for smalltooth sawfish outside of the U.S. DPS. A summary of age and growth data on the U.S. DPS of smalltooth sawfish (NMFS, 2010b) indicates rapid juvenile growth for smalltooth sawfish for the first two years after birth. Recently, Scharer *et al.* (2012) counted bands on sectioned vertebrae from naturally deceased smalltooth sawfish and estimated von Bertalanffy growth parameters. Theoretical maximum size was estimated at 14.7 ft (4.48 m), relative growth was 0.219 per year, with theoretical maximum size at 15.8 years.

Reproduction

In the eastern Atlantic Ocean, smalltooth sawfish have been recorded breeding in Richard's Bay and St. Lucia, South Africa (Wallace, 1967; Compagno *et al.*, 1989; Compagno and Last, 1999). Popping grounds are usually inshore, in marine or fresh water. Popping occurs year-around in the tropics, but in only spring and summer at higher latitudes (Compagno and Last, 1999). Records of captive breeding have been reported from the Atlantis Paradise Island Resort Aquarium in Nassau, Bahamas; copulatory behavior was observed in 2003 and six months later the female aborted the pups for unknown reasons (McDavitt, 2006). In October 2012, a female sawfish gave birth to five live pups at the Atlantis Paradise Island Resort Aquarium in Nassau, Bahamas (J. Choromanski, Ripley's Entertainment pers. comm to NMFS, 2013).

Several studies have examined demography of smalltooth sawfish in U.S. waters. Moreno Iturria (2012) calculated demographic parameters for smalltooth sawfish in U.S. waters and

estimated intrinsic rates of increase at seven percent annually with a population doubling time of 9.7 years. However, preliminary results of a different model by Carlson *et al.* (2012) indicates population increase rates may be greater, up to 17.6 percent annually, for the U.S. population of smalltooth sawfish. It is not clear which of these models is more appropriate for the non-U.S. population of smalltooth sawfish.

Diet and Feeding

Smalltooth sawfish often use their rostrum saw in a side-sweeping motion to stun their prey, which may include small fishes, or to dig up invertebrates from the bottom (Breder Jr., 1952; Compagno *et al.*, 1989; Rainboth, 1996; McEachran and De Carvalho, 2002; Raje and Joshi, 2003; Last and Stevens, 2009; Wueringer *et al.*, 2009).

Population Structure

A qualitative examination of genetic sequences revealed no geographical structuring of smalltooth sawfish haplotypes; however, variation in the number of rostral teeth per side was found in specimens from the western and eastern Atlantic Ocean (Faria *et al.*, 2013).

Distribution and Abundance

Smalltooth sawfish were thought to be historically found in South Africa, Madagascar, the Red Sea, Arabia, India, the Philippines, along the coast of West Africa, portions of South America including Brazil, Ecuador, the Caribbean Sea, the Mexican Gulf of Mexico, as well as Bermuda (Bigelow and Scheroder, 1953; Wallace, 1967; Van der Elst 1981; Compagno *et al.*, 1989; Last and Stevens, 1994; IUCN, 1996; Compagno and Last, 1999; McEachran and De Carvalho, 2002; Monte-Luna *et al.*, 2009; Wueringer *et al.*, 2009). Yet, reports of smalltooth sawfish from other than the Atlantic Ocean are likely misidentifications of other sawfish (Faria *et al.*, 2013). The lack of confirmed reports of smalltooth sawfish from areas other than the Atlantic Ocean indicates that smalltooth sawfish are only found in the Atlantic Ocean. In the eastern Atlantic Ocean, smalltooth sawfish were historically found along the west coast of Africa from Angola to Mauritania (Faria *et al.*, 2013). Although smalltooth sawfish were included in historic faunal lists of species found in the Mediterranean Sea (Serena, 2005), it is still unclear if smalltooth sawfish occurred as part of the Mediterranean ichthyofauna or were only seasonal migrants.

To evaluate the current and historic distribution and abundance of the

smalltooth sawfish outside the U.S. DPS, we conducted an extensive search of peer-reviewed publications and technical reports, newspaper, records from the GBIF Database, and magazine articles. The results of that search are summarized by major geographic region.

Eastern Atlantic Ocean

Smalltooth sawfish were once common in waters off the west coast of Africa, but are now rarely reported or documented in the area. The earliest record of a smalltooth sawfish is a specimen from Namibia in 1874 (GBIF Database). Other records of smalltooth sawfish in Africa occurred in 1907 from Cameroon, five males and two females. Female specimens were recorded in the Republic of the Congo in 1911 and 1948. Other reports from the Republic of Congo include a male and two females, but dates were not recorded. An undated female specimen from Mauritania was recorded (Faria *et al.*, 2013). A rostrum from Pointe Noire, Molez, Republic of the Congo was found in 1958 (Deynat, 2005; Faria *et al.*, 2013). There are records of smalltooth sawfish from Senegal as early as 1956 and another rostral saw was recorded in 1959. Faria *et al.* (2013) also reports on four other rostra from Senegal, but no other information is available.

Many records of smalltooth sawfish from the eastern Atlantic Ocean are reported in the GBIF database during the 1960s, particularly between 1963 and 1964. The majority of these records are from Nigeria (118), but others are from Gabon (77), Ghana (51), Cameroon (43), and Liberia (39). Another online database, Fishbase (www.fishbase.org), has the same records. It is unclear if these records are duplicative due to the lack of specific information.

In the 1970s, records of smalltooth sawfish became limited to more northern areas of West Africa. One rostral saw from Senegal was recorded in 1975 (Alexander, 1991). Similarly, one rostral saw was reported from Gambia in 1977, but information about exact location or sex of the animal was absent (Faria *et al.*, 2013). Faria *et al.* (2013) report a record of smalltooth sawfish in Guinea-Bissau in 1983 and a record of a saw in 1987. For a morphological study, Deynat (2005) obtained a juvenile female from Cacheu, Guinea-Bissau in 1983, and another from Port-Etienne, Mauritania, in 1986. Two rostra were reported from the Republic of Guinea, one in 1980 and one in 1988 (Faria *et al.*, 2013).

In the last 10 years, there has been only one confirmed record of a smalltooth sawfish in the eastern Atlantic Ocean in Sierra Leone, West

Africa, in 2003 (M. Diop, pers. comm. to IUCN, 2012). Two other countries have recently reported sawfish (Guinea Bissau, Africa in 2011, and Mauritania in 2010), but these reports did not identify the species as smalltooth sawfish.

Western Atlantic Ocean (Outside U.S Waters)

Overall, records of smalltooth sawfish in the western Atlantic Ocean are scarce and show a non-continuous range, potentially due to misidentification with largetooth sawfish. Faria *et al.* (2013) summarized most records of smalltooth sawfish in these areas. Faria *et al.* (2013) report the earliest records are a female smalltooth sawfish from Haiti in 1831 and a female sawfish from Trinidad and Tobago in 1876 (Faria *et al.*, 2013). One smalltooth sawfish was recorded in Belém, Brazil in 1863 (GBIF Database). Two smalltooth sawfish saws were reported from Guyana in 1886, and an additional saw was later recorded in 1900. In Brazil, there is a 1910 report of a female smalltooth sawfish. In 1914, there is a report of a smalltooth sawfish in Laguna de Terminos, Mexico (GBIF Database).

In the middle part of the twentieth century, there are reports of two female smalltooth sawfish from Mexico in 1926. Rostral saws were found in Suriname in 1943, 1944, and 1963, but no additional location or specimen information is known. One rostrum was reported from Costa Rica in 1960 and one rostral saw from Trinidad and Tobago in 1944 (Faria *et al.*, 2013). Several whole individuals and one rostrum were recorded from Guyana in 1958 and 1960. There are also several other undated specimens recorded from Guyana from this period (Faria *et al.*, 2013). There are other records of smalltooth sawfish's presence in the western Atlantic Ocean but specific information is lacking. For example, Faria *et al.* (2013) report that 4 rostral saws came from Mexico and two from Belize. One female was reported from Venezuela and two rostra from Trinidad and Tobago. Despite lacking date information, the GBIF Database and Fishbase have reports of smalltooth sawfish throughout South and Central America: French Guiana (48), México (9), Guyana (6), Venezuela (3), Haití (2), and individual records from Colombia, Nicaragua, and Belize.

In summary, while records are sparse, it is likely the distribution of smalltooth sawfish in the Atlantic Ocean is patchy and has been reduced in a pattern similar to largetooth sawfish. Data suggests only a few viable populations might exist outside the United States.

The Caribbean Sea may have greater numbers of smalltooth sawfish than other areas given high quality habitats and reduced urbanization. For example, smalltooth sawfish have been repeatedly reported along the western coast of Andros Island, Bahamas (R.D. Grubbs, Florida State University pers. comm. to J. Carlson, NMFS, 2014) and The Nature Conservancy noted two smalltooth sawfish at the northern and southern end of the island in 2006. Fishing guides commonly encounter smalltooth sawfish around Andros Island while fishing for bonefish and tarpon (R.D. Grubbs pers. comm. to J. Carlson, NMFS, 2014), and researchers tagged two in 2010 (Carlson *et al.*, 2013). In Bimini, Bahamas, generally one smalltooth sawfish has been caught every two years as part of shark surveys conducted by the Bimini Biological Station (D. Chapman pers. comm. to Carlson, NMFS). In West Africa, Guinea Bissau represents the last areas where sawfish can be found (M. Diop pers. comm. to IUCN, 2012). Anecdotal reports indicate smalltooth sawfish may also be found in localized areas off Honduras, Belize, and Cuba (R. Graham, Wildlife Conservation Society, pers. comm. to IUCN, 2012).

