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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 57

[Doc. No. AMS–LPS–14–0055]

RIN 0581–AD41

Revision To Incorporate the Electronic Submission of the Import Request of Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is revising the regulations governing the inspection of eggs to streamline the importation process for table eggs, hatching eggs, and inedible liquid egg by allowing the import request to be filed electronically through the U.S. Customs and Border Protection's (CBP) International Trade Data System.

DATES: This final rule is effective on January 13, 2016.

FOR FURTHER INFORMATION CONTACT: David Bowden, Chief, Standardization Branch, Quality Assessment Division, Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0258, Room 3932S, 1400 Independence Avenue SW., Washington, DC 20250, by phone (202) 690–3148, or via email *David.Bowden@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

AMS administers the Shell Egg Surveillance Program, a mandatory inspection program for shell eggs under the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). This inspection program ensures that shell eggs sold to consumers contain no more restricted eggs than are permitted in the standards for consumer grades. Restricted eggs may contain dirty or cracked shells, eggs leaking internal contents, and eggs with meat or blood spots in the interior. Regulations governing EPIA are contained in 7 CFR part 57.

On February 19, 2014, the President signed Executive Order (EO) 13659, streamlining the export/import process for America's businesses. EO 13659 outlines the use of the International Trade Data System (ITDS), an efficient and cost effective trade processing infrastructure that will modernize and simplify the export and import of cargo. The goal of ITDS is to eliminate the redundant reporting of data, replacing multiple filings, many of which are on paper, with a single electronic filing. AMS participated in the development of ITDS, a government-wide project that will allow traders to file shipment data through an electronic ''single window'' instead of completing multiple paper-based forms to report the same information to different government agencies. ITDS will reduce the burden on America's export and import trade, while still providing information necessary for the U.S. to ensure compliance with its laws. AMS will incorporate electronic filing of import requests for shell eggs to comply with EO 13659.

Automated Commercial Environment (ACE) Interface

CBP has developed the Automated Commercial Environment (ACE), a U.S. commercial trade processing system that automates border processing of products. The ACE system connects the trade community and participating government agencies by providing a single, centralized, online access point. When applicants file entries with CBP through ACE, relevant data is electronically distributed to appropriate government agencies. AMS considers all electronic data entered in ACE as certified by the applicant. In addition, AMS considers any electronic records, digital images, data, or information from a foreign government for foreign inspection and foreign establishment certification to be equivalent to paper records and certified by the foreign government. When developing, procuring, maintaining, or using electronic information technology (EIT), Federal agencies are required by Section 508(a)(1)(a) of the Rehabilitation Act of 1973 (29 U.S.C. 794d) to ensure that EIT is accessible to people with disabilities, including employees and members of the public. The ACE interface meets these requirements.

Therefore, for the reasons specified above, we are revising the shell egg import regulations to include that applicants may submit LPS Form 222-Import Request electronically.

Comments

A proposed rule to streamline the importation process was published in the **Federal Register** (80 FR 32867) on June 10, 2015. Comments on the proposed rule were solicited from interested parties until August 10, 2015. No comments were received.

Executive Order 12866, 13563, and the Regulatory Flexibility Act

This action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis regarding economic effects of this final rule on small entities. Copies of the analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Based on the information we have, AMS has determined that this regulation, as revised, will not have a significant impact on a substantial number of small entities.

Executive Order 12988

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action would have no retroactive effects and would not require administrative proceedings before parties may file suit in court challenging this rule. Pursuant to section 23 of the EPIA (21 U.S.C. 1052), states or local jurisdictions are preempted from requiring the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from Federal standards for any eggs which have moved or are moving in interstate or foreign commerce.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments. The review reveals that this regulation will not have substantial and direct effects on tribal governments and will not have significant tribal implications.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), OMB has approved the information collection and recordkeeping requirements included in this final rule, and there are no new requirements. Should any changes become necessary, they would be submitted to OMB for approval. The assigned OMB control number is 0581–0113.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires that, when practicable, Federal agencies allow individuals to submit information and transact with the agency electronically.

E-Government Act

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Part 57

Eggs and egg products, Exports, Food grades and standards, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 57 is amended as follows:

PART 57—REGULATIONS GOVERNING THE INSPECTION OF EGGS (EGG PRODUCTS INSPECTION ACT)

■ 1. The authority citation for part 57 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 2. Revise § 57.920 to read as follows:

§ 57.920 Importer to make application for inspection of imported eggs.

Each person importing any eggs as defined in these regulations, unless exempted by § 57.960 shall make application for inspection upon LPS Form 222- Import Request. The application may be submitted to the address located on LPS Form 222, filed through electronic submission via *QAD.importrequesteggs@ams.usda.gov,* or by accessing the U.S. Customs and Border Protection's International Trade Data System. Application shall be made as far in advance as possible prior to the arrival of the product. Each application shall state the approximate date of product arrival in the United States, the name of the ship or other carrier, the country from which the product was shipped, the destination, the quantity and class of product, and the point of first arrival in the United States.

Dated: January 7, 2016.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2016–00438 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 45

[Docket No. FAA–2013–0933; Amdt. Nos. 21–98A and 45–29A

RIN 2120–AK20

Changes to Production Certificates and Approvals; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting a final rule correction published on December 17, 2015. In that correction, the FAA changed the effective date of the final rule to permit an earlier implementation of the rule's provisions that allow production approval holders to issue authorized release documents for aircraft engines, propellers, and articles. It also permits an earlier implementation date for production certificate holders to manufacture and install interface components, and provides earlier relief from the current requirement that fixed-pitch wooden propellers be marked using an approved fireproof method. This action corrects an error in the preamble of that document.

DATES: This correction is effective January 13, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Priscilla Steward or Robert Cook, Aircraft Certification Service, Production Certification Section, AIR–112, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–1656; email: *priscilla.steward@faa.gov* or telephone: (202) 267–1590; email: *robert.cook@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2015, the final rule, ''Changes to Production Certificates and Approvals,'' 80 FR 59021, was published in the **Federal Register**. In that final rule the FAA revised the regulations pertaining to certification requirements for products and articles in part 21 of Title 14 of the Code of Federal Regulations (14 CFR) and removed certain marking requirements in 14 CFR part 45 applicable to fixed-pitch wooden propellers. The final rule afforded production approval holders (PAHs) a number of privileges not currently permitted under current regulations.

On December 17, 2015, a correction to the final rule, ''Changes to Production Certificates and Approvals; Correction,'' 80 FR 78650, was published in the **Federal Register**. In that correction, the FAA revised the effective date of the final rule to permit an earlier implementation of the rule's provisions that allow production approval holders to issue authorized release documents for aircraft engines, propellers, and articles. It also permits an earlier implementation date for production certificate holders to manufacture and install interface components, and provides earlier relief from the current requirement that fixed-pitch wooden propellers be marked using an approved fireproof method.

In the correction to the final rule, it stated that the FAA and EASA have agreed to delay the implementation of Change 5 to the Maintenance Annex Guidance (MAG) until March 29, 2016. The March 29, 2016 referenced date is incorrect, and the correct date is April 1, 2016. This action corrects an error in the preamble of that document.

Correction

In FR Doc. 2015-31639, beginning on page 78650 in the **Federal Register** of December 17, 2015, make the following correction to the preamble:

On page 78651, in the first column, twelfth line, correct ''March 29'' to read ''April 1''.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on December 24, 2015.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–00307 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0080; Directorate Identifier 2012–NM–189–AD; Amendment 39–18357; AD 2015–26–09]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all ATR—GIE Avions de Transport Régional Model ATR42 airplanes. This AD was prompted by several reports of a cracked floor beam at frame (FR) 26, and of discrepancies in certain wing inspection tasks in maintenance documents that could lead to errors in scheduling inspection intervals of structurally significant items (SSIs). This AD requires repetitive inspections of certain floor beams and revision of the maintenance or inspection program to include inspections of several areas of the wings. We are issuing this AD to detect and correct any cracking of the floor beam at FR 26 and several areas of the wings, which could lead to reduced structural integrity of the airplane.

DATES: This AD becomes effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0080* 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 final rule, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0080.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

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 all ATR—GIE Avions de Transport Régional Model ATR42 airplanes. The NPRM published in the **Federal Register** on January 26, 2015 (80 FR 3921).

European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2012–0193, dated September 25, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR—GIE Avions de Transport Régional Model ATR42 airplanes. The MCAI states:

> Floor beam at Frame 26: During maintenance checks, the floor beam at frame (FR) 26 was found cracked on several ATR 42 aeroplanes.
>
> This condition, if not detected and corrected, could lead to reduce the structural integrity of the aeroplane. A new Structural Significant Items (SSI) task will be introduced in the next revision of the ATR42 Time Limits document in order to address this issue.
>
> MRBR/MPD discrepancy on Wings item: A discrepancy has been noticed between the Maintenance Review Board Report (MRBR)/Maintenance Planning Document (MPD) and the Time Limits document. ATR modifications 02805 and 08039 were erroneously stated similar in the MRBR/MPD, inducing misleading applicability of the SSI tasks depending upon the document used and leading operators to miss several inspections, as evidenced during a recent review.
>
> Following the structural investigation, new inspection thresholds have been calculated and will be introduced in the next revisions of the ATR Time Limits documents (Revision 8 and Revision 9, as applicable to the aeroplane models) and MRBR/MPD documents.
>
> For the reasons described above, this [EASA] AD requires repetitive inspections of the FR26 floor beam, and of several areas of the wings, as defined in the ATR42 Time Limits document and, depending on findings, the accomplishment of applicable corrective action(s).

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0080-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. The following presents the comment received on the NPRM (80 FR 3921, January 26, 2015) and the FAA's response.

Request To Resolve Conflict Between the Effectivity of Certain Tasks and the Applicability of Paragraph (h) of This AD

Empire Airlines requested that a conflict between the affected airplanes identified in paragraph (h) of the proposed AD (80 FR 3921, January 26, 2015) and the effectivity of certain SSI tasks listed in table 1 to paragraph (h) of the proposed AD be removed. Empire Airlines noted that paragraph (h) of the proposed AD would apply to Model ATR42 airplanes on which ATR Modification 02805 was not embodied in production. The ATR MRBRs, however, identify certain SSI tasks as being effective only for airplanes on which ATR Modification 02805 has been embodied. Empire Airlines suggested that revising the NPRM to address this conflict could result in avoiding the need to request an alternative method of compliance (AMOC).