Peer Review and Public Comments

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the Information Quality Act (IQA). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664). The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by the Federal Government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information. The proposed rule and included status review were considered influential scientific information under this policy and subject to peer review. Similarly, a joint NMFS/FWS policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from at least three qualified specialists, concurrent with the public comment period, on the science that is the basis for listing decisions. To ensure this final rule was based on the best scientific and commercial data available, we solicited peer review comments from three scientists familiar with elasmobranchs.

On June 4, 2013, we published a proposed rule to list as endangered five species of sawfish: Narrow sawfish (*A.*

cuspidata), dwarf sawfish (*P. clavata*), largemouth sawfish (*P. pristis*), green sawfish (*P. zijsron*), and the non-U.S. DPS of smalltooth sawfish (*P. pectinata*), that occurs outside U.S. waters, and opened a 90-day public comment period (78 FR 33300). In the proposed rule, we stated that we were not proposing to designate critical habitat for any of the five species because they occur outside U.S. waters. During our comment period we received a request to extend the public comment period by 45 days. On August 7, 2013, we published a notice extending the public comment period by 45 days (78 FR 48134). We received a total of four public comments.

In the following sections of the document we summarize and respond to the comments received from the public and peer reviewers on the proposed rule.

Peer Review Comments

Comment 1: One commenter noted that the section of the proposed rule addressing protective efforts did not include details on the Sawfish Conservation Strategy developed by the IUCN Shark Specialist Group. The commenter stated that the strategy is a protective effort and will improve the conservation status of sawfishes worldwide. The commenter predicted a medium to high certainty that the actions identified in the Conservation Plan, when implemented, will be effective.

Response: We have included the IUCN Sawfish Conservation Strategy in the Protective Efforts section of this final rule. The Services established two basic criteria in the PECE for evaluating conservation efforts: (1) The certainty that the conservation efforts will be implemented, and (2) the certainty that the efforts will be effective. We evaluated the IUCN Sawfish Conservation Strategy and determined it does not meet either criterion identified in the PECE. The strategy identifies actions for countries to develop regulations or adopt management actions to implement the strategy. However, the strategy does not legally bind any country to enact laws or regulations, fund conservation actions, or otherwise implement the strategy. We believe there is considerable uncertainty that the actions identified in the strategy will be adopted by the various countries within the range of the five species of sawfish, and that resources are limited to support these actions. Therefore, we cannot find that the strategy will decrease extinction risk for any of the species.

Comment 2: One commenter stated that the Protective Efforts section of the proposed rule did not include national protective efforts except for the Convention on International Trade of Endangered Species of Wild Fauna and Flora (CITES). The commenter stated that sawfish protections in Australia were likely effective, but protections in India were likely ineffective.

Response: We updated the Protective Efforts section of the rule and included the new information on sawfish protections and conservation efforts in Australia from the Australian Government's recently published 2014 Draft Recovery Plan for Sawfish and River Sharks (Department of Environment, 2014). We also included updated information on existing laws in Australia and India designed to protect sawfishes into the Inadequacy of Existing Regulatory Mechanisms section of this final rule.

Comment 3: It was suggested we use information in Kyne *et al.* (2013) to update the occurrence information for *P. clavata*.

Response: We appreciate the new information and updated the occurrence information in the preceding sections. The information did not impact our evaluation of the status of *P. clavata*.

Comment 4: We received a question about the origin of the 1996 record of dwarf sawfish from the Mekong River Basin, Laos.

Response: We cite Rainboth (1996) for this report from the early 1900s that assumed the dwarf sawfish was from the Mekong River Basin, Laos. We acknowledge no specimen exists to confirm this report.

Comment 5: The validity of narrow sawfish reports from Tasmania by Deynat (2005) was questioned in one comment given the cold, temperate waters that do not support sawfish. The commenter suggested the record of the sawfish specimen in the fish collection of CSIRO in Hobart, Tasmania was erroneous.

Response: We reviewed the literature and agree with the commenter. We removed the reference to reports of narrow sawfish in Tasmania.

Public Comments

Comment 1: One commenter requested we cite a more recent reference for the information on the supply and demand of sawfish than the 1996 reference in the proposed rule. Specifically, the commenter questioned the statement that "sawfishes are in high demand throughout the world for display" and suggested that sawfishes are no longer in high demand for display in aquaria.

Response: We updated our information on the aquaria trade of sawfishes on current supply and demand of sawfishes in the Scientific and Educational Uses section and removed the statement cited by the commenter. Although we believe that sawfish are still in high demand in the aquaria trade, we recognize that the recent inclusion of all sawfishes under CITES Appendix I limits the use of sawfish for display and requires acquisition of animals for aquaria from captivity or captive breeding.

Comment 2: Several commenters stated that they were concerned about the impacts of including "injuring or killing a captive sawfish through experimental or potentially injurious veterinary care or conducting research or breeding activities on captive sawfish, outside the bounds of normal animal husbandry practices" in the list of activities that could result in a violation of the ESA Section 9 prohibitions. The concerns relate to the impacts on captive propagation and rearing programs being conducted by aquaria, and on the use of the latest advanced technological techniques available for captive held animals. The commenters requested clarification that fish care and husbandry techniques could continue to be used by aquaria.

Response: As stated in the proposed rule, sawfish held in captivity at the time of listing are afforded all of the ESA protections and may not be killed or injured or otherwise harmed, and, therefore, must receive proper care. We realize that the care of captive animals necessarily entails handling or other manipulation and we do not consider such activities to constitute injury or harm to the animals so long as adequate care, including veterinary care, is provided. Such veterinary care includes confining, tranquilizing, and anesthetizing sawfishes when such practices, procedures, or provisions are necessary and not likely to result in injury.

On the effective date of a final listing, ESA Section 9 take prohibitions automatically apply for species listed as endangered and any 'take' of the species is illegal unless that take is authorized under a permit or through an incidental take statement. Incidental take statements result from ESA Section 7 consultations on the effects of federal activities. ESA Section 10 permits can authorize directed take (*e.g.*, for scientific research or enhancement of the species) or incidental take during an otherwise lawful activity that would not be subject to ESA section 7 consultation. ESA Section 10 permits are issued to entities or persons subject to the

jurisdiction of the United States. We encourage institutions with captive sawfish who are considering activities outside the bounds of normal animal husbandry (e.g., breeding or research) to contact NMFS Office of Protected Resources, Permits and Conservation Division, to determine if an ESA Section 10 permit is required to authorize the proposed activity. We do not have information regarding emerging advances in fish care and animal husbandry for sawfish held in captivity so we cannot determine at this time if they are outside the bounds of normal care for captive animals.

Comment 3: Several commenters requested clarification of the meaning of the terms “non-commercial” and “non-commercially” as those terms are used in the section titled Identification of those Activities that Would Constitute a Violation of Section 9 of the ESA.

Response: Section 3 of the ESA defines the term “commercial activity” to mean “all activities of industry and trade, including but not limited to, the buying and selling of commodities and activities conducted for the purposes of facilitating such buying and selling; *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.” NMFS will use the definition of “commercial activity” to evaluate whether an activity is “non-commercial” or a sawfish is being held “non-commercially” in captivity.

Our listing determinations and summary of the data on which it is based, with the incorporated changes, are presented in the remainder of this document.

Species Determinations

We first consider whether the narrow sawfish (*A. cuspidata*), dwarf sawfish (*P. clavata*), largetooth sawfish (*P. pristis*), green sawfish (*P. zijron*), and of the non-U.S. DPS of smalltooth sawfish (*P. pectinata*) meet the definition of “species” pursuant to section 3 of the ESA. Then we consider if any populations meet the DPS criteria.

Consideration as a “Species” Under the Endangered Species Act

Based on the best available scientific and commercial information described above in the natural history sections for each species, we have determined that the narrow sawfish (*A. cuspidata*), dwarf sawfish (*P. clavata*), largetooth sawfish (*P. pristis*), and green sawfish (*P. zijron*) are taxonomically-distinct species and therefore eligible for listing under the ESA. The largetooth sawfish (*P. pristis*) now includes the formerly

recognized species *P. microdon* and the previously listed *P. perotteti*. The decision to list *P. pristis* will replace our 2011 listing determination for *P. perotteti*.

Distinct Population Segments

In order to determine if the petitioned and currently non-listed population segment of smalltooth sawfish (*P. pectinata*) constitutes a “species” eligible for listing under the ESA, we evaluated it under our joint NMFS-USFWS Policy regarding the recognition of distinct population segments (DPS) under the ESA (61 FR 4722; February 7, 1996). We examined the three criteria that must be met for a DPS to be listed under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the remainder of the species to which it belongs; and (3) the population segment’s conservation status in relation to the Act’s standards for listing (i.e., Is the population segment, when treated as if it were a species, endangered or threatened?).

A population may be considered discrete, if it satisfies one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or (2) it is delimited by international governmental boundaries within which differences of control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

We previously determined that smalltooth sawfish in the United States merited protection as a DPS and listed the U.S. DPS of smalltooth sawfish as endangered (68 FR 15674; April 1, 2003). At that time, there was no information available to indicate smalltooth sawfish in U.S. waters interact with those in international waters or other countries, suggesting that the U.S. population may be effectively isolated from other populations. However, there were few scientific data on the biology of smalltooth sawfish, and it was not possible to conclusively subdivide this species into discrete populations on the basis of genetics, morphology, behavior, or other biological characteristics. Because there were no identified mechanisms regulating the exploitation of this species anywhere outside of the United States, we considered that lack of protection as directly relevant to the inadequacy of existing regulatory mechanisms and a basis for considering

the U.S. population as discrete across international boundaries.

We now evaluate the non-U.S. population of smalltooth sawfish to determine if it meets the discreteness criteria of the joint DPS policy. First, we determine whether the non-U.S. population of smalltooth sawfish is discrete from the U.S. population because it is delimited by international governmental boundaries within which differences of control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. Because we have designated critical habitat for the U.S. DPS population of smalltooth sawfish, there is a significant regulatory mechanism for protecting smalltooth sawfish and their habitats in the United States that does not exist for the non-U.S. population of smalltooth sawfish. Movement data from smalltooth sawfish tagged in U.S. and Bahamian waters also indicate no movement to countries outside where they were tagged. This information provides support that the non-U.S. population is discrete from the already-listed U.S. DPS on the basis of being markedly separate as a consequence of ecological factors, in addition to our previous determination that the U.S. DPS is discrete on the basis of international boundaries and significant differences in regulatory mechanisms. For smalltooth sawfish outside the U.S., we have no information regarding genetic or other biological differences that would provide a strong basis for further separating the non-U.S. smalltooth sawfish population into smaller, discrete units. We, therefore, conclude that the non-U.S. population of smalltooth sawfish meets the discreteness criterion of the joint DPS policy and we consider this population as a single potential DPS.

We next must consider whether the non-U.S. population of smalltooth sawfish meets the significance criterion. The joint DPS policy gives examples of potential considerations indicating the population’s significance to the larger taxon. Among these considerations is evidence that the discrete population segment would result in a significant gap in the range of the taxon. Smalltooth sawfish are limited in their distribution outside of the United States to West Africa, the Caribbean, Mexico, and Central and South America. Loss of this group of smalltooth sawfish would result in a significant gap in the range of this species and restrict distribution to U.S. waters. Because the loss of smalltooth sawfish in areas outside the United States would result in a

significant gap in the range of the species, we conclude the non-U.S. population of smalltooth sawfish is significant as defined by the DPS policy.

Based on the above analysis of discreteness and significance, we conclude that the non-U.S. population of smalltooth sawfish (*P. pectinata*) meets the definition of a DPS and is eligible for listing under the ESA, and hereafter refer to it as the non-U.S. DPS of smalltooth sawfish.

Extinction Risk

Our updated extinction risk analysis provides a more detailed discussion of the extinction risk analysis process that we used to determine the risk of extinction for narrow sawfish, dwarf sawfish, green sawfish, largemouth sawfish, and the non-U.S. DPS of smalltooth sawfish to determine whether the species are threatened or endangered per the ESA's definitions. We used an adaptation of the approach, including the primary concepts, developed by Wainwright and Kope (1999) to organize and summarize our findings. This approach was originally developed for salmonids and has been adapted and applied in the review of many other species (Pacific salmonid, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, and black abalone) to summarize the status of the species according to demographic risk criteria. The approach is useful when there is insufficient quantitative data to support development of population viability models to investigate extinction risk and it allows the incorporation of sparse and qualitative data. Wainwright and Kope (1999) identified key demographic parameters that have a strong bearing on extinction risk, with a focus on risks to small populations from genetic effects and population dynamics. Using these concepts, adapted to the biology of these sawfishes and our available data, we estimated the extinction risk, based on demographic factors, for each of the five species under both current threats and threats expected in the foreseeable future. We also performed a threats assessment by identifying the severity of threats that exist now and in the foreseeable future.

We defined the "foreseeable future" as the timeframe over which threats, or the species' response to those threats, can be reliably predicted to impact the biological status of the species. We determined that the foreseeable future is approximately three generation times, calculated for each of the species based on the demographic calculations of Moreno Iturria (2012): Narrow sawfish, 14 years; dwarf sawfish, 49 years;

largemouth sawfish, 48 years; green sawfish, 38 years; and the non-U.S. DPS of smalltooth sawfish, 30 years. After considering the life history of each species, availability of data, and type of threats, we concluded that three generations was an appropriate measure to evaluate threats in the foreseeable future. As a late-maturing species, with slow growth rate and low productivity, it would take more than one generation for any conservation management action to be realized and reflected in population abundance indices. The timeframe of three generations is a widely used scientific indicator of biological status, and has been applied to decision making models by many other conservation management organizations, including the American Fisheries Society, the CITES, and the IUCN.

We considered three demographic categories in which to summarize available data and assess extinction risk of each sawfish species: (1) Abundance, (2) population growth rate/productivity, and (3) genetic integrity which include the connectivity and genetic diversity of the species. We determined the extinction risk for each category, for both now and in the foreseeable future, using a five level qualitative scale to describe our assessment of the risk of extinction. At the lowest level, a factor, either alone or in combination with other factors, is considered "unlikely" to significantly contribute to risk of extinction for a species. The next lowest level is considered to be a "low" risk to contribute to the extinction risk, but could contribute in combination with other factors. The next level is considered a "moderate" risk of extinction for the species, but in combination with other factors contributes significantly to the risk of extinction. A ranking of "high" risk means that factor by itself is likely to contribute significantly to the risk of extinction. Finally, a ranking of "very high" risk means that factor is considered "highly likely" to contribute significantly to the risk of extinction.

We ranked abundance as high or very high risk which is likely to contribute significantly to the current and foreseeable risk of extinction for all five species. While it appears the northern coast of Australia supports the largest remaining groups of dwarf, largemouth, green, and narrow sawfish in the Pacific and Indian Ocean, data from the Queensland, Australia Shark Control Program show a clear decline in sawfish catch (non-species-specific) over a 30-year period from the 1960s. In addition, it shows the complete disappearance of sawfish in southern regions (Stevens *et*

al., 2005). The available data on abundance of sawfishes indicates there are still some isolated groups of sawfish in the western and central Indo-Pacific region, but their abundance has likely declined from historic levels. Smalltooth sawfish are still being reported outside of U.S. waters in the Caribbean Sea, but records are few and mostly insular (*e.g.*, Andros Island) where habitat is available and gillnet fisheries are not a threat to the species (see below). There are only four records of largemouth sawfish in the eastern Atlantic Ocean over the last decade. In the western Atlantic, recent largemouth sawfish records are from only the Amazon River basin and the Rio Colorado-Rio San Juan area in Nicaragua.

Wainwright and Kope (1999) stated short- and long-term trends in abundance are a primary indicator of extinction risk. These trends may be calculated from a variety of quantitative data such as research surveys, commercial logbook or observer data, and landings information when accompanied by effort, but there is an absence of long-term monitoring data for all five sawfishes. We looked at the available data closely to see if we could support inferences about extinction risk based on the trends in past observations using the presence of a particular species at specified places and times (*e.g.*, Dulvy *et al.*, 2003; Rivadeneira *et al.*, 2009). The available museum records, negative scientific survey results, and anecdotal reports do indicate the abundance trend for all five sawfishes is declining and population sizes are small. Information available on the species' distribution indicates the species' ranges have also contracted. In many areas where sawfish still occur, they are subject to commercial and artisanal fisheries and potential habitat loss. We therefore ranked the risk of extinction posed by the sawfishes' abundances as high, now and into the foreseeable future.

We next considered the species' potential growth rates and productivity as measures of their ability to recover from depleted levels and provide inherent protection against extinction risk. Sawfish have historically been classified as having both low reproductive productivity and low recovery potential. The demography of smalltooth and largemouth sawfish from the northwest Atlantic Ocean that was originally investigated using an age-structured life table (Simpfendorfer, 2000). Using known estimates of growth, mortality, and reproduction at the time, Simpfendorfer (2000) determined that intrinsic rates of

population increase ranged from 8 to 13 percent per year, and population doubling times were approximately 5 to 8.5 years for both species. These estimates included assumptions that there was no fishing mortality, no habitat limitations, no population fragmentation, or other effects of small population sizes. Simpfendorfer (2006) further modeled the demography of smalltooth sawfish using a method for estimating the rebound potential of a population by assuming that maximum sustainable yield was achieved when the total mortality was twice that of natural mortality. This demographic model produced intrinsic rates of population increase that were from two to seven percent per year for both smalltooth and largetooth sawfish. These values are similar to those calculated by Smith *et al.* (2008) using the same methodology corresponding to elasmobranch species with the lowest productivity. Musick *et al.* (2000) noted that species with intrinsic rates of increase of less than 10 percent were particularly vulnerable to rapid population declines and a higher risk of extinction.

Some recent studies on the life history of sawfish, however, indicate they are potentially more productive than originally proposed. Growth rates (von Bertalanffy "K") for some species, like narrow sawfish, approach 0.34 per year (Peeverell, 2008). Data from tag-recapture studies and analysis of vertebral growth bands from smalltooth sawfish indicate that the first few years after birth represent the time when growth is most rapid (*e.g.*, Simpfendorfer *et al.*, 2008; Scharer *et al.*, 2012). Using updated life history information, Moreno Iturria (2012) calculated intrinsic rates of increase for these five species of sawfish and determined values ranging from a low of 0.02 per year for green sawfish to a high of 0.27 per year for narrow sawfish with dwarf sawfish being second highest at 0.10 per year. Considering this information, and the inferred declining trend in abundance, we conclude productivity is a moderate risk for the narrow sawfish but a high risk for the other four species. We also determined that productivity would remain a moderate risk for the narrow sawfish and is a high risk for the other four species, in the foreseeable future.

We also assessed the species' extinction risk, based on genetic diversity, spatial structure and connectivity. Population structure and levels of genetic diversity have recently been assessed for the green sawfish, dwarf sawfish, and largetooth sawfish across northern Australia using a portion of the mtDNA control region.