We agree and have revised table 1 to paragraph (h) of this AD to remove the tasks that are associated only with post-Modification 02805 airplanes, *i.e.,* tasks 572301–3 and –5 for Model ATR–42–200, –300, and –320 airplanes. As stated in the MCAI, the time limit documents and the MRBR/MPD documents will be updated to include the new compliance times.

We have clarified paragraph (h) of this AD by replacing the text ''incorporating the SSI tasks'' with the text ''incorporating the applicable SSI tasks and compliance times'' to match the title of table 1 to paragraph (h) of this AD.

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 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 (80 FR 3921,

January 26, 2015) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 3921, January 26, 2015).

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

Related Service Information Under 1 CFR Part 51

Avions de Transport Régional (ATR) has issued Job Instruction Card 535100 DVI 10097, ''DVI of FR26 Floor Beam Around Cut-outs for Cooling & Hydrau Ducts,'' dated February 9, 2012 (for Model ATR42–200, –300, –320, and –500 airplanes). The service information describes procedures for a detailed inspection for damage (cracks, corrosion, dents, scratches, scores and abrasions) of the floor beam at FR 26, on the left-hand (LH) and right-hand (RH) sides, and, for certain inspection findings, contacting the manufacturer for repair instructions. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 31 airplanes of U.S. registry.

We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $10,540, per inspection cycle, or $340, per inspection cycle, 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-2015-0080;* 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):

2015–26–09 ATR—GIE Avions de Transport Régional: Amendment 39–18357. Docket No. FAA–2015–0080; Directorate Identifier 2012–NM–189–AD.

(a) Effective Date

This AD becomes effective February 17, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all ATR—GIE Avions de Transport Régional (ATR) Model ATR42–200, –300, –320, and –500 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Codes 53, Fuselage; and 57, Wings.

(e) Reason

This AD was prompted by several reports of a cracked floor beam at frame (FR) 26 on several Model ATR42 airplanes, and of discrepancies in certain wing inspection tasks in maintenance documents that could lead to errors in scheduling inspection intervals of structurally significant items (SSIs). We are issuing this AD to detect and correct any cracking of the floor beam at FR 26 and several areas of the wings, which could lead to reduced structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions for FR 26 Floor Beam for All Model ATR42 Airplanes

(1) For all Model ATR42 airplanes: At the later of the compliance times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD, and thereafter at intervals not to exceed 12,000 flight cycles, accomplish a detailed inspection for damage (cracks, corrosion, dents, scratches, scores and abrasions) of the floor beam at FR 26, on the left-hand (LH) and right-hand (RH) sides, in accordance with the instructions of ATR Job Instruction Card 535100 DVI 10097, ''DVI of FR26 Floor Beam Around Cut-outs for Cooling & Hydrau Ducts,'' dated February 9, 2012 (for Model ATR42–200, –300, –320, and –500 airplanes).

(i) Before the accumulation of 24,000 total flight cycles.

(ii) Within 5,000 flight hours or 24 months, whichever occurs first, after the effective date of this AD.

(2) If, during any inspection required by paragraph (g)(1) of this AD, any damage (corrosion or scratches that are greater than allowed, cracks, dents, scores and abrasions) is found: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or ATR—GIE Avions de Transport Régional's EASA Design Organization Approval (DOA).

(h) SSI Tasks for Certain Model ATR42 Airplanes

For Model ATR42 airplanes on which ATR modification 02805 was not embodied in production: Within 6 months after the effective date of this AD, revise the maintenance or inspection program, as

applicable, by incorporating the SSI tasks and compliance times identified in table 1 to paragraph (h) of this AD, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

TABLE 1 TO PARAGRAPH (h) OF THIS AD—APPLICABLE SSI TASKS AND COMPLIANCE TIMES

For Model—	Use SSI Task—	At this initial time—	And repeat at intervals not to exceed—
ATR–42–500 airplanes	572301–1 or –3, as applicable.	Before 45,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	7,300 flight cycles.
ATR–42–500 airplanes	572305	Before 46,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	3,900 flight cycles.
ATR42–200, –300, and –320 airplanes.	572301–1, or –4, as applicable.	Before 45,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	7,300 flight cycles.
ATR42–200, –300, and –320 airplanes.	572305–1	Before 46,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	3,900 flight cycles.
ATR42–200, –300, and –320 airplanes.	572409	Before 42,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	9,000 flight cycles.
ATR42–200, –300, and –320 airplanes.	572410, 572411, 572412, 572413, 572414, and 572415.	Before 43,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	10,000 flight cycles.
ATR42–200, –300, and –320 airplanes.	572416 and 572417	Before 44,000 total flight cycles or within 6 months after the effective date of this AD, whichever occurs later.	7,300 flight cycles.

Note 1 to paragraph (h) of this AD: For ATR42–500 airplanes, additional guidance for the maintenance or inspection program revision may be found in the ATR ATR 42–400/–500 Maintenance Review Board Report, Revision 13, dated November 30, 2011.

Note 2 to paragraph (h) of this AD: For ATR42–200, –300, and –320 airplanes, additional guidance for the maintenance or inspection program revision may be found in the ATR ATR 42–200/–300/–320 Maintenance Review Board Report, Revision 13, dated November 30, 2011.

(i) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (h) 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 (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or ATR—GIE Avions de Transport Régional's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2012–0193, dated September 25, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0080-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified 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 this AD specifies otherwise.

(i) ATR Job Instruction Card 535100 DVI 10097, ''DVI of FR26 Floor Beam Around Cut-outs for Cooling & Hydrau Ducts,'' dated February 9, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.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 December 21, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32892 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0678; Directorate Identifier 2013–NM–207–AD; Amendment 39–18367; AD 2016–01–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–13–04, for certain Airbus Model A318, A319, A320, and A321 series airplanes. AD 2013–13–04 required installing a power interruption protection circuit for the landing gear control interface unit (LGCIU). This new AD requires a new modification of any previously modified LGCIU. This new AD also requires revising the maintenance or inspection program to reduce a certain functional check interval. This new AD also adds airplanes to the applicability. This AD was prompted by a determination that additional work is necessary to adequately address the identified unsafe condition. We are issuing this AD to prevent untimely unlocking and/or retraction of the nose landing gear (NLG), which, while on the ground, could result in injury to ground personnel and damage to the airplane.

DATES: This AD becomes effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 14, 2013 (78 FR 41286, July 10, 2013) .

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0678;* 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 final rule, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0678

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013). AD 2013–13–04 applied to certain Airbus Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on March 31, 2015 (80 FR 17007).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2013–0202, dated September 5, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The MCAI states:

> After a push back from the gate, an A320 aeroplane was preparing to initiate taxi, when an uncommanded nose landing gear (NLG) retraction occurred, causing the nose of the aeroplane to hit the ground. Investigations revealed that the retraction was caused by a combination of a power interruption to Landing Gear Control and Interface Units (LGCIU) and an internal hydraulic leak through the landing gear (LG) selector valve 40GA.
>
> Deeper investigations have revealed that LGCIU power interruption appears during engine start at each flight. Even though no incident has been reported in service, it has been determined that a non-compliance to the safety objective exists when combined with a dormant single failure of the selector valve seal leaking.
>
> This condition, if not corrected, could lead to further incidents of untimely unlocking and/or retraction of the NLG which, while on the ground, could result in injury to ground personnel and damage to the aeroplane.
>
> To address the possible hydraulic leak of the LG selector valve, EASA issued AD 2007–0065 [*http://ad.easa.europa.eu/blob/easa_ad_2007_0065.pdf/AD_2007-0065*] currently at Revision 2.
>
> To address the risk of untimely unlocking and/or retraction of the NLG, EASA issued AD 2011–0202 [*http://ad.easa.europa.eu/blob/easa_ad_2011_0202.pdf/AD_2011-0202*] to require installation of a power interruption protection circuit to the LGCIU and accomplishment of associated modifications.
>
> Since that [EASA] AD was issued, it has been discovered that additional work is necessary to adequately correct this unsafe condition and consequently, Airbus issued Service Bulletin (SB) A320–32–1346 to Revision 05. An update of the maintenance programme is required as well, following the required modification.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0202, which is superseded, and requires certain additional actions, as defined in the revised Airbus SB, as applicable to aeroplane model, and an update of the approved maintenance programme.

The additional actions include a new modification of any previously modified LGCIU, and reducing a certain functional check interval. This AD also adds airplanes on which Airbus modification 37866 has been embodied in production to the applicability. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0678-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (80 FR 17007, March 31, 2015) and the FAA's response to the comment.

Request To Include Revised Service Information

United Airlines (UAL) stated that paragraphs (i) and (j) of the proposed AD (80 FR 17007, March 31, 2015) would be required to be done in accordance with the instructions of Airbus Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012. UAL asked that we allow use of the latest revision available, Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015, for accomplishing the modification.

We agree with the commenter's request. Airbus has issued Service Bulletin A320–32–1346, Revision 06, dated January 12, 2015, and Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015.

These revisions state that no additional work is necessary on airplanes changed in accordance with Airbus Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012, which was specified as the appropriate source of service information in the NPRM (80 FR 17007, March 31, 2015).

We have changed paragraphs (i) and (j) of this AD to specify accomplishing the modification in accordance with Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015. We have also added a new paragraph (l)(2) to this AD (paragraph (l) of the proposed AD (80 FR 17007, March 31, 2015) has been changed to paragraph (l)(1) in this AD) to give credit for actions done before the effective date of this AD using Airbus Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012; or Airbus Service Bulletin A320–32–1346, Revision 06, dated January 12, 2015.

Request To Include Terminating Action

UAL stated that the NPRM (80 FR 17007, March 31, 2015) does not include a terminating action. UAL asked that we create a new paragraph detailing all actions that will be terminated by accomplishing the modification of the LGCIU, as specified in Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015.

We do not agree with the request. Paragraph (i) of this AD specifies that the modification terminates the actions required by paragraphs (g) and (h) of this AD. Therefore, no change to this AD is necessary in this regard.

Conclusion

We reviewed the relevant data 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 (80 FR 17007, March 31, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 17007, March 31, 2015).

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015, including Appendices 01 and 02, dated February 10, 2015; and Task 32.30.00.17, ''Functional Check of LGCIU Power Supply Relays,'' of Section C–32 of Section C, Systems and Powerplant, of the Airbus A318/A319/A320/A321 Maintenance Review Board Report, Revision 18, dated March 2013. The service information describes procedures for installing a power interruption protection circuit for the LGCIU, and for a new modification of any previously modified LGCIU. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 851 airplanes of U.S. registry.