Phillips *et al.* (2011) found statistically significant genetic structure within species and moderate genetic diversity among these species. These results suggest that sawfish may be more vulnerable to local extirpation along certain parts of their range, especially in areas where the population has been fragmented and movement between these areas is limited. However, these results do not necessarily suggest a higher risk of extinction throughout the entire range of the species. Chapman *et al.* (2011) investigated the genetic diversity of the U.S. DPS of smalltooth sawfish that has declined to between one percent to five percent of its abundance at the turn of the twentieth century, while its core distribution has contracted to less than 10 percent of its former range (NMFS, 2009). Surprisingly, given the magnitude of this population decline and range contraction, the U.S. DPS of smalltooth sawfish does not exhibit any sign of genetic bottlenecks, and it has genetic diversity that is similar to other, less depleted elasmobranch populations (Chapman *et al.*, 2011). Given that all five species of sawfish considered here have suffered similar abundance declines, we believe this conclusion should serve as a surrogate for the other sawfish species. Because the U.S. DPS of smalltooth sawfish has not undergone a genetic bottleneck, we ranked genetic diversity as a moderate risk for all sawfish species as it is likely, in combination with other factors, to contribute significantly to the risk of extinction. However, we determined that the risk of extinction due to the lack of connectivity was high for all five species, primarily because all populations have undergone severe fragmentation. While genetic results provide optimism for the remaining populations of sawfish, this does not preclude the promotion of management actions to enhance connectivity among populations that have been historically fragmented. We are also somewhat optimistic that sawfish populations may begin to rebuild in some areas and the risk of connectivity was determined to decrease for smalltooth and the narrow sawfish in the foreseeable future, although by only a small amount.

After reviewing the best available scientific data and assessing the extinction risk on the five species of sawfishes based on their status and demography, we conclude the risk of extinction for all five species of sawfish is high.

Summary of Factors Affecting the Five Species of Sawfishes

Next we consider whether any of the five factors specified in section 4(a)(1) of the ESA are contributing to the extinction risk of these five sawfishes.

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

We identified destruction, modification, or curtailment of habitat or range as a potential threat to all five species of sawfishes and determined this factor is currently, and in the foreseeable future, contributing significantly to the risk of extinction of these species.

Coastal and Riverine Habitats

Loss of habitat is one of the factors determined to be associated with the decline of smalltooth sawfish in the U.S. (NMFS, 2009). As juveniles, sawfishes rely on shallow nearshore environments, primarily mangrove-fringed estuaries as nurseries (*e.g.*, Wiley and Simpfendorfer, 2010; Norton *et al.*, 2012). Coastal development and urbanization have caused these habitats to be reduced or removed from many areas throughout the species' historic and current range. Habitat loss was identified as one of the most serious threats to the persistence of all species of sawfish, posing high risks for extinction. It is still unclear how anthropogenic perturbations to habitats affect the recruitment of juvenile sawfish, and therefore adequate protection of remaining natural areas is essential. Given the threat from coastal urbanization coupled with the predicted reduction of mangroves globally (Alongi, 2008), we believe the risk of habitat loss would significantly contribute to both the decline of sawfish and their reduced viability.

We expect habitat modification throughout the range of these sawfishes to continue with human population increases. As humans continue to develop rural areas, habitat for other species, like sawfish, becomes compromised (Compagno, 2002b). Habitat modification affects all five species of sawfish, especially those inshore, coastal habitats near estuaries and marshes (Compagno and Last, 1999; Cavanagh *et al.*, 2003; Martin, 2005; Chin *et al.*, 2010; NMFS, 2010). Mining and mangrove deforestation severely alter the coast habitats of estuaries and wetlands that support sawfish (Vidthayanon, 2002; Polhemus *et al.*, 2004; Martin, 2005). In addition, riverine systems throughout most of these species' historical range have been

altered or dammed. For example, the potential expansion of the McArthur River Mine would permanently realign channels that would in turn affect the number of pools formed during the wet and dry seasons, many of which are used as refuge areas for dwarf, green, or largemouth sawfish (Polhemus *et al.*, 2004; Gorham, 2006). In addition to the potential expansion of the McArthur River Mine, the Nicaragua government is proposing to build a cross-country canal through habitats currently used by the remaining largemouth sawfish population in Lake Nicaragua (BBC News, Latin America and Caribbean, 2013).

Although the status of habitats across the global range of these sawfishes is not well known, we expect the continued development and human population growth to have negative effects on habitat, especially to nearshore nursery habitats. For example, Ruiz-Luna *et al.* (2008) acknowledge that deforestation of mangrove forests in Mexico has occurred from logging practices, construction of harbors, tourism, and aquaculture activities. Valiela *et al.* (2001) reported on mangrove declines worldwide. They showed that the area of mangrove habitat in Brazil decreased from 9652 to 5173 square miles (24,999 to 13,398 square kilometers) between 1983 and 1997, with similar trends in Guinea-Bissau 1837 to 959 square miles (4758 to 2484 square kilometers) from 1953 to 1995. The areas with the most rapid mangrove declines in the Americas included Venezuela, Mexico, Panama, the U.S., and Brazil. Along the western coast of Africa, the largest declines have occurred in Senegal, Gambia, Sierra Leone, and Guinea-Bissau. World-wide mangrove habitat loss was estimated at 35 percent from 1980 to 2000 (Valiela *et al.*, 2001). These areas where mangroves are known to have decreased are within both the historic and current ranges of these five species.

Hydroelectric and Flood Control Dams

Hydroelectric and flood control dams pose a major threat to freshwater inflow into the euryhaline habitats of sawfishes. Alterations of flow, physical barriers, and increased water temperature affect water quality and quantity in the rivers, as well as adjacent estuaries that are important nursery areas for sawfish. Regulating water flow affects the environmental cues of monsoonal rains and increased freshwater flow for pupping (Peveler, 2008; Morgan *et al.*, 2011). Changes in siltation due to regulated water flow may also affect benthic habitat or prey abundance for these sawfishes

(Compagno, 2002; Polhemus *et al.*, 2004; Martin, 2005; Thorburn *et al.*, 2007; Chin *et al.*, 2010; Morgan *et al.*, 2010a).

New dams being proposed to provide additional irrigation to farmland upstream may affect sawfish habitat. For example, the Gilbert River, in Queensland, Australia drains into the Gulf of Carpentaria, which is the nursery area for green, dwarf, and largemouth sawfish. Further modification of the McArthur and Gilbert Rivers, along with increased commercial fishing in coastal waters, will negatively affect sawfishes by reducing available habitat while increasing bycatch mortality (Gorham, 2006).

Water Quality

Largemouth sawfish in particular, and likely the other sawfishes, have experienced a loss of habitat throughout their range due to the decline in water quality. Agriculture and logging practices increase runoff, change salinity, and reduce the flow of water into freshwater rivers and streams that affects the habitat of the largemouth sawfish (Polhemus *et al.*, 2004; IUCN Red List, 2006); mining seems to be the most detrimental activity to water quality. Pollution from industrial waste, urban and rural sewage, fertilizers and pesticides, and tourist development all end up in these freshwater systems and eventually the oceans. Pollution from these operations has caused a reduction in the number of sawfish in these freshwater systems (Vidhayanon, 2002; Polhemus *et al.*, 2004).

In summary, habitat alterations that potentially affect sawfishes include commercial and residential development; agricultural, silvicultural, and mining land uses; construction of water control structures; and modification to freshwater inflows. All sawfishes are vulnerable to a host of habitat impacts because they use rivers, estuaries, bays, and the ocean at various times of their life cycle. Based on our review of current literature, scientific surveys and anecdotal information on the historic and current distribution, we find that destruction, modification, and curtailment of habitat or ranges are a factor affecting the status of each species. We conclude that this factor is contributing, on its own or in combination with other factors, to the extinction risk of all five species of sawfishes.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We identified overutilization for commercial, recreational, scientific, or

educational purposes as a potential threat to all five species of sawfishes and determined that it is currently and in the foreseeable future contributing significantly to their risk of extinction.

Commercial Fisheries

Commercial fisheries pose the biggest threat to these sawfishes, as these species are bycatch from many fisheries. Their unusual morphology and prominent saw makes sawfishes particularly vulnerable to most types of fishing gear, most notably any type of net (Anak, 2002; Hart, 2002; Last, 2002; Pogonoski *et al.*, 2002; Cavanagh *et al.*, 2003; Porteous, 2004; Stevens *et al.*, 2005; Gorham 2006; IUCN Red List, 2006; Chidlow, 2007; Field, 2009; Chin *et al.*, 2010; NMFS, 2010; Morgan *et al.*, 2011). Trawling gear is of particular concern as it is the most common gear used within the range and habitat of sawfishes (Compagno and Last, 1999; Taniuchi, 2002; Walden and Nou, 2008). In Thailand, all sawfish fins obtained and sold to markets are a result of bycatch by otter-board trawling and gillnet fisheries as there are no directed sawfish fisheries in the country (Pauly, 1988; Vidhayanon, 2002). The Lake Nicaragua commercial fishery for largemouth sawfish that collapsed prior to the 1980's was comprised mostly of gillnet boats (Thorson, 1982a), and the commercial small coastal shark fishery in Brazil mainly uses gillnets and some handlines (Charvet-Almeida, 2002). Subadult and adult smalltooth sawfish have been reported as bycatch in the U.S. Gulf of Mexico and south Atlantic shrimp trawl fishery (NMFS SEFSC, 2011); however, if proper techniques are used, all sawfish species, particularly adults, are fairly resilient and can be released alive from most fishing gear (Lack *et al.*, 2009).

Live release of sawfishes from commercial fishing gear does occur but sawfishes are often retained. The meat is generally consumed locally, but the fins and rostra are of high value and sold in markets where these products are unregulated (CITES, 2007). In Brazil, a captured sawfish is most likely retained because of the value of their products, as the rostra, rostral teeth, and fins are valued at upwards of \$1,000 U.S. in foreign markets (NMFS, 2010a). The proportion of largemouth sawfish in these markets is unknown, although as many as 180 largemouth sawfish saws were annually sold at a single market in northern Brazil in the early 2000's (McDavitt and Charvet-Almeida, 2004). The Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC) organization found that meat, liver oil, fins, and skin are among the most

preferred sawfish products in Asian markets (Anak, 2002; Vidthayanon, 2002). In the Gulf of Thailand, over 5,291 US tons (4,800 tonnes) of rays were caught annually from 1976 to 1989; at the same time over 1,102 US tons (1,000 tonnes) of rays were caught in the Andaman Sea (Vidthayanon, 2002). It is likely that most of these products were sold in Asian markets because of the high demand for sawfish products. Reports of sawfish products in various markets throughout Asia are often inconsistent and inaccurate despite international rules on trade and possession of sawfish products (Fowler, 2002; Clarke *et al.*, 2008; Kiessling *et al.*, 2009).

Recreational or commercial fishing gear may be abandoned or lost at sea. These “ghost nets” are an entanglement hazard for sawfishes and have become an increasing problem in the Gulf of Carpentaria where over 5,500 ghost nets were removed in 2009. Sawfish captures are expected to occur in regions where no quantitative information about ghost nets exists (Gunn *et al.*, 2010).

Misidentification, general species-composition grouping, and failure to record information are all concerns for reporting sawfish captures in direct or indirect commercial fisheries (Stobutzki *et al.*, 2002b). With little enforcement of regional and international laws, the practice of landing sawfishes may continue (NMFS, 2010a). All sawfish populations have been declining worldwide, partly due to the negative effects of commercial fishing (Stevens *et al.*, 2000; Peverell, 2008).

Recreational Fisheries

Sawfish are bycatch of many recreational fisheries throughout their range, even in areas where they are protected, including many Australian rivers (Walden and Nou, 2008; Field *et al.*, 2009). Peverell (2008) reports that some sawfish are a target sport fish for recreational fishermen in the Gulf of Carpentaria, Queensland. Historical information from the U.S. indicates that recreational hook and line fishers in Texas sometimes target large sharks as trophy fish but may capture sawfish (Burgess *et al.*, 2009). Elsewhere in the United States, the abundance of sawfishes is low and likely never high enough for recreational fishers to encounter sawfish, much less target it (NMFS, 2010a). With the increase in human population along the coast, recreational fishing has the potential to put additional pressure on sawfish species that use coastal habitats (Walden and Nou, 2008).

Indigenous Take

Due to the large populations of various indigenous people throughout the range of these five species, and the lack of data on the animals they harvest, the number of sawfish taken by local peoples is unknown. Elasmobranchs are caught for consumption throughout the Indo-Pacific. In some areas, the meat and fins of these animals are of high market value, and therefore they are sold rather than consumed locally. Due to this unregulated consumption, removal of elasmobranchs, which includes sawfishes, is a threat to their population(s) (Compagno and Last, 1999; Pogonoski *et al.*, 2002; Vidthayanon, 2002; Thorburn *et al.*, 2007; Peverell, 2008; Morgan *et al.*, 2010a).

Some studies have been conducted on the use and value of elasmobranch parts to various indigenous groups, particularly those in eastern Sabah, Malaysia. One study (Almada-Villela, 2002) found the majority of natives from Pulau Tetabuan and Pulau Mabul only take what is necessary for subsistence. Sawfish rostra are also valued and kept as decoration or given as gifts at the expense of the animal (Almada-Villela, 2002; McDavitt *et al.*, 1996; Vidthayanon, 2002).

Protective Coastal Nets

Protective gillnets to prevent shark attacks on humans is used in some areas but can have a negative impact due to bycatch. Sawfishes are highly susceptible to capture in nets because their saws are easily tangled in nets. The Queensland Shark Control Program in Australia places nets along beaches during the summer months. From 1970 to 1990, sawfish bycatch in these nets declined despite relatively constant effort; likely due to an overall decline in sawfish populations (Stevens *et al.*, 2005). In South Africa, the first protective gillnets lined the southeast tip of the continent's coast as early as 1952. By 1990, over 27 mi (44 km) of nets lined the area between Richards Bay and Mzamba (Dudley and Cliff, 1993). About 350 sharks and rays were captured in these nets between 1981 and 1990. A high percentage of entangled sawfish are released alive because of their ability to breathe while motionless. Dudley and Cliff (1993) reported that 100 percent of largemouth sawfish and 67 percent of smallmouth sawfish caught during that time were released alive. Still, subsequent mortality post-release due to stress or injury from the process is unknown and potentially detrimental given other

fishing pressures (Dudley and Cliff, 1993).

Scientific and Educational Uses

Sawfishes are unique animals that are currently on public display in many large aquariums. Removal of sawfishes from their natural habitats has caused some concern for these sawfish species and their ecosystems. No information is available on the level of mortality that occurs during the capture and transporting of live sawfish to aquaria. Removal of female sawfish from the wild could have an effect on the future reproductive capacity of that population (Anak, 2002; Harsan and Petrescu-Mag, 2008). Limited information is available regarding the number of sawfish that have been removed from the wild for display in aquaria. All sawfish removed from Australian waters for aquaria collections have been reported as juveniles (S. Olson, Association of Zoos and Aquariums (AZA), 2013 pers. comm). The two most recent imports of largemouth sawfish to an Association of Zoos and Aquariums (AZA) accredited facility were in 2007 and 2008 (S. Olson, AZA, 2013 pers. comm).

In July 2011, the Australian CITES Scientific Authority for Marine Species reviewed their 2007 non-detriment finding for the export of *P. microdon* and found that it was not possible to conclude with a reasonable level of certainty that any harvest for export purposes would not be detrimental to the survival or recovery of the species (DSEWPaC, 2011). Since then, international trade in freshwater sawfish from Australia has ceased.

Worldwide, we are not aware of any narrow sawfish in captivity (Peverell, 2005, 2008). We are aware of 2 dwarf sawfish held in captivity in Japan (McDavitt, 2006). Largemouth sawfish are the most common sawfish species in captivity (NMFS, 2010a). Juvenile largemouth measuring less than 3.5 ft (1 m) TL on average are most often caught for the aquaria trade as they are easier to transport than adults (Peter and Tan, 1997).

Globally, scientists are collecting information on sawfish biology. Research efforts began in 2003 on the U.S. DPS population of smallmouth sawfish and no negative impacts have been associated with this research to date.

In summary, while no quantitative data on fishery impacts are available, we conclude that given the susceptibility of sawfish to entanglement in gillnets and trawl nets that are commonly used throughout their range, sawfishes are likely captured as incidental take. We are not aware of any fisheries

specifically targeting sawfishes. This impact from fisheries is the most likely single cause of the observed range contractions and reduced abundance in many areas of their former range. Trade of sawfish parts occurs throughout the world. Sawfish have been exploited for their fins, rostra, and teeth. Sawfish fins have been reported in the shark fin trade since the early 1900s (Mountnorris, 1809). Trade of sawfish parts occurs on Internet sites such as eBay and Craigslist. Trade of sawfish parts (*e.g.*, fins, rostral teeth, and rostra) are also ongoing threats to all five species (Harrison *et al.*, 2014). Therefore, we conclude the overutilization for commercial, recreational, scientific, or educational purposes, alone or in combination with other factors as discussed herein, is contributing significantly to the risk of extinction of the narrow, dwarf, largetooth, green, and the non-U.S. DPS of smalltooth sawfish.

Disease and Predation

We have determined that disease and predation are not potential threats to any of the five species of sawfish and that it is unlikely that these factors, on their own or in combination with other factors, are contributing significantly to their risk of extinction of all five sawfish species.

These species co-occur with other sawfishes and large sharks, but we are not aware of any studies or information documenting interspecific competition in terms of either habitat or prey (NMFS 2010a). Thorson (1971) speculated that the Lake Nicaragua bull shark population may compete with largetooth sawfish, as both were prevalent, but he offered no additional data. Sawfish have been documented within the stomach of a dolphin (*Tursiops truncatus*) near Bermuda (Bigelow and Schroeder, 1953; Monte-Luna *et al.*, 2009), in the stomach of a bull shark (*C. leucas*) in Australia (Thorburn *et al.*, 2004), and evidence of bite marks from what appeared to be a bull shark (*C. leucas*) on a juvenile smalltooth sawfish in the United States have been reported (T. Wiley-Lescher, Haven Worth Consulting, 2012 pers. comm). Crocodiles also prey on sawfishes (Cook and Compagno, 2005). There is no evidence that unusual levels of disease or predation affect any of the five sawfish species. Based on the information available on disease and predation for all five species of sawfish, we have determined that disease and predation on their own, or in combination with other factors, do not pose an extinction risk to any of these sawfishes.

Inadequacy of Existing Regulatory Mechanisms

We identified inadequacy of existing regulatory mechanisms as a potential threat to each of the five species of sawfish. We determined that this factor alone, or in combination with other factors, is contributing significantly to their risk of extinction.

First, we reviewed general or global regulatory protections for sawfish. The use of turtle exclusion devices (TEDs) in the nets of trawl fisheries to conserve sea turtles occurs throughout much of the range of sawfishes, but TEDs are not efficient in directing sawfish out of nets because sawfish rostra get entangled (Stobutzki *et al.*, 2002a; Brewer *et al.*, 2006) prior to reaching the TED. TEDs are often used when trawling occurs along the sea bottom at depths of 49 ft to 131 ft (15 to 40 m), areas where sawfish are likely to be found (Stobutzki *et al.*, 2002a). Most sawfishes show no difference in recovery after going through a trawl net, regardless of the presence or absence of a TED (Griffiths, 2006). Stobutzki *et al.* (2002a) found that large females are more likely to survive capture after passing through a trawling net and TED compared to smaller males. Only narrow sawfish were found to benefit from the presence of TEDs in nets as 73.3 percent escaped (Brewer *et al.*, 2006; Griffiths, 2006). In general, TEDs tend to have negligible impact on sawfish that get captured by trawling nets (Stobutzki *et al.*, 2002a; Griffiths, 2006), but they do provide an escape route if the animal does not get entangled.