The actions required by AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013), take about 48 work-hours per product, at an average labor rate of $85 per work-hour. Required parts will cost about $8,220 per product. Based on these figures, the estimated cost of the actions that are required by AD 2013–13–04 is $12,300 per product.

We estimate that it takes about 46 work-hours per product to comply with the new modification in this AD. The average labor rate is $85 per work-hour. Required parts will cost about $9,650 per product. Based on these figures, we estimate the cost of the new modification on U.S. operators to be $11,539,560, or $13,560 per product.

We estimate that it takes about 1 work-hour per product to revise the maintenance or inspection program in this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of revising the maintenance program on U.S. operators to be $72,335, 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-2015-0678;* 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) 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013), and adding the following new AD:

2016–01–08 Airbus: Amendment 39–18367. Docket No. FAA–2015–0678; Directorate Identifier 2013–NM–207–AD.

(a) Effective Date

This AD becomes effective February 17, 2016.

(b) Affected ADs

This AD replaces AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013).

(c) Applicability

(1) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by a determination that additional work is necessary to adequately address the identified unsafe condition. We are issuing this AD to prevent untimely unlocking and/or retraction of the nose landing gear (NLG), which, while on the ground, could result in injury to ground personnel and damage to the airplane.

(f) Compliance

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

(g) Retained Modification With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013) with no changes. For all airplanes except airplanes on which Airbus modification 37866 has been embodied in production: At the applicable compliance time specified in paragraph (g)(1) or (g)(2) of this AD: Install a power interruption protection circuit for the landing gear control interface unit (LGCIU), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 04, including Appendices 01 and 02, dated April 22, 2011 (for Model A318, A319, A320, and A321 series airplanes other than the Model A319CJ (corporate jet) airplanes); or Airbus Service Bulletin A320–32–1349, Revision 03, including Appendix 1, dated October 5, 2011 (for Model A319CJ (corporate jet) airplanes).

(1) For airplanes that have embodied Airbus Modification 38947 specified in Airbus Service Bulletin A320–32–1348 during production or in service: Within 72 months after August 14, 2013 (the effective date of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013)).

(2) For all airplanes other than those identified in paragraph (g)(1) of this AD: Within 60 months after August 14, 2013 (the effective date of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013)).

(h) Retained Re-Identification of Identification Plates With No Changes

This paragraph restates the requirements of paragraph (h) of AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013) with no changes. For airplanes on which the installation required by paragraph (g) of this AD has been done before August 14, 2013 (the effective date of AD 2013–13–04) using Airbus Service Bulletin A320–32–1346, dated December 4, 2008 (for Model A318, A319, A320, and A321 series airplanes other than Model A319CJ (corporate jet) airplanes): Within the applicable times specified in paragraphs (g)(1) and (g)(2) of this AD, re-identify the identification plates, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 04, including Appendices 01 and 02, dated April 22, 2011 (for Model A318, A319, A320, and A321 series airplanes other than Model A319CJ (corporate jet) airplanes).

(i) New Modification

For airplanes identified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD except airplanes on which Airbus modification 37866 has been embodied in production: Modify the LGCIU at the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015, including Appendices 01 and 02, dated February 10, 2015; or Airbus Service Bulletin A320–32–1349, Revision 03, including Appendix 1, dated October 5, 2011 (for Model A319CJ (corporate jet) airplanes), which was incorporated by reference on August 14, 2013 (78 FR 41286, July 10, 2013). Accomplishing the modification in this paragraph terminates the actions required by paragraphs (g) and (h) of this AD.

(1) For airplanes on which any landing gear (LG) selector valve having part number (P/N) 114079019 is installed and that have embodied Airbus Modification 38947 specified in Airbus Service Bulletin A320–32–1348 during production or in service: Modify the LGCIU within 72 months after the effective date of this AD.

(2) For airplanes on which any LG selector valve 40GA having a part number listed in paragraphs (i)(2)(i) through (i)(2)(xii) of this AD, provided the valve has the marking ''DI'' or ''DI–BE'' recorded on its amendment plates: Modify the LGCIU within 72 months after the effective date of this AD.

(i) P/N 114079001.
(ii) P/N 114079005.
(iii) P/N 114079009.
(iv) P/N 114079013.
(v) P/N 114079001A.
(vi) P/N 114079005A.
(vii) P/N 114079009A.
(viii) P/N 114079015.
(ix) P/N 114079001AB.
(x) P/N 114079005AB.
(xi) P/N 114079009AB.
(xii) P/N 114079017.

(3) For all airplanes other than those identified in paragraphs (i)(1) and (i)(2) of this AD: Modify the LGCIU within 60 months after the effective date of this AD.

(j) New Modification for Airplanes Previously Modified

For airplanes that have been modified as of the effective date of this AD as specified in the applicable service information identified in paragraph (j)(1), (j)(2), (j)(3), or (j)(4) of this AD, except airplanes on which Airbus modification 37866 has been embodied in production: Within 72 months after the effective date of this AD, do the additional modification of the LGCIU, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015, including Appendices 01 and 02, dated February 10, 2015.

(1) Airbus Service Bulletin A320–32–1346, Revision 01, dated October 27, 2009, which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A320–32–1346, Revision 02, dated November 4, 2009, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A320–32–1346, Revision 03, dated January 7, 2010, which is not incorporated by reference in this AD.

(4) Airbus Service Bulletin A320–32–1346, including Appendices 01 and 02, Revision 04, dated April 22, 2011, which is incorporated by reference in AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013).

(k) New Maintenance or Inspection Program Revision

Before further flight after accomplishing the actions specified in paragraph (i) or (j) of this AD or within 7 days after the effective date of this AD, whichever occurs later: Revise the maintenance or inspection program, as applicable, to incorporate Task 32.30.00.17, ''Functional Check of LGCIU Power Supply Relays,'' of Section C–32 of Section C, Systems and Powerplant, of the Airbus A318/A319/A320/A321 Maintenance Review Board Report, Revision 18, dated March 2013. The initial compliance time is within 4,000 flight hours after accomplishing the additional modification of the LGCIU.

(l) Credit for Previous Actions

(1) This paragraph provides credit for A319 Corporate Jet airplanes for the modification required by paragraph (g) of this AD if that modification was performed before the effective date of this AD using the following applicable service information. This service information is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A320–32–1349, dated December 4, 2008;

(ii) Airbus Service Bulletin A320–32–1349, Revision 01, dated August 31, 2009;

(iii) Airbus Service Bulletin A320–32–1349, Revision 02, dated June 16, 2010.

(2) This paragraph provides credit for the modification required by paragraphs (i) and (j) of this AD, as applicable, if that modification was performed before the effective date of this AD using Airbus Service Bulletin A320–32–1346, Revision 05, dated January 13, 2012; or Airbus Service Bulletin A320–32–1346, Revision 06, dated January 12, 2015. This service information is not incorporated by reference in this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*.

(i) 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.

(ii) AMOCs approved previously for AD 2013–13–04, Amendment 39–17492 (78 FR 41286, July 10, 2013) are approved as AMOCs for the corresponding provisions of 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0202, dated September 5, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0678-0002*.

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

(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 this AD specifies otherwise.

(3) The following service information was approved for IBR on February 17, 2016.

(i) Airbus Service Bulletin A320–32–1346, Revision 07, dated February 10, 2015, including Appendices 01 and 02, dated February 10, 2015.

(ii) Task 32.30.00.17, ''Functional Check of LGCIU Power Supply Relays,'' of Section C–32 of Section C, Systems and Powerplant, of the Airbus A318/A319/A320/A321 Maintenance Review Board Report, Revision 18, dated March 2013.

(4) The following service information was approved for IBR on August 14, 2013 (78 FR 41286, July 10, 2013).

(i) Airbus Service Bulletin A320–32–1346, Revision 04, including Appendices 01 and 02, dated April 22, 2011.

(ii) Airbus Service Bulletin A320–32–1349, Revision 03, including Appendix 1, dated October 5, 2011.

(5) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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 December 31, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00014 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1984; Directorate Identifier 2015–NM–022–AD; Amendment 39–18363; AD 2016–01–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2005–01–09, which applied to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. AD 2005–01–09 required a one-time detailed inspection for discrepancies of the frame web and inner chords on the forward edge frame of the number 5 main entry door cutout, and corrective action if necessary. This new AD adds repetitive high frequency eddy current (HFEC) inspections for cracking of the frame inner chords (forward and aft), and corrective action if necessary. This AD was prompted by additional cracking found in the same area after completion of the one-time detailed inspection. We are issuing this AD to detect and correct discrepancies of the frame web and inner chords, which could result in cracking, subsequent severing of the frame, and consequent rapid depressurization of the airplane.

DATES: This AD is effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2016.

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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1984.

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–2015–1984; 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: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2005–01–09, Amendment 39–13933 (70 FR 1340, January 7, 2005). AD 2005–01–09 applied to certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes. The NPRM published in the **Federal Register** on June 24, 2015 (80 FR 36255) (''the NPRM''). The NPRM was prompted by additional cracking found in the same area after completion of the one-time detailed inspection. The NPRM proposed to continue to require a one-time detailed inspection for discrepancies of the frame web and inner chords on the forward edge frame of the number 5 main entry door cutout, and corrective action if necessary. The NPRM also proposed to require repetitive HFEC inspections for cracking of the frame inner chords (forward and aft), and corrective action if necessary. We are issuing this AD to detect and correct discrepancies of the frame web and inner chords, which could result in cracking, subsequent severing of the frame, and consequent rapid depressurization of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment. United Airlines concurred with the NPRM.

Request for Credit for Accomplishing Certain Inspections Required by AD 2013–17–08, Amendment 39–17572 (78 FR 57053, September 17, 2013) (''AD 2013–17–08'')

UPS asked that credit be included in the proposed AD (80 FR 36255, June 24, 2015) for accomplishing the inspections required by AD 2013–17–08. UPS stated that paragraph (g) of the proposed AD would require accomplishing the same inspections that are required by AD 2013–17–08. UPS added that the proposed AD has a lower threshold for accomplishing the inspections than that in AD 2013–17–08. UPS noted that Boeing confirmed that these inspections are duplicated and stated that a revision of the service information may be forthcoming to provide clarification.

We agree with the commenter that accomplishing the inspections required by AD 2013–17–08 before the effective date of this AD is acceptable for compliance with the inspections required by this AD. We had already included credit for accomplishing the inspections required by AD 2013–17–08 in paragraph (i)(2) of the proposed AD.