Data reporting agencies (*i.e.*, customs and national fisheries) are often inconsistent in their reporting of wildlife trade (Anak, 2002). Reports are often vague and include general descriptions like “shark fin” or “ray,” providing practically no information of trading rates of specific products (Lack and Sant, 2011). Many countries in the Indo-Pacific do not report bycatch statistics or elasmobranchs taken illegally (Holmes *et al.*, 2009). In order for effective management plans to be implemented in fin markets and for sawfish product trade, data need to be consistent.

Next, we reviewed regional or country specific regulatory protections for sawfish. Many countries in the Indo-Pacific and the Middle East do not have formal legislation for management or national protection of the sawfish that may occur in their waters. Presently, Thailand has regulated some fisheries, but has no protective legislation for any elasmobranch in the country except for export of marine species for aquaria

(Vidthayanon, 2002). Among Middle Eastern countries that fish for sharks, only Iran has implemented an International Plan of Action for the Conservation and Management of Sharks (IPOA Shark Plan). Nine Arab countries have recently signed a Memorandum of Understanding on the Conservation of Migratory Sharks to improve shark conservation measures under the United Nations Environment Programme Convention on Migratory Species. Countries in Africa face similar circumstances as enforcement for sawfish protection is unknown (NMFS, 2010a). Countries that do have protective legislation are often unable to effectively patrol their waters, and fishing restrictions are routinely violated by foreign vessels (Lack and Sant, 2008). In one study, genetic testing (DNA barcoding) was used to identify fins from green sawfish confiscated from foreign boats illegally fishing in northern Australian waters (Holmes, 2009).

The Australian government listed the largetooth, green, and dwarf sawfishes as vulnerable on their Environmental Protection and Biodiversity Conservation (EPBC) Act list. The EPBC Act protects these sawfish and prohibits killing, injuring, taking, trading, keeping, or moving an individual without a permit. Even with these protections in place, the Draft Recovery Plan for Sawfish and River Sharks (Department of the Environment, 2014) reports that these three sawfish species have experienced substantial population declines.

In summary, several organizations are trying to regulate and manage sawfish but often these regulations and management initiatives are inadequate. Illegal exploitation by foreign fishers often occurs when regulations exist but are not enforced (Kiessling *et al.*, 2009). Preventative measures on existing fishing mechanisms to avoid sawfish catch, international monitoring of trade and bycatch, and governmental influence on fisheries are not presently sufficient to protect sawfishes. Specific regulation and monitoring of sawfishes by country would provide better protection (Vidthayanon, 2002; Walden and Nou, 2008). Therefore, we conclude the inadequacy of existing regulatory mechanisms has and continues to significantly contribute to the risk of extinction of the narrow, dwarf, largetooth, green, and the non-U.S. DPS of smalltooth sawfish.

Other Natural or Manmade Factors Affecting Its Continued Existence

In the proposed rule, we determined this was not a factor contributing

significantly to the risk of extinction of all five species of sawfish. We re-evaluated the information for this factor and changed our conclusion from the proposed rule based on the fact that sawfish life history traits, which consists of slow growth rates, late maturity, long life spans, and low fecundity rates. These life history traits do not enable them to respond rapidly to additional sources of mortality, such as overexploitation and habitat degradation. Scientific information available on all five species of sawfish indicates that other natural or manmade factors are potential threats to all of the five species of sawfish. We conclude it is likely that these factors, on their own or in combination with other factors, are contributing significantly to the risk of extinction for all five sawfish species.

An increase in global sea-surface temperature and sea level may already be influencing sawfish populations (Clark, 2006; Walden and Nou, 2008; Chin *et al.*, 2010). Fish assemblages are likely to change their distribution and could affect the prey base for sawfishes. Estuaries, including sawfish pupping grounds, may be affected as climate change changes patterns in freshwater flow due to rainfall and droughts. Skewed salinities in these areas or extreme tide levels might discourage adults from making up-river migrations (Clark, 2006). Saltwater marsh grass and mangrove areas play important roles in sawfish habitat as well (Simpfendorfer *et al.*, 2010); any disruption to these areas may affect sawfish populations. There is little agreement, however, on the effects that climate change will have on sawfish and their environments specifically (Clark, 2006; Chin *et al.*, 2010).

Red tide is the common name for a harmful algal bloom (HAB) of marine algae (*Karenia brevis*) that can make the ocean appear red or brown. *Karenia brevis* is one of the first species ever reported to have caused a HAB and is principally distributed throughout the Gulf of Mexico, with occasional red tides in the mid- and south-Atlantic United States. *Karenia brevis* naturally produces a brevetoxin that is absorbed directly across the gill membranes of fish or through ingestion of algal cells. While many HAB species are nontoxic to humans or small mammals, they can have significant effects on aquatic organisms. Fish mortalities associated with *K. brevis* events are very common and widespread. The mortalities affect hundreds of species during various stages of development. Red tide toxins can cause intoxication in fish, which may include violent twisting and corkscrew swimming, defecation and

regurgitation, pectoral fin paralysis, caudal fin curvature, loss of equilibrium, quiescence, vasodilation, and convulsions, culminating in death. However, it is known that fish can die at lower cell concentrations and can also apparently survive in much higher concentrations. In some instances, mortality from red tide is not acute, but may occur over a period of days or weeks after exposure to subacute toxin concentrations. There is no specific information on red tide effects on sawfish, but a single report exists of a smalltooth sawfish that was found dead along the west coast of Florida, during a red tide event (International Sawfish Encounter Database, 2009). Therefore, we conclude that sawfishes occurring in the U.S. Gulf of Mexico are vulnerable to red tide, but there is little information documenting direct mortality resulting from exposure to red tide (NMFS, 2010a). Harmful algal blooms also exist in waters outside of the U.S. Gulf of Mexico therefore, it is probable that all sawfishes are vulnerable to harmful algal blooms wherever they occur. Collectively, these other natural or manmade factors may be affecting the continued existence of the narrow, dwarf, largetooth, green, and the non-U.S. DPS of smalltooth sawfish. Based on the results from our extinction risk analysis and information on other man-made factors affecting all five species of sawfish, this factor is contributing to their extinction risk.

Overall Risk Summary

After considering the extinction risks, both threat-based and demographic, for each of the five species of sawfish, we have determined the narrow, dwarf, largetooth, and green sawfish and the non-U.S. DPS of smalltooth sawfish are in danger of extinction throughout all of their ranges due to (1) present or threatened destruction, modification or curtailment of habitat, (2) overutilization for commercial, recreational, scientific, or educational purposes, (3) inadequacy of existing regulatory mechanisms, and (4) other natural or manmade factors affecting their continued existence, and low abundance, lack of connectivity, and genetic diversity.

Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species. In judging the effectiveness of efforts not yet implemented, or those existing protective efforts that are not yet fully

effective, we rely on the Services' joint "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE"; 68 FR 15100; March 28, 2003). The PECE policy is designed to ensure consistent and adequate evaluation on whether any conservation efforts that have been recently adopted or implemented, but not yet proven to be successful, will result in recovering the species to the point at which listing is not warranted or contribute to forming the basis for listing a species as threatened rather than endangered. The purpose of the PECE policy is to ensure consistent and adequate evaluation of future or recently implemented conservation efforts identified in conservation agreements, conservation plans, management plans, and similar documents when making listing determinations. The PECE provides direction for the consideration of conservation efforts identified in these documents that have not yet been implemented, or have been implemented but not yet demonstrated effectiveness. The policy is expected to facilitate the development of conservation efforts by states and other entities that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

Two basic criteria were established in the PECE to use in evaluating efforts identified in conservations plans, conservation agreements, management plans or similar documents: (1) The certainty that the conservation efforts will be implemented; and (2) the certainty that the efforts will be effective. When we evaluate the certainty of whether or not the formalized conservation effort will be implemented, we may consider the following: Do we have a high level of certainty that the resources necessary to carry out the conservation effort are available? Do the parties to the conservation effort have the authority to carry it out? Are regulatory or procedural mechanisms in place to carry out the efforts? If the conservation effort relies on voluntary participation, we will evaluate whether the incentives that are included in the conservation effort will ensure the level of participation necessary to carry out the conservation effort. In evaluating the certainty that a conservation effort will be effective, we may consider the following: Does the effort describe the nature and extent of the threats to the species to be addressed and how these threats are reduced by the conservation effort? Does the effort establish specific conservation objectives? Does the effort

identify the appropriate steps to reduce the threats to the species? And does the effort include quantifiable performance measures to monitor both compliance and effectiveness? Overall, we need to be certain that the formalized conservation effort improves the status of the species at the time we make a listing determination. The PECE Policy also states that last-minute agreements (*i.e.*, those that are developed just before or after a species is proposed for listing) often have little chance of affecting the outcome of a listing decision. Last-minute efforts are also less likely to be able to demonstrate that they will be implemented and effective in reducing or removing the threats to a species. In addition, there are circumstances in which the threats to a species are so imminent and/or complex that it will be almost impossible to develop an agreement or plan that includes conservation efforts that will result in making the listing unnecessary. A conservation effort that satisfies the criteria for implementation and effectiveness is considered when making a listing determination, but may not ultimately change the risk assessment for the species. Using the criteria identified in our PECE Policy we evaluated conservation efforts to protect and recover the five sawfish species that are either underway but not yet fully implemented, or are only planned.