However, since the compliance time in AD 2013–17–08 is later than the compliance time required by this AD, we have not given credit for inspections that will be done for AD 2013–17–08 on or after the effective date of this AD. Operators may apply for approval of an AMOC in accordance with the provisions specified in paragraph (j) of this AD, by submitting data substantiating that the request would provide an acceptable level of safety. Therefore, we have made no further change to this AD.

Request To Include Terminating Action

UPS also recommended adding a sentence to paragraph (h) of the proposed AD to terminate the repetitive inspections required by AD 2013–17–08, after accomplishment of the initial inspections required by the proposed AD.

We do not agree to specify that the actions required by paragraph (h) of this AD terminate the repetitive inspections required by AD 2013–17–08, because those inspections are more extensive than the inspections in this AD. However, affected operators who wish to terminate the repetitive inspections required by AD 2013–17–08 may apply for approval of an AMOC in accordance with the provisions specified in paragraph (j) of this AD, by submitting data substantiating that the request would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Correct Typographical Error

Boeing asked that a typographical error in the ''Related AD'' section of the proposed AD be corrected. Boeing stated that the description of the inspection area in AD 2013–17–08 of the frame segment should be changed from ''between 16 and 31'' to ''between 15 and 31.'' Boeing noted that this is a typographical error.

We agree that there is a typographical error in the ''Related AD'' section of the proposed AD, as noted by the commenter. That section should specify ''the frame segment between 15 and 31''; however, since that section of the preamble does not reappear in the final rule, no change to this AD is necessary in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed and approved Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015. The service information describes procedures for a one-time detailed inspection and repetitive surface HFEC inspections of the Station 2231 frame inner chords (forward and aft), and repair of discrepancies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 174 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
Detailed inspection	2 work-hours × $85 per hour = $170.	$0	$170	$29,580.
HFEC inspections	4 work-hours × $85 per hour = $340.	0	$340 per inspection cycle	$59,160 per inspection cycle.

We have received no definitive data that will enable us to provide a cost estimate for the on-condition actions specified in this AD.

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 have 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 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 removing Airworthiness Directive (AD) 2005–01–09, Amendment 39–13933 (70 FR 1340, January 7, 2005), and adding the following new AD:

2016–01–04 The Boeing Company: Amendment 39–18363; Docket No. FAA–2015–1984; Directorate Identifier 2015–NM–022–AD.

(a) Effective Date

This AD is effective February 17, 2016.

(b) Affected ADs

This AD replaces AD 2005–01–09, Amendment 39–13933 (70 FR 1340, January 7, 2005) (''AD 2005–01–09'').

(c) Applicability

This AD applies to The Boeing Company Model 747–100, –100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of additional cracking found in the same area after completion of the one-time detailed inspection. We are issuing this AD to detect and correct discrepancies of the frame web and inner chords, which could result in cracking, subsequent severing of the frame, and consequent rapid depressurization of the airplane.

(f) Compliance

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

(g) Inspections

Do the applicable actions specified in paragraphs (g)(1), (g)(2), (g)(3), and (g)(4) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015, except as required by paragraph (h)(2) of this AD.

(1) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015, except as required by paragraph (h)(1) of this AD: Do a detailed inspection for nicks, scratches, or gouges of the Station 2231 frame inner chords, forward and aft, at stringer 26 at the edge and side of the inner chords.

(2) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015, except as required by paragraph (h)(1) of this AD: Do a surface high frequency eddy current (HFEC) inspection for cracks of the frame inner chords, forward and aft.

(3) Based on the findings from the inspections specified in paragraphs (g)(1) and (g)(2) of this AD, do all applicable corrective actions, before further flight.

(4) Repeat the HFEC inspection specified in paragraph (g)(2) of this AD at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015.

(h) Exceptions to Service Bulletin Specifications

(1) Where Boeing Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015, specifies a compliance time ''after the release of Revision 1 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 747–53A2494, Revision 1, dated January 9, 2015, specifies to contact Boeing for repair instructions: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for inspections required by paragraph (g)(1) of this AD, if those inspections were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2494, dated September 18, 2003, which was incorporated by reference in AD 2005–01–09.

(2) This paragraph provides credit for inspections required by paragraphs (g)(1) and (g)(2) of this AD, if those inspections were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–53A2450, Revision 7, dated November 2, 2011, which was incorporated by reference in AD 2013–17–08, Amendment 39–17572 (78 FR 57053, September 17, 2013).

(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) 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, modification, or alteration 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. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2005–01–09 are approved as AMOCs for the corresponding provisions of paragraph (g)(1) of this AD.

(k) Related Information

For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *nathan.p.weigand@faa.gov.*

(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 Alert Service Bulletin 747–53A2494, Revision 1, dated January 9, 2015.

(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 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 December 28, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00011 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8695; Directorate Identifier 2015–SW–042–AD; Amendment 39–18365; AD 2016–01–06]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB139 and AW139 helicopters. This AD requires inspecting each full ice protection system tail rotor slip ring (slip ring) for chatter marks, witness marks, or scoring, and determining the depth of each mounting hole. Based on the findings from the inspection, this AD requires either re-identifying the slip ring or replacing the slip ring. This AD is prompted by two incidents of the slip ring body separating from the supporting flange due to improper torque. These actions are intended to prevent separation of the mounting flange from the slip ring body and subsequent loss of control of the helicopter.

DATES: This AD becomes effective January 28, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of January 28, 2016.

We must receive comments on this AD by March 14, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments 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 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2015–8695; 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 (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this final rule, 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*; and Moog Inc., Components Group, Blacksburg Operations, 1213 North Main St., Blacksburg, Virginia 24606–3127, telephone (540) 552–3011, or at *www.moog.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Martin R. Crane, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *martin.r.crane@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with

FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

We are adopting a new AD for Agusta Model AB139 and AW139 helicopters with certain slip rings installed. This AD requires inspecting each slip ring for chatter marks, witness marks, or scoring. Based on the findings from the inspection, the AD requires either re-identifying the slip ring by marking a letter ''T'' after the serial number or replacing the slip ring with a slip ring that is not affected by this AD. This AD is prompted by two reports of detached slip ring bodies from the supporting flange due to improperly low torque of the affected screws during installation. These actions are intended to prevent separation of the mounting flange from the slip ring body and subsequent loss of control of the helicopter.

This AD was prompted by AD No. 2015–0155, dated July 28, 2015, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Agusta Model AB139 and AW139 helicopters. EASA advises of two incidents of the screws being found loose and broken on two Model AW139 helicopter tail rotor slip rings. EASA states that subsequent technical investigation revealed that the torque of the screws was improperly low. The slip ring manufacturer established that this occurred on the production line by improper installation of the affected screws on a number of slip rings. EASA advises that this condition, if not detected and corrected, could lead to other events of detachment of the slip ring, possibly resulting in reduced control of the helicopter.

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 and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information Under 1 CFR Part 51

We reviewed AgustaWestland Bollettino Technico No. 139–404, dated December 22, 2014 (BT), including Annex A Moog Service Bulletin SB 14–02, Revision D, undated (Moog SB). The BT specifies inspecting and replacing the slip ring mounting screws and reinstalling the lockwire by complying with the Moog SB. The Moog SB advises of insufficient torqueing of the screws and incorrect lock wiring used to affix the tail rotor mountain plate to the slip ring frame. If the slip ring does not pass the inspection, the BT specifies returning the slip ring to AgustaWestland, replacing it, and marking the letter ''T'' after the serial number of the unit. AgustaWestland states that slip rings already marked with a ''T'' after the serial number or ''MOD 1'' marked in the manufacturing plate do not have to be inspected. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires within 25 hours time-in-service:

- Removing each slip ring, lockwire, fastener, and washer.
- Inspecting the wall of the mounting plate hole for a chatter mark, witness mark, or scoring. If there is a chatter mark, witness mark, or scoring, replacing the slip ring with an airworthy slip ring.
- Determining the depth of the mounting plate hole. If the depth exceeds the grip length of the screw, replacing the slip ring with an airworthy slip ring.
- Re-identifying the slip ring by marking a letter ''T'' after the serial number with permanent black pen and applying acrylic lacquer (CO81 or equivalent).

This AD also prohibits installing an affected slip ring on any helicopter unless the slip ring has passed the inspections in accordance with this AD.

Differences Between This AD and the EASA AD

This AD requires compliance within 25 hours time-in-service; the EASA AD requires compliance within 14 days.

Costs of Compliance

We estimate that this AD will affect 106 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work hour. We estimate 3 work hours to inspect the slip ring for a cost of $255 per helicopter and $27,030 for the fleet. We estimate $56,806 in required parts and no additional labor costs to replace a slip ring.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments before adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we found that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the previously described unsafe condition can adversely affect the controllability of the helicopter and the required corrective actions must be accomplished within 25 hours TIS. These helicopters have a variety of uses including offshore and emergency medical flights and are expected to accumulate 25 hours TIS within a few weeks.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

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, 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 adding the following new airworthiness directive (AD):

2016–01–06 Agusta S.p.A.: Amendment 39–18365; Docket No. FAA–2015–8695; Directorate Identifier 2015–SW–042–AD.

(a) Applicability

This AD applies to Model AB139 and AW139 helicopters, certificated in any category, with a Full Icing Protection System tail rotor slip ring (slip ring) part number (P/N) 4G6420V00151, P/N 4G6420V00152, or P/N 4G6420V00153 installed, except a slip ring with a letter ''T'' after the serial number or marked with ''MOD 1.''

(b) Unsafe Condition

This AD defines the unsafe condition as a loose or missing screw connecting the mounting flange and the slip ring body. This condition could result in separation of the mounting flange from the slip ring body and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective January 28, 2016.

(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

Within 25 hours time-in-service:

(1) Remove each slip ring from the helicopter. Remove each lockwire, fastener, and washer by following the Compliance Instructions, paragraphs 3 through 5, of Moog Service Bulletin SB 14–02, Revision D, undated, included as Annex A to Agusta Westland Bollettino Tecnico (BT) No. 139–404, dated December 22, 2014, except you are not required to discard parts.

(2) Inspect the wall of the mounting plate hole for a chatter mark, witness mark, or scoring. If there is a chatter mark, witness mark, or scoring, replace the slip ring with a slip ring that is not listed in paragraph (a) of this AD.

(3) Determine the depth of the mounting plate hole. If the depth exceeds the grip length of the screw, replace the slip ring with a slip ring that is not listed in paragraph (a) of this AD.

(4) Re-identify the slip ring by marking a letter ''T'' after the serial number with permanent black pen and applying acrylic lacquer (CO81 or equivalent).

(5) Do not install an affected slip ring on any helicopter unless the slip ring has passed the inspections in accordance with this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Martin R. Crane, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@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.