CITES restricts the trade of live animals to a vast array of wildlife products derived from them, including food products, musical instruments, tourist curios and medicines. Many wildlife species in trade are not endangered, but the existence of an agreement to ensure the sustainability of the trade is important in order to safeguard these resources for the future. All sawfishes in the family Pristidae were listed on Appendix I of CITES at the 14th Conference of the Parties meeting in 2007. An Appendix I listing bans all commercial trade in parts (*e.g.*, rostral teeth, rostra, liver, and fins) or derivatives of sawfish with trade in specimens of these species permitted only in exceptional circumstances (*e.g.*, for research purposes). At that time, an annotation to the Appendix I listing allowed the largemouth sawfish *P. microdon* (herein *P. pristis*) to be treated as Appendix II “for the exclusive purpose of allowing international trade in live animals to appropriate and acceptable aquaria for primarily conservation purposes.” The annotation was accepted on the basis that Australian populations of *P. microdon* were robust relative to other populations in the species’ range, and

that the capture of individuals for aquaria was not likely to be detrimental to the population. Later, at the CITES 16th Annual Conference of the Parties meeting in March of 2013, Australia proposed the transfer of *P. microdon* from Appendix II to Appendix I, and the measure was adopted and became effective on 12 June 2013. Therefore, live trade of *P. pristis* (*P. microdon*) is currently banned and all commercial trade of all sawfishes is banned per CITES Appendix I listing.

The recent banning of all trade of *P. pristis* (*P. microdon*) for aquaria trade is a good conservation measure for the species and meets all of the criteria for implementation and effectiveness. The recently adopted CITES Appendix I listing for largemouth sawfish only bans the live trade of the fish from Australia to approved foreign aquaria, all other trade was banned with the 2007 listing. Only 11 largemouth sawfish were approved for aquaria trade when the largemouth sawfish was listed under CITES Appendix I with the annotation for aquaria trade. The recent CITES Appendix I listing for largemouth sawfish is not likely to significantly affect the species outside of the limited area (Australia) where they were removed from the wild for aquaria display. Given live trade of *P. pristis* (*P. microdon*) for aquaria use is not a threat leading to the extinction risk of the species, we conclude the full CITES Appendix I listing may satisfy the PECE policy’s standards for implementation and effectiveness, but the impact of this measure is considered insignificant. Australia may be effective at enforcing trade policies, but the recent Appendix I listing of *P. microdon* (largemouth sawfish) alone, is not sufficient to protect the species throughout its range.

The IUCN Shark Specialist Group, in collaboration with a large number of the national and international stakeholders in sawfish conservation, developed A Global Strategy for Sawfish Conservation (Harrison and Dulvy, 2014). The strategy identifies the actions required to achieve recovery for all sawfishes. The strategy outlines seven objectives that are necessary to achieve recovery of all sawfishes: Fisheries management, species protection, habitat conservation, trade limitation, strategic research, education and communication, and responsible husbandry. We evaluated the certainty of whether or not the strategy would be implemented and determined that (1) the strategy does not have a high level of certainty that the resources necessary to carry out the conservation effort are available, (2) that the strategy team members do not have the authority to

carry out all of the objectives, (3) regulatory or procedural mechanisms are not in place to carry out the objectives, (4) and the conservation efforts rely on voluntary participation that does not have incentives that are included in the conservation effort that will ensure the level of participation necessary to effectively carry out the conservation effort. Based on the lack of certainty that the conservation efforts will be implemented we determined the strategy does not satisfy the PECE policy’s standards for certainty of implementation and effectiveness.

The Australian Government, Department of the Environment, published a Draft Recovery Plan for Sawfish and River Sharks (Plan) in 2014 (Department of Environment, 2014). The Draft Plan covers three sawfish species (*P. pristis*, *P. zijron*, and *P. clavata*). The Plan identifies specific actions and objectives necessary to stop local decline of sawfish and river sharks and promotes their recovery. The goal of the Draft Plan is to assist with the recovery of sawfish in Australian waters in two ways: (1) Improving the population status leading to the removal of the sawfish from the protected species list of EPBC; and (2) ensuring anthropogenic activities do not hinder the recovery in the near future, or impact the conservation status of the species in the future. We evaluated the certainty of whether or not the Draft Plan would be implemented. We determined that the strategy has a high level of uncertainty regarding implementation because: (1) The Draft Plan does not have dedicated funding so the resources necessary to carry out the conservation efforts may not be available, and (2) the Draft Plan is dependent on the participation of voluntary groups or organizations (*e.g.*, indigenous community groups and non-governmental organizations) to carry out some of the actions. Based on the lack of certainty that the Draft Plan will be implemented, we determined the Draft Plan does not satisfy the PECE policy’s standards for certainty of implementation and effectiveness.

Listing Determinations

Section 4(b)(1) of the ESA requires that we make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have reviewed the best available scientific and commercial information including the petition, and the information in the

review of the status of the five species of sawfishes, and we have consulted with species experts.

We are responsible for determining whether narrow sawfish (*A. cuspidata*), dwarf sawfish (*P. clavata*), largetooth sawfish (*P. pristis*), green sawfish (*P. zijsron*), and the non-U.S. DPS of smalltooth sawfish (*P. pectinata*) are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). We have followed a stepwise approach as outlined above in making this listing determination for these five species of sawfish. We have determined that narrow sawfish (*A. cuspidata*); dwarf sawfish (*P. clavata*); largetooth sawfish (*P. pristis*); green sawfish (*P. zijsron*); and the non-U.S. DPS of smalltooth sawfish (*P. pectinata*) constitute species as defined by the ESA. We have conducted an extinction risk analysis and concluded that the risk of extinction for all five species of sawfish is high, now and in the foreseeable future. We have assessed the threats affecting the status of each species using the five factors identified in section 4(a)(1) of the ESA and concluded the narrow, dwarf, largetooth, green, and the non-U.S. DPS of smalltooth sawfish face ongoing threats from habitat alteration, overutilization for commercial and recreational purposes, inadequacy of existing regulatory mechanisms, and other natural or manmade factors affecting their continued existence throughout their ranges. Therefore, we find that all five species of sawfishes are in danger of extinction throughout all of their ranges. After considering efforts being made to protect these sawfishes, we could not conclude the proposed conservation efforts would alter the extinction risk for any of these five sawfishes.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)); Federal agency requirements to consult with NMFS and to ensure its actions do not jeopardize the species or result in adverse modification or destruction of critical habitat should it be designated (16 U.S.C. 1536); designation of critical habitat if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); and prohibitions on taking (16 U.S.C. 1538). An additional benefit of listing beyond these legal requirements is that the recognition of the species' plight through listing promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Recovery Plans

NMFS may develop a recovery plan or plans for these species after considering the conservation benefit to the species per ESA sections 4(f)(1) and 4(f)(1)(A). Section 4 (f)(1) of the ESA directs NMFS to develop and implement recovery plans for the conservation and survival of listed species, unless we find that such a plan will not promote the conservation of the species. Section 4(f)(1)(A) further directs us, to the maximum extent practicable, to give priority in developing plans to those species that will most likely benefit from such plans.

Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and NMFS/USFWS regulations require Federal agencies to consult with us to ensure that activities authorized, funded, or carried out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. The requirement to consult applies to these Federal agency actions in the United States and on the high seas. The five sawfishes all occur in the waters of foreign nations, where there would be no consultation requirement. It is possible, but highly unlikely, that the listing of the five species of sawfish under the ESA may result in a minor increase in the number of Section 7 consultations for high seas activities.

Critical Habitat

Critical habitat is defined in Section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. Critical habitat shall not be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12 (h)).

The best available scientific and commercial data show that the geographical areas occupied by the narrow sawfish (*A. cuspidata*), dwarf sawfish (*P. clavata*), green sawfish (*P. zijsron*), largetooth sawfish (*P. pristis*), and the non-U.S. DPS of smalltooth sawfish (*P. pectinata*) are entirely outside U.S. jurisdiction, so we cannot

designate critical habitat for these species in their occupied range.

We can designate critical habitat in unoccupied areas in U.S. jurisdiction, if we determine the areas are essential for the conservation of the species. Only the largetooth sawfish (*P. pristis*, formerly *P. perotteti*) has a range that once included occasional use of U.S. waters, with approximately 39 confirmed records (33 in Texas) from 1910 through 1961. All records of *P. pristis* in U.S. waters were adults, mostly during the summer months. U.S. waters were a limited part of the historic range, likely used for periodic, seasonal foraging movements. There is no evidence of U.S. waters supporting any other biological functions like breeding or nursery areas. Therefore, we believe reestablishment back into U.S. waters is not required for the recovery of *P. pristis*. Based on the best available information we have not identified unoccupied areas in U.S. jurisdiction that are essential to the conservation of any of the five sawfish species. Therefore, we do not intend to designate critical habitat for the narrow, dwarf, largetooth, green, or the non-U.S. DPS of smalltooth sawfish.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and FWS published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. Because we are listing all five sawfishes as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to all five species. These include prohibitions against the import, export, use in foreign commerce, and "take" of the species. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." These prohibitions apply to all persons subject to the jurisdiction of the United States, including in the United States or on the high seas. The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species' range. Activities that we believe could result in a violation of Section 9 prohibitions of these five sawfishes include, but are not limited to, the following:

- (1) Take within the U.S. or its territorial sea, or upon the high seas;
- (2) Possessing, delivering, transporting, or shipping any sawfish part that was illegally taken;
- (3) Delivering, receiving, carrying, transporting, or shipping in interstate or

foreign commerce any sawfish or sawfish part, in the course of a commercial activity, even if the original taking of the sawfish was legal;

(4) Selling or offering for sale in interstate commerce any sawfish part, except antique articles at least 100 years old;

(5) Importing or exporting sawfish or any sawfish part to or from any country;

(6) Releasing captive sawfish into the wild. Although sawfish held non-commercially in captivity at the time of listing are exempt from certain prohibitions, the individual animals are considered listed and afforded most of the protections of the ESA, including most importantly the prohibitions against injuring or killing. Release of a captive animal has the potential to injure or kill the animal. Of an even greater conservation concern, the release of a captive animal has the potential to affect wild populations of sawfish through introduction of diseases or inappropriate genetic mixing. Depending on the circumstances of the case, NMFS may authorize the release of a captive animal through a section 10(a)(1)(a) permit; and

(7) Engaging in experimental or potentially injurious veterinary care or conducting research or breeding activities on captive sawfish, outside the bounds of normal animal husbandry practices. Normal care of captive animals necessarily entails handling or other manipulation of the animals, and NMFS does not consider such activities to constitute take or harassment of the animals so long as adequate care, including adequate veterinary care is provided. Such veterinary care includes confining, tranquilizing, or anesthetizing sawfishes when such practices, procedures, or provisions are not likely to result in injury. Captive breeding of sawfish is considered experimental and potentially injurious. Furthermore, the production of sawfish progeny has conservation implications (both positive and negative) for wild populations. Experimental or potentially injurious veterinary procedures and research or breeding activities of sawfish may, depending on the circumstances, be authorized under an ESA 10(a)(1)(a) permit for scientific research or the enhancement of the propagation or survival of the species.