(g) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2015–0155, dated July 28, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8695.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3060 Propeller/Rotor Anti-ice/De-Ice System.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference 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) AgustaWestland Bollettino Technico No. 139–404, dated December 22, 2014, including Annex A, Moog Service Bulletin SB 14–02, Revision D, undated.

(ii) Reserved.

(3) For service information identified in this AD, contact Moog Inc., Components Group, Blacksburg Operations, 1213 North Main St., Blacksburg, Virginia 24606–3127, telephone 540/552–3011, or at *www.moog.com.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(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 Fort Worth, Texas, on December 28, 2015.

Lance T. Gant,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–00013 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1990; Directorate Identifier 2015–NM–027–AD; Amendment 39–18364; AD 2016–01–05]

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 737–400 series airplanes, as modified by a certain supplemental type certificate. This AD was prompted by the discovery of a design drawing error regarding placards that identified incorrect squibs and pressure switches for certain fire extinguisher bottles. This AD requires a detailed inspection of certain cargo placards to determine if they are the correct placards and in the correct location, a detailed inspection of the harnesses to verify that they are marked and installed correctly, and corrective action if necessary. We are issuing this AD to detect and correct incorrectly installed harnesses for the cargo fire suppression system bottles, which could result in an incorrect activation sequence of the bottles, the inability to suppress a cargo fire quickly, and a possible uncontrollable fire.

DATES: This AD is effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2016.

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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1990.

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–2015–1990; 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: Paul DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, KS 67209; phone: 316–946–4142; fax: 316–946–4107; email: *paul.devore@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 737–400 series airplanes, as modified by a certain supplemental type certificate. The NPRM published in the **Federal Register** on July 2, 2015 (80 FR 38033). The NPRM was prompted by the discovery of a design drawing error regarding placards that identified incorrect squibs and pressure switches for certain fire extinguisher bottles. The NPRM proposed to require a detailed inspection of certain cargo placards to determine if they are the correct placards and in the correct location, a detailed inspection of the harnesses to verify that they are marked and installed correctly, and corrective action if necessary. We are issuing this AD to detect and correct incorrectly installed harnesses for the cargo fire suppression system bottles, which could result in an incorrect activation sequence of the bottles, the inability to suppress a cargo fire quickly, and a possible uncontrollable fire.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The European Aviation Safety Agency stated that it is following the progress of this activity of the NPRM (80 FR 38033, July 2, 2015). Boeing stated that the NPRM does not address any Boeing designs; therefore, Boeing can neither review the data, nor comment on the content of the NPRM, and that no file attachment accompanies its comment.

Conclusion

We reviewed the relevant data, considered the comments received, 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 (80 FR 38033, July 2, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 38033, July 2, 2015).

Related Service Information Under 1 CFR Part 51

We reviewed Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015. The service information describes procedures for a detailed inspection of Advanced Aircraft Extinguishers cargo fire protection system placards to determine if they are the correct placards and in the correct location, and applicable corrective actions; and a detailed inspection of the harnesses to verify that they are correctly marked and installed, and doing steps C.(5) through C.(11) of Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015, if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 3 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
Detailed inspection	2 work-hours × $85 per hour = $170	N/A	$170	$510

We estimate the following costs to do any necessary corrective actions that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these corrective actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Corrective actions	2 work-hours × $85 per hour = $170	$900	$1,070

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

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):

2016–01–05 The Boeing Company: Amendment 39–18364; Docket No. FAA–2015–1990; Directorate Identifier 2015–NM–027–AD.

(a) Effective Date

This AD is effective February 17, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–400 series airplanes, certificated in any category, having serial numbers 23865, 24231, 24706, 24474, 25417, 27003, 27149, 25375, 26281, 28661, and 28881, as modified by Supplemental Type Certificate ST01114WI (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/f9490633c04cbc8286257301006ed621/$FILE/ST01114WI.pdf*).

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Unsafe Condition

This AD was prompted by the discovery of a design drawing error regarding placards that identified incorrect squibs and pressure switches for certain fire extinguisher bottles. We are issuing this AD to detect and correct incorrectly installed harnesses for the cargo fire suppression system bottles, which could result in an incorrect activation sequence of the bottles, the inability to suppress a cargo fire quickly, and a possible uncontrollable fire.

(f) Compliance

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

(g) Placard Inspection

Within 6 months after effective date of this AD, do a detailed inspection of Advanced Aircraft Extinguishers cargo fire protection system (FPS) placards to determine if they are the correct placards and in the correct location, and do all applicable corrective actions, in accordance with the ''SERVICE BULLETIN INSTRUCTIONS'' of Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015. Do all applicable corrective actions before further flight.

(h) Harness Inspection

Within 6 months after the effective date of this AD, do a detailed inspection of the harnesses to verify that they are correctly marked and installed, in accordance with the ''SERVICE BULLETIN INSTRUCTIONS'' of Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015. If any harness is not marked or installed correctly, before further flight, do steps C.(5) through C.(11) specified in and in accordance with the ''SERVICE BULLETIN INSTRUCTIONS'' of Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015, except as required by paragraph (i) of this AD.

(i) Exception to the Service Information Specification

Where Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015, specifies contacting the manufacturer for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA.

(j) Special Flight Permit

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane, provided the airplane does not carry cargo in the lower cargo bay.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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 (l) of this AD.

(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) Except as required by paragraph (i) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(3)(i) and (k)(3)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

For more information about this AD, contact Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita,

KS 67209; phone: 316–946–4142; fax: 316–946–4107; email: *paul.devore@faa.gov.*

(m) 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) Advanced Aircraft Extinguishers Service Bulletin TFA10–26–0020, Revision IR, dated January 12, 2015.

(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 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 December 28, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00004 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0937; Directorate Identifier 2014–NM–024–AD; Amendment 39–18348; AD 2015–25–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2011–24–05 for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, and Model A340–200 and –300 series airplanes. AD 2011–24–05 required repetitive inspections for cracking of the hole(s) of the horizontal flange of the keel beam, and repair if necessary. This new AD requires changing the inspection compliance times, and, for certain airplanes, adding a one-time ultrasonic inspection for cracking at a certain fastener hole. This new AD also provides optional terminating action for the repetitive inspections. This AD was prompted by a determination that the rototest inspection and applicable corrective actions of a certain fastener hole were inadvertently omitted from the requirements in AD 2011–24–05. We are issuing this AD to detect and correct cracking of the fastener holes, which could result in rupture of the keel beam, and consequent reduced structural integrity of the airplane.

DATES: This AD becomes effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of January 3, 2012 (76 FR 73496, November 29, 2011).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 13, 2007 (72 FR 44731, August 9, 2007).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0937;* 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 final rule, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0937.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011). AD 2011–24–05 applied to certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. The NPRM published in the **Federal Register** on May 4, 2015 (80 FR 25249).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0010R1, dated May 5, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. The MCAI states:

> During A330 and A340 aeroplanes fatigue tests, cracks were detected on the RH [right-hand] and LH [left-hand] sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB).
>
> This condition, if not detected and corrected, could lead to keel beam rupture which would affect the structural integrity of the area.
>
> Prompted by this potential unsafe condition, EASA issued AD 2006–0315 [*http://ad.easa.europa.eu/blob/easa_ad_2006_0315.pdf/AD_2006-0315*] (later revised to R1) to require repetitive special detailed inspections (SDI) [rotating probe inspection for cracking] on the horizontal flange of the keel beam in the area of first fastener hole aft of Frame (FR) 40 in order to maintain the structural integrity of the aeroplane.
>
> After that [EASA] AD was issued, EASA issued AD 2010–0024 [which corresponds to FAA AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)], retaining the inspection requirements of EASA AD 2006–0315R1 [*http://ad.easa.europa.eu/blob/easa_ad_2006_0315R1.pdf/AD_2006-0315R1*], which was superseded, extending the applicability to aeroplanes with Airbus Mod 49202 embodied, and reducing the inspection thresholds and intervals.
>
> Since that [EASA] AD [2010–0024] was issued, a new fatigue and damage tolerance evaluation has been conducted by Airbus, which concluded that due to the aeroplane utilization, the current inspection threshold and intervals have to be modified.
>
> In addition, it was determined that the rototest inspection of fastener hole Nr 6, necessary to ensure that no crack was left unrepaired at the time of fastener hole cold working, was inadvertently not included in

Revisions 01 and 02 of both Airbus Service Bulletin (SB) A330–57–3098 and A340–57–4106.

Prompted by these findings, EASA issued AD 2014–0010 [*http://ad.easa.europa.eu/blob/easa_ad_2014-0010.pdf/AD_2014-0010*], retaining the requirements of EASA AD 2010–0024, which was superseded, and redefined the inspection thresholds and intervals [by reducing certain compliance times], and added a one-time ultrasonic inspection of fastener hold Nr 6 in the junction keel beam fitting at FR40 on both LH and RH side[s].

Following issuance of EASA AD 2014–0010, it was identified that there was a need for clarifications [of affected airplanes] * * *.

The compliance times vary depending on airplane utilization and configuration. The earliest compliance time for the initial rotating probe inspections is the later of (1) before 10,400 total flight cycles or 67,800 total flight hours, whichever occurs first; and (2) within 24 months or 14,590 flight cycles or 43,790 flight hours, whichever occurs first. The latest compliance time for the initial inspections is the later of (1) before 20,800 total flight cycles or 67,900 total flight hours, whichever occurs first; and (2) within 24 months or 21,180 flight cycles or 63,560 flight hours, whichever occurs first. The compliance times for the repetitive intervals range between 7,800 flight cycles or 50,900 flight hours and 10,700 flight cycles or 35,200 flight hours. The compliance times for the one-time ultrasonic inspection are the latest of (1) 21,000 flight cycles or 60,600 flight hours and within 2,400 flight cycles or 24 months; or the latest of (2) 22,100 flight cycles and 64,400 flight hours, or within 1,300 flight cycles or 24 months.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0937-0002*.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 25249, May 4, 2015) or on the determination of the cost to the public.

Conclusion

We reviewed the available 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 (80 FR 25249, May 4, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 25249, May 4, 2015).

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information.

- Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012.
- Airbus Service Bulletin A330–57–3090, Revision 01, dated June 15, 2011.
- Airbus Service Bulletin A330–57–3098, dated August 30, 2007.
- Airbus Service Bulletin A330–57–3098, Revision 02, June 15, 2011.
- Airbus Service Bulletin A330–57–3098, Revision 03, dated September 24, 2012.
- Airbus Service Bulletin A330–57–3117, dated January 25, 2013.
- Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012.
- Airbus Service Bulletin A340–57–4098, Revision 01, dated June 15, 2011.
- Airbus Service Bulletin A340–57–4106, dated August 30, 2007.
- Airbus Service Bulletin A340–57–4106, Revision 02, dated June 15, 2011.
- Airbus Service Bulletin A340–57–4106, Revision 03, dated September 24, 2012.
- Airbus Service Bulletin A340–57–4126, dated January 25, 2013.

This service information describes procedures for inspections for cracking of the hole(s) of the horizontal flange of the keel beam, and contacting the manufacturer for repair instructions. Additionally, this service information describes procedures for a one-time ultrasonic inspection for cracking at fastener hole ''Nr 6,'' and provides optional terminating action for the repetitive inspections.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 35 airplanes of U.S. registry.

The actions that were required by AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), and retained in this AD take about 41 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $191 per product. Based on these figures, the estimated cost of the actions that were required by AD 2011–24–05 is $3,676 per product.

We also estimate that it takes about 23 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $68,425, or $1,955 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

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-2015-0937;* 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) 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), and adding the following new AD:

2015–25–10 Airbus: Amendment 39–18348. Docket No. FAA–2015–0937; Directorate Identifier 2014–NM–024–AD.

(a) Effective Date

This AD becomes effective February 17, 2016.

(b) Affected ADs

This AD replaces AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011).

(c) Applicability

(1) This AD applies to the airplanes identified in paragraphs (c)(1)(i) and (c)(1)(ii) of this AD, certificated in any category, except as provided by paragraph (c)(2) of this AD.

(i) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all serial numbers, except those on which Airbus modification 55306 or 55792 has been embodied in production.

(ii) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all serial numbers, except those on which Airbus modification 55306 or 55792 has been embodied in production.

(2) This AD does not apply to Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes on which the repair specified in Airbus Repair Drawing R57115053, R57115051, or R57115047 (installation of titanium doubler on both sides) has been accomplished. AD 2007–12–08, Amendment 39–15086 (72 FR 31171, June 6, 2007), applies to these airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of cracks on the keel beam fitting and the front spar of the center wing box. This AD was also prompted by a determination that the rototest inspection and applicable corrective actions of fastener hole ''Nr 6'' were inadvertently omitted from the requirements in AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011). We are issuing this AD to detect and correct cracking of the fastener holes, which could result in rupture of the keel beam, and consequent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Non-Destructive Test (NDT) Inspection

This paragraph restates the requirements of paragraph (n) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), with new service information and revised credit for certain actions. At the applicable time in paragraph (g)(1) or (g)(2) of this AD, do an NDT inspection of the hole(s) of the horizontal flange of the keel beam located on frame (FR) 40 datum on the right-hand (RH) and/or left-hand (LH) side of the fuselage, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(3), (g)(4), (g)(5), or (g)(6) of this AD. Accomplishing an inspection required by paragraph (j) of this AD terminates the inspections required by this paragraph.

(1) For airplanes on which an inspection required by paragraph (h) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), has not been done as of January 3, 2012 (the effective date of AD 2011–24–05): At the applicable time specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) For all airplanes except those identified in paragraph (g)(1)(ii) of this AD: Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after January 3, 2012 (the effective date AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)); whichever occurs later. The compliance times for configurations 02 through 06 specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(ii) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes, except those on which Airbus modification 49202 has been embodied in production, or Airbus Service Bulletin A330–57–3090 has been embodied in service; and Model A340–200 and –300 series airplanes, except those on which Airbus modification 49202 has been embodied in production or Airbus Service Bulletin A340–57–4098 has been embodied in service, and except Model A340–211, –212, –213, –311, –312, and –313 airplanes on which the repair specified in Airbus Repair Drawing R57115053, R57115051, or R57115047 has been accomplished: At the earlier of the times specified in paragraphs (g)(1)(ii)(A) and (g)(1)(ii)(B) of this AD.

(A) Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; depending on the configuration of the aircraft model; or within 3 months after September 13, 2007 (the effective date of AD 2007–16–02, Amendment 39–15141 (72 FR 44731, August 9, 2007)), whichever occurs later. The compliance times for Model A330 post-mod. 41652 and pre-mod. 44360, post-mod. 44360, and pre-mod. 49202 (as specified in Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006); and Model A340 post-mod. 41652, post-mod. 43500 and pre-mod. 44360, post-mod. 44360 and pre-mod. 49202, and weight variant 027 (as specified in Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006); specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(B) Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)); whichever occurs later. The compliance times for configurations 02 through 06 specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(2) For airplanes on which an inspection required by paragraph (h) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), has been done as of January 3, 2012 (the effective date of AD 2011–24–05): At the earlier of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within the ''Mandatory Intervals'' given in table 1 of paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; as applicable.

(ii) Within the applicable ''Mandatory Interval'' specified in table 1 of Paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3

months after January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)); whichever occurs later.

(3) Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011.

(4) Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012.

(5) Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011.

(6) Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012.

(h) Retained Repetitive Inspections

This paragraph restates the requirements of paragraph (p) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011). If no cracking is found during any inspection required by paragraph (g) of this AD, do the actions required by paragraphs (h)(1) and (h)(2) of this AD.

(1) Before further flight: Install a new or oversized fastener, as applicable; seal the fastener; and do all other applicable actions; in accordance with the Accomplishment Instructions of the applicable service information specified in paragraph (g)(3), (g)(4), (g)(5), or (g)(6) of this AD.

(2) Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed the ''Mandatory Intervals'' specified in Paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable.

(i) Retained Corrective Action and Optional Modification

(1) This paragraph restates the requirements of paragraph (o) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), with revised method of compliance language. If any cracking is found during any inspection required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) This paragraph restates the requirements of paragraph (r) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), with new service information and revised method of compliance language. Modifying the fastener installation in the junction keel beam fitting at FR 40, as specified in paragraph (i)(2)(i), (i)(2)(ii), (i)(2)(iii), or (i)(2)(iv) of this AD, as applicable, terminates the requirements of paragraphs (g) and (h) of this AD; except, for airplanes on which a crack was detected at hole 5 before oversizing of the keel beam, in accordance with step 3.B.(1)(b)*3* of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3098, dated August 30, 2007; or Airbus Service Bulletin A340–57–4106, dated August 30, 2007; or in accordance with step 3.C.(2)(c) of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3098, Revision 03, dated September 24, 2012, or Airbus Service Bulletin A340–57–4106, Revision 03, dated September 24, 2012; before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. In case of any crack finding during any modification specified in this paragraph: Where the service information specifies to contact Airbus, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(i) Modification in accordance with Airbus Service Bulletin A330–57–3098, dated August 30, 2007, before January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)).

(ii) Modification in accordance with Airbus Service Bulletin A330–57–3098, Revision 03, dated September 24, 2012, before the effective date of this AD.

(iii) Modification in accordance with Airbus Service Bulletin A340–57–4106, dated August 30, 2007, before January 3, 2012 (the effective date of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011)).

(iv) Modification in accordance with Airbus Service Bulletin A340–57–4106, Revision 03, dated September 24, 2012, before the effective date of this AD.

(j) New Repetitive Rotating Probe Inspections

At the applicable times specified in paragraphs (j)(1) and (j)(2) of this AD: Do a rotating probe inspection for cracking of the fastener hole(s) of the horizontal flange of the keel beam located on FR 40 datum on the RH and LH side of the fuselage, as applicable to airplane type and depending on airplane configuration and utilization, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012; as applicable. Repeat the inspection thereafter at intervals not to exceed the ''Mandatory Intervals'' specified in Paragraph 1.E.(2) of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012; as applicable. Accomplishing an inspection required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(1) For airplanes on which the inspection required by paragraph (g) of this AD has not been done as of the effective date of this AD: Do the inspection before exceeding the applicable compliance times specified in the ''Mandatory Threshold'' column of the tables in paragraph 1.E.(2) of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012; as applicable; or within 12 months after the effective date of this AD; whichever occurs later.

(2) For airplanes on which the inspection required by paragraph (g) of this AD has been done as of the effective date of this AD: Do the inspection within the applicable compliance times specified in the ''Mandatory Interval'' column of the tables in paragraph 1.E.(2) of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012; as applicable; or within 12 months after the effective date of this AD; whichever occurs later.

(k) Credit for Previous Actions

(1) This paragraph provides credit for the initial rotating probe inspection that is part of the inspections required by paragraphs (g) and (j)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD. This service information was incorporated by reference in AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011).

(i) Airbus A330/A340 200–300 Technical Disposition F57D03012810, Issue B, dated August 18, 2003.

(ii) Airbus A330/A340 Technical Disposition 582.0651/2002, Issue A, dated October 17, 2002.

(2) This paragraph restates the credit for the actions specified in paragraph (k) of AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), if those actions were performed before January 3, 2012 (the effective date of AD 2011–24–05), using the service information specified in paragraphs (k)(2)(i) through (k)(2)(viii) of this AD.

(i) Airbus Service Bulletin A330–57–3081, dated October 30, 2003, which is not incorporated by reference in this AD.

(ii) Airbus Service Bulletin A330–57–3081, Revision 01, dated May 18, 2004, which is not incorporated by reference in this AD.

(iii) Airbus Service Bulletin A330–57–3081, Revision 02, including Appendix 01, dated January 24, 2006, which was incorporated by reference in AD 2007–12–08, Amendment 39–15086 (72 FR 31171, June 6, 2007).

(iv) Airbus Mandatory Service Bulletin A330–57–3081, Revision 03, dated July 31, 2009, which is not incorporated by reference in this AD.

(v) Airbus Service Bulletin A340–57–4089, dated October 30, 2003, which is not incorporated by reference in this AD.

(vi) Airbus Service Bulletin A340–57–4089, Revision 01, dated March 2, 2004, which is not incorporated by reference in this AD.

(vii) Airbus Service Bulletin A340–57–4089, Revision 02, including Appendix 01, dated January 24, 2006, which was incorporated by reference in AD 2007–12–08, Amendment 39–15086 (72 FR 31171, June 6, 2007).

(viii) Airbus Mandatory Service Bulletin A340–57–4089, Revision 03, dated July 31, 2009.