We have identified, to the extent known at this time, specific activities that will not be considered likely to result in a violation of Section 9. Although not binding, we consider the following actions, depending on the circumstances, as not being prohibited by ESA Section 9:

(1) Take of a sawfish authorized by a 10(a)(1)(a) permit authorized by, and carried out in accordance with the terms and conditions of an ESA section 10(a)(1)(a) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species;

(2) Incidental take of a sawfish resulting from Federally authorized, funded, or conducted projects for which consultation under section 7 of the ESA has been completed, and when the otherwise lawful activity is conducted in accordance with any terms and conditions granted by NMFS in an incidental take statement in a biological opinion pursuant to section 7 of the ESA;

(3) Continued possession of sawfish parts that were in possession at the time of listing. Such parts may be non-commercially exported or imported; however the importer or exporter must be able to provide sufficient evidence to show that the parts meet the criteria of ESA section 9(b)(1) (*i.e.*, held in a controlled environment at the time of listing, non-commercial activity);

(4) Continued possession of live sawfish that were in captivity or in a controlled environment (*e.g.*, in aquaria) at the time of this listing, so long as the prohibitions under ESA section 9(a)(1) are not violated. Again, facilities should be able to provide evidence that the sawfish were in captivity or in a controlled environment prior to listing. We suggest such facilities submit information to us on the sawfish in their possession (*e.g.*, size, age, description of animals, and the source and date of acquisition) to establish their claim of possession (see For Further Information Contact);

(5) Provision of care for live sawfish that were in captivity at the time of listing. These individuals are still protected under the ESA and may not be killed or injured, or otherwise harmed, and, therefore, must receive proper care. Normal care of captive animals necessarily entails handling or other manipulation of the animals, and we do not consider such activities to constitute take or harassment of the animals so long as adequate care, including adequate veterinary care is provided. Such veterinary care includes confining, tranquilizing, or anesthetizing sawfish when such practices, procedures, or provisions are not likely to result in injury; and

(6) Any importation or exportation of live sawfish or sawfish parts with all accompanying CITES import and export permits and an ESA section 10(a)(1)(a) permit for purposes of scientific

research or the enhancement of the propagation or survival of the species.

Section 11(f) of the ESA gives NMFS authority to promulgate regulations that may be appropriate to enforce the ESA. Future regulations may be promulgated to regulate trade or holding of sawfish, if necessary. The public will be given the opportunity to comment on future proposed regulations.

Policies on Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing a minimum peer review standard. Similarly, a joint NMFS/FWS policy (59 FR 34270; July 1, 1994) requires us to solicit independent expert review from qualified specialists, concurrent with the public comment period. The intent of the joint peer review policy is to ensure that listings are based on the best scientific and commercial data available. We formally solicited expert opinion of three appropriate and independent specialists regarding the scientific and commercial data or assumptions related to the information considered for listing.

We considered peer reviewer comments in making our determination. We conclude that these experts' reviews satisfy the requirements for "adequate [prior] peer review" contained in the Information Quality Bulletin for Peer Review and the joint NMFS/FWS policy (59 FR 34270; July 1, 1994).

References

A complete list of the references used in this final rule is available on the Internet at http://sero.nmfs.noaa.gov/protected_resources/sawfish/.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA) (See NOAA Administrative Order 216-6).

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis

requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant Federalism effects and that a Federalism assessment is not required.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened

species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 8, 2014.

Samuel D. Rauch, III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C 1361 *et seq.*

■ 2. In § 224.101, paragraph (h), amend the table by:

■ A. Removing the “Sawfish, largetooth” and the “Sawfish, smalltooth (United States DPS)” entries.

■ B. Adding entries for five new sawfish species in alphabetic order by Scientific name under “Fishes”:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species ¹		Description of listed entity	Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name				
*	*	*	*	*	*
FISHES					
*	*	*	*	*	*
Sawfish, dwarf	<i>Pristis clavata</i>	Entire species	[Insert Federal Register citation] 12/12/2014.	NA	NA
Sawfish, green	<i>Pristis zijsron</i>	Entire species	[Insert Federal Register citation] 12/12/2014.	NA	NA
Sawfish, largetooth	<i>Pristis pristis</i> (formerly <i>Pristis perotteti</i> , <i>Pristis pristis</i> , and <i>Pristis microdon</i>).	Entire species	[Insert Federal Register citation] 12/12/2014.	NA	NA
Sawfish, narrow	<i>Anoxypristis cuspidata</i>	Entire species	[Insert Federal Register citation] 12/12/2014.	NA	NA
Sawfish, smalltooth (Non-U.S. DPS).	<i>Pristis pectinata</i>	Smalltooth sawfish originating from non-U.S. waters.	[Insert Federal Register citation] 12/12/2014.	NA	NA
*	*	*	*	*	*

¹ Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2014-29201 Filed 12-11-14; 8:45 am]

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Part IV

The President

Presidential Determination No. 2015–03 of December 3, 2014—Suspension of Limitations Under the Jerusalem Embassy Act

Presidential Documents

Title 3—**Presidential Determination No. 2015–03 of December 3, 2014****The President****Suspension of Limitations Under the Jerusalem Embassy Act****Memorandum for the Secretary of State**

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the “Act”), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish this determination in the *Federal Register*.

This suspension shall take effect after transmission of this determination and report to the Congress.



THE WHITE HOUSE,
Washington, December 3, 2014



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Part V

The President

Proclamation 9219—Human Rights Day and Human Rights Week, 2014

Presidential Documents

Title 3—

Proclamation 9219 of December 9, 2014**The President****Human Rights Day and Human Rights Week, 2014****By the President of the United States of America****A Proclamation**

On December 10, 1948, nations from six continents came together to adopt the Universal Declaration of Human Rights. This extraordinary document affirmed that every individual is born equal with inalienable rights, and it is the responsibility of governments to uphold these rights. In more than 430 translations, the Declaration recognizes the inherent dignity and worth of all people and supports their right to chart their own destinies. On the anniversary of this human rights milestone, we join with all those who are willing to strive for a brighter future, and together, we continue our work to build the world our children deserve.

The desires for freedom and opportunity are universal, and around the world, yearnings for the rule of law and self-determination burn within the hearts of all women and men. When people can raise their voices and hold their leaders accountable, governments are more responsive and more effective. Children who are able to lead healthy lives and pursue an education without fear are free to spark progress and contribute to thriving communities. And when citizens are empowered to pursue their full measure of happiness without restraint, they help ensure that economies grow, stability and prosperity spread, and nations flourish. Protecting human rights around the globe extends the promise of democracy and bolsters the values that serve as a basis for peace in our world.

It is our obligation as free peoples to stand with courageous individuals who raise their voices to demand universal rights. Under extremely difficult circumstances—and often at grave personal risk—brave human rights defenders and civil society activists throughout the world are working to actualize the rights and freedoms that are the birthright of all humankind. The United States will continue to support all those who champion these fundamental principles, and we will never stop speaking out for the human rights of all individuals at home and abroad. It is part of who we are as a people and what we stand for as a Nation.

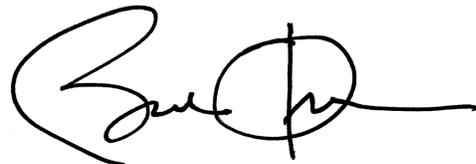
My Administration supports free and fair elections, and we will always oppose efforts by foreign governments to restrict the freedoms of peaceful assembly, association, and expression. We will continue to defend the rights of ethnic and religious minorities, call for the release of all who are unjustly detained, and insist that lesbian, gay, bisexual, and transgender persons be treated equally under the law. We will press forward in our efforts to end the scourge of human trafficking, our fight to ensure the protection of refugees and other displaced persons, and our tireless work to empower women and girls worldwide.

The United States will always lift up those who seek to work for the world as it should be. This is part of American leadership. On Human Rights Day and during Human Rights Week, let us continue our urgent task of rejecting hatred in whatever form it takes and recommit to fostering a global community where every person can achieve their dreams and contribute to humankind.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim December 10, 2014, as Human Rights Day and the week beginning December 10, 2014, as Human Rights Week. I call upon the people of the United States to mark these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord two thousand fourteen, and of the Independence of the United States of America the two hundred and thirty-ninth.

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B', a cursive 'O', and a vertical line through the 'O'.

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