(l) New One-Time Ultrasonic Inspection

For airplanes in Configuration 2, as defined in the applicable service information

identified in paragraph (l)(3), (l)(4), (l)(5), or (l)(6) of this AD, on which the modification has been done as of the effective date of this AD in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (l)(3), (l)(4), (l)(5), or (l)(6) of this AD; as applicable to airplane type; and on which fastener hole ''Nr 5'' has been bushed before embodiment of Airbus Service Bulletin A330–57–3098 or Airbus Service Bulletin A340–57–4106, as applicable; or on which a crack has been found on fastener hole ''Nr 5'' during embodiment of Airbus Service Bulletin A330–57–3098 or Airbus Service Bulletin A340–57–4106, as applicable: At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD, do a one-time ultrasonic inspection for cracking at fastener hole ''Nr 6'' in the junction keel beam fitting at FR 40 LH and RH sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3117, dated January 25, 2013; or Airbus Service Bulletin A340–57–4126, dated January 25, 2013; as applicable.

(1) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes: At the later of the times specified in paragraphs (l)(1)(i) and (l)(1)(ii) of this AD.

(i) At the applicable time specified in paragraph 1.E.(2), of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3117, dated January 25, 2013.

(ii) Within 2,400 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: At the later of the times specified in paragraphs (l)(2)(i) and (l)(2)(ii) of this AD.

(i) At the applicable time specified in paragraph 1.E.(2) of the Accomplishment Timescale of Airbus Service Bulletin A340–57–4126, dated January 25, 2013.

(ii) Within 1,300 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(3) Airbus Service Bulletin A330–57–3098, excluding Appendix 1, Revision 01, dated July 31, 2009.

(4) Airbus Service Bulletin A330–57–3098, Revision 02, dated June 15, 2011.

(5) Airbus Service Bulletin A340–57–4106, excluding Appendix 1, Revision 01, dated July 31, 2009.

(6) Airbus Service Bulletin A340–57–4106, Revision 02, dated June 15, 2011.

(m) Corrective Actions

(1) If no cracking is found during any inspection required by paragraph (j) of this AD, before further flight: Install new or oversized fastener, as applicable; seal the fastener; and do all other applicable corrective actions; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012; as applicable. Thereafter, repeat the inspection required by paragraph (j) of this AD at intervals not to exceed the ''Mandatory Intervals'' specified in Paragraph 1.E.(2) of the Accomplishment Timescale of Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012; or Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012; as applicable.

(2) If any crack is found during any inspection required by paragraph (j) or (l) of this AD; before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Airplanes Excluded From Certain Requirements

(1) For airplanes on which a rototest was done at fastener hole ''Nr 6'' before cold working of the fastener hole during accomplishment of the actions specified in the applicable service information identified in paragraph (n)(1)(i), (n)(1)(ii), (n)(1)(iii), or (n)(1)(iv) of this AD: The ultrasonic inspection specified in paragraph (l) of this AD is not required.

(i) Airbus Service Bulletin A330–57–3098, excluding Appendix 1, Revision 01, dated July 31, 2009.

(ii) Airbus Service Bulletin A330–57–3098, Revision 02, dated June 15, 2011.

(iii) Airbus Service Bulletin A340–57–4106, excluding Appendix 1, Revision 01, dated June 31, 2009.

(iv) Airbus Service Bulletin A340–57–4106, Revision 02, dated June 15, 2011.

(2) For airplanes that have been modified as of the effective date of this AD in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (n)(1)(i), (n)(1)(ii), (n)(1)(iii), or (n)(1)(iv) of this AD: No action is required by this paragraph, except as otherwise required by paragraph (l) of this AD and, provided that if any crack was found during any modification specified in this paragraph and the service information specified to contact Airbus, repair was done before further flight using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Optional Terminating Actions

(1) Modification of an airplane in accordance with the Accomplishment Instructions of the applicable service information identified in paragraph (o)(1)(i), (o)(1)(ii), (o)(1)(iii), (o)(1)(iv), (o)(1)(v), or (o)(1)(vi) of this AD; as applicable to airplane type and depending on airplane configuration; terminates the requirements of this AD, provided that in case of any crack finding during any modification specified in this paragraph, and the service information specifies to contact Airbus, repair is done before further flight, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Airbus Service Bulletin A330–57–3090, dated March 27, 2006.

(ii) Airbus Service Bulletin A330–57–3090, Revision 01, dated June 15, 2011.

(iii) Airbus Service Bulletin A330–57–3098, Revision 03, dated September 24, 2012.

(iv) Airbus Service Bulletin A340–57–4098, dated March 27, 2006.

(v) Airbus Service Bulletin A340–57–4098, Revision 01, dated June 15, 2011.

(vi) Airbus Service Bulletin A340–57–4106, Revision 03, dated September 24, 2012.

(2) Accomplishment of the ultrasonic inspection required by paragraph (l) of this AD and all applicable corrective actions required by paragraph (m) of this AD terminate the requirements of this AD for those airplanes.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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) AMOCs approved previously for AD 2011–24–05, Amendment 39–16869 (76 FR 73496, November 29, 2011), are approved as AMOCs for the corresponding provisions of this AD.

(3) *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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0010R1, dated May 5, 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–2015–0937–0002.

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

(r) 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 February 17, 2016.

(i) Airbus Service Bulletin A330–57–3081, Revision 05, dated November 13, 2012.

(ii) Airbus Service Bulletin A330–57–3090, Revision 01, dated June 15, 2011.

(iii) Airbus Service Bulletin A330–57–3098, dated August 30, 2007.

(iv) Airbus Service Bulletin A330–57–3098, Revision 02, June 15, 2011.

(v) Airbus Service Bulletin A330–57–3098, Revision 03, dated September 24, 2012.

(vi) Airbus Service Bulletin A330–57–3117, dated January 25, 2013.

(vii) Airbus Service Bulletin A340–57–4089, Revision 05, dated November 13, 2012.

(viii) Airbus Service Bulletin A340–57–4098, Revision 01, dated June 15, 2011.

(ix) Airbus Service Bulletin A340–57–4106, dated August 30, 2007.

(x) Airbus Service Bulletin A340–57–4106, Revision 02, dated June 15, 2011.

(xi) Airbus Service Bulletin A340–57–4106, Revision 03, dated September 24, 2012.

(xii) Airbus Service Bulletin A340–57–4126, dated January 25, 2013.

(4) The following service information was approved for IBR on January 3, 2012 (76 FR 73496, November 29, 2011).

(i) Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011.

(ii) Airbus Service Bulletin A330–57–3098, Revision 01, excluding Appendix 1, dated July 31, 2009.

(iii) Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011.

(iv) Airbus Service Bulletin A340–57–4106, excluding Appendix 1, Revision 01, dated July 31, 2009.

(5) The following service information was approved for IBR on September 13, 2007 (72 FR 44731, August 9, 2007).

(i) Airbus Service Bulletin A330–57–3081, Revision 02, including Appendix 01, dated January 24, 2006.

(ii) Airbus Service Bulletin A340–57–4089, Revision 02, including Appendix 01, dated January 24, 2006.

(6) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(7) 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 December 9, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–32256 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–4213; Directorate Identifier 2015–CE–022–AD; Amendment 39–18359; AD 2016–01–01]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. Model PA–46–500TP airplanes. This AD was prompted by a report of the wing upper skin joints being manufactured without sealant, which allows water to enter and stay in sealed, bonded stringers. This AD requires inspecting the upper wing surface for sealant; inspecting the wing stringers for water intrusion; inspecting for deformation and corrosion if evidence of water intrusion exists; and taking corrective actions as necessary. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 17, 2016.

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: none; email: *customer.service@piper.com*; Internet: *www.piper.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. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2015–4213.

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–2015–4213; 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 (telephone: 800–647–5527) is Document 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: Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@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 Piper Aircraft, Inc. Model PA–46–500TP airplanes. The NPRM published in the **Federal Register** on October 19, 2015 (80 FR 63151). The NPRM was prompted by a report of wing upper skin joints on Piper Aircraft, Inc. Model PA–46–500TP airplanes being manufactured without sealant, which allows water to enter and stay in sealed, bonded stringers. The NPRM proposed to require inspecting the upper wing surface for sealant; inspecting the wing stringers for water intrusion; inspecting for deformation and corrosion if evidence of water intrusion exists; and taking corrective actions as necessary. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015. The service bulletin provides instructions for inspecting the upper wing surface for sealant and sealing or resealing (if necessary). This service bulletin also provides instructions for inspecting the wing stringers for water intrusion, and, if water intrusion was found as a result of the inspection, inspecting for corrosion or deformation. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this final rule.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 63151, October 19, 2015) 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 (80 FR 63151, October 19, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 63151, October 19, 2015).

Costs of Compliance

We estimate that this AD affects 440 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 for sealant	2 work-hours × $85 per hour = $170.	Not Applicable	$170	$74,800

We estimate the following costs to do any additional necessary inspections, rework of the stringers, and installation of sealant that will be required based on the results of the initial inspection. We have no way of determining the number of airplanes that might need this rework of the stringers and installation of sealant:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Rework stringers and seal skin joints	12 work-hours × $85 per hour = $1,020	$200	$1,220

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

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):

2016–01–01 Piper Aircraft, Inc.: Amendment 39–18359; Docket No. FAA–2015–4213; Directorate Identifier 2015–CE–022–AD.

(a) Effective Date

This AD is effective February 17, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piper Aircraft, Inc. Model PA–46–500TP airplanes, serial numbers 4697001 through 4697528, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 5700, Wings.

(e) Unsafe Condition

This AD was prompted by a report of wing upper skin joints being manufactured without sealant, which allows water to enter and stay in sealed, bonded stringers. We are issuing this AD to prevent water from entering the stringers common to the upper wing skin. Left uncorrected, corrosion could develop, and freeze/thaw cycles of water at this location could cause deformation of the skin with follow-on disbonding between the stringer flanges and the inner surface of the wing skin. Consequently, the corrosion or disbonding could reduce the structural integrity of the wing.

(f) Compliance

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

(g) Inspect the Upper Skin Joints for Adequate Sealant

Within the next 100 hours time-in-service (TIS) after February 17, 2016 (the effective date of this AD) or 12 months after February 17, 2016 (the effective date of this AD), whichever occurs first, inspect the upper skin joints for adequate sealant following Part I of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015. No further action per this AD is required if adequate sealant is already applied.

(h) Inspect for Evidence of Water Intrusion/Moisture

If you find missing or inadequate sealant during the inspection required by paragraph (g) of this AD, before further flight, inspect for evidence of water intrusion/moisture following Part II of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(1) If no evidence of water intrusion/moisture is found during the inspection required in paragraph (h) of this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(2) If evidence of water intrusion/moisture is found during the inspection required in paragraph (h) of this AD, before further flight, do the actions required in paragraphs (i) and (j) of this AD.

(i) Inspect for Corrosion

If you find, as a result of the inspection required by paragraph (h) of this AD, evidence of water intrusion/moisture, before further flight, inspect for corrosion following Part II of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(1) If no evidence of corrosion is found during the inspection required in paragraph (i) of this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(2) If evidence of corrosion is found during the inspection required in paragraph (i) of this AD, before further flight, obtain and implement an FAA-approved corrective action approved specifically for this AD. At the operator's discretion, assistance may be provided by contacting Piper Aircraft, Inc. at the address identified in paragraph (p)(3) of this AD. After obtaining and implementing an FAA-approved corrective action, approved specifically for this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(j) Inspect for Deformation

If you find, as a result of the inspection required by paragraph (h) of this AD, evidence of water intrusion/moisture, before further flight, do a visual inspection for skin or stringer deformation.

(1) If no evidence of deformation is found during the inspection required in paragraph (j) of this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(2) If any visible deformation is found during the inspection required in paragraph (j) of this AD, before further flight, obtain and implement an FAA-approved corrective action, approved specifically for this AD. At the operator's discretion, assistance may be provided by contacting Piper Aircraft, Inc. at the address identified in paragraph (p)(3) of this AD. After obtaining and implementing an FAA-approved corrective action, approved specifically for this AD, before further flight, rework the stringers and apply sealant as required in paragraph (k) of this AD.

(k) Rework Stringers and Seal Skin Joints

If any inspection required by paragraphs (g) through (j) of this AD reveals discrepancies (no sealant/inadequate sealant, evidence of water intrusion/moisture, corrosion, or deformation), before further flight, after completing any necessary corrective actions, rework wing stringers and seal skin joints following Part II of Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(l) Credit for Actions Done in Accordance With Previous Service Information

Actions done before February 17, 2016 (the effective date of this AD) following Part I and Part II of Piper Aircraft, Inc. Service Bulletin No. 1262, dated October 16, 2013, or Part I and Part II of Piper Aircraft, Inc. Service Bulletin No. 1262A, dated November 14, 2013, as applicable, are considered acceptable for compliance with the corresponding actions specified in paragraphs (g), (h), (i), and (k) (including subparagraphs) of this AD. Additional inspections beyond Service Bulletin No. 1262 are required to fully comply with paragraph (j) of this AD.

(m) Special Flight Permit

(1) In accordance with 14 CFR 39.23, a single flight is allowed to a location to do the actions in paragraph (g) of this AD.

(2) In accordance with 14 CFR 39.23, a single flight is allowed to a location to do the inspections, rework and installation of sealant required in paragraphs (h) through (k) of this AD. Prior to the flight to perform the inspections, rework, and installation of sealant, the following inspection must be performed: If the inspection required by paragraph (g) of this AD reveals no sealant, inspect for evidence of wing damage (skin or stringer deformation, *e.g.* buckling). Any wing damage that is found must be repaired before further flight and before any special flight permit is authorized.

(n) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (l)(1) of this AD.

(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

(o) Related Information

For more information about this AD, contact Gregory ''Keith'' Noles, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5551; fax: (404) 474–5606; email: *gregory.noles@faa.gov.*

(p) 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) Piper Aircraft, Inc. Service Bulletin No. 1262B, dated April 23, 2015.

(ii) Reserved.

(3) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc., Customer Service, 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (877) 879–0275; fax: None; email: *customer.service@piper.com;* Internet: *www.piper.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. It is also available on the Internet at *http://www.regulations.gov* by searching for locating Docket No. FAA–2015–4213.

(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 24, 2015.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33170 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1981; Directorate Identifier 2014–NM–204–AD; Amendment 39–18362; AD 2016–01–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, and A340–300 series airplanes. This AD was prompted by reports that the inner bore of some main landing gear (MLG) unit bogie beams were insufficiently re-protected against corrosion after inspection or maintenance actions were accomplished. This AD requires for certain MLG units, determining which revision of the component maintenance manual (CMM) was used to accomplish the most recent MLG unit overhaul; a detailed inspection for missing or damaged paint, and if necessary, a detailed inspection of the cadmium plating for discrepancies, measurement of the depth of the cadmium plating, a general visual inspection of the base metal for corrosion or damage, a detailed inspection of repaired areas for cracking or corrosion; and corrective actions if necessary. We are issuing this AD to detect and correct corrosion in the bore of each MLG unit bogie beam, which could result in collapse of a MLG unit, and subsequent damage to the airplane and injury to occupants.

DATES: This AD becomes effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 17, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-1981;* 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 Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* For Messier-Dowty service information contact Messier-Dowty Limited, Cheltenham Road, Gloucester, GL2 9QH, England; telephone +44(0) 1452 712424; fax+ 44(0) 1452 713821; Internet *http://www.safranmbd.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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1981.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425–227–1149.

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 Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, and A340–300 series airplanes. The NPRM published in the **Federal Register** on June 15, 2015 (80 FR 34098).

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0222, dated October 6, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, and A340–300 series airplanes. The MCAI states:

> From in-service experience, it was found that the inner bore of some bogie beams had been insufficiently re-protected against corrosion after inspection and/or possible maintenance actions accomplished in this area (absence of corrosion inhibitor and damage to paint have been found in some specific areas).
>
> This condition, if not detected and corrected, could lead to corrosion on the bore of the bogie beam, potentially resulting in Main Landing Gear (MLG) collapse, ultimately resulting in damage to the aeroplane and injury to the occupants.
>
> To address this potential unsafe condition, Airbus issued Alert Operators Transmission (AOT) A32L004–14, providing inspection instructions for some aeroplane configurations.
>
> For the reasons described above, this [EASA] AD requires identification of the MLG units that are possibly affected, [a detailed] inspection [for missing or damaged paint] of the MLG Bogie Beam bore and, depending on findings, accomplishment of the applicable corrective actions.
>
> This [EASA] AD also prohibits the installation of MLG units that have been overhauled by using instructions from an earlier Components Maintenance Manual (CMM) revision.

Required actions also include a detailed inspection of the cadmium plating for discrepancies (gray in color), measurement of the depth of the cadmium plating if necessary, and a general visual inspection of the base metal for corrosion or damage, and a detailed inspection of repaired areas for cracking or corrosion. Corrective actions include removing cadmium plating and repairing any cracked, corroded, or damaged areas; re-applying cadmium plating and paint; and re-applying temporary corrosion protection to the bores of the MLG bogie beams.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1981-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The following presents the comments received on the NPRM (80 FR 34098, June 15, 2015) and the FAA's response to each comment.

Request for Clarification of Optional Method of Compliance

Air France and American Airlines (AA) requested that paragraph (j) of the proposed AD (80 FR 34098, June 15, 2015) be revised to clarify that after accomplishment of the actions in the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007; or Service Bulletin A33/34–32–272, Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008; the actions specified in the Messier-Dowty service information identified in paragraphs (j)(1) through (j)(5) of the proposed AD must not be accomplished on that same MLG unit.

We agree with the commenters' request and have revised paragraph (j) of this AD to clarify that after accomplishment of the actions in the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007; or Service Bulletin A33/34–32–272, Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008; the actions specified in the Messier-Dowty service information identified in paragraphs (j)(1) through (j)(5) of this AD must not be accomplished on that same MLG unit. The actions in the Accomplishment Instructions of Messier-Dowty service information identified in paragraphs (j)(1) through (j)(5) do not provide sufficient corrosion protection for the MLG units.

Request To Correct Service Information Reference

Air France requested that the references to the Airbus component maintenance manual in paragraph (g) of the proposed AD be changed to Messier-Dowty component maintenance manual.

We agree with the commenter's request because the component maintenance manuals were published by Messier-Dowty, not Airbus. We have revised paragraphs (g) and (k) of this AD accordingly.

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 (80 FR 34098, June 15, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 34098, June 15, 2015).

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

Related Service Information Under 1 CFR Part 51

Airbus has issued Alert Operators Transmission A32L004–14, dated July 28, 2014, including Appendixes 1, 2, 3, and 4. This service information describes procedures for inspections of the bogie beam bore of the MLG.

Messier-Dowty has issued the following service information, which describes procedures for inspections of the internal diameter of the bogie beam for corrosion.

- Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007.
- Service Bulletin A33/34–32–272, Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 89 airplanes of U.S. registry.

We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD, and 1 work-hour to report the inspection findings. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $98,345, or $1,105 per product.

We have received no definitive data that would enable us to provide cost estimates for any necessary follow-on actions.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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-2015-1981;* 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):

2016–01–03 Airbus: Amendment 39–18362. Docket No. FAA–2015–1981; Directorate Identifier 2014–NM–204–AD.

(a) Effective Date

This AD becomes effective February 17, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model A330–201, A330–202, A330–203, A330–223, A330–223F, A330–243, A330–243F, A330–301, A330–302, A330–303, A330–321, A330–322, A330–323, A330–341, A330–342, and A330–343 airplanes; all manufacturer serial numbers; except those on which Airbus Modification 58896 has been embodied in production or embodied through Airbus Service Bulletin A330–32–3237.

(2) Model A340–211, A340–212, A340–213, A340–311, A340–312, and A340–313 airplanes; all manufacturer serial numbers; except those on which Airbus Modification 58896 has been embodied in production or embodied through Airbus Service Bulletin A340–32–4279.

(d) Subject

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

(e) Reason

This AD was prompted by reports that the inner bore of some main landing gear (MLG) unit bogie beams were insufficiently re-protected against corrosion after inspection or maintenance actions were accomplished. We are issuing this AD to detect and correct corrosion in the bore of each MLG unit bogie beam, which could result in collapse of a MLG unit, and subsequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Identification of Affected MLG Units

Within 12 months after the effective date of this AD: For MLG units having a 201252 series or 201490 series part number, determine the revision of the Messier-Dowty component maintenance manual (CMM) used to do the most recent MLG unit overhaul. If it is determined that the Messier-Dowty CMM revision specified in paragraph (g)(1) or (g)(2) of this AD was used to accomplish the most recent MLG unit overhaul: Within 12 months after the effective date of this AD, clean the area between the bogie pivot pin and the bogie beam bore of each MLG unit and do a detailed inspection for missing or damaged paint, in accordance with Airbus Alert Operators Transmission A32L004–14, dated July 28, 2014, including Appendixes 1, 2, 3, and 4, which do not have a date.

(1) For MLG units having a part number in the 201252 series: Messier-Dowty CMM 32–11–74, Revision 25 or earlier.

(2) For MLG units having a part number in the 201490 series: Messier-Dowty CMM 32–12–05, Revision 20 or earlier.

(h) Inspection of Cadmium Plating

If, during the inspection required by paragraph (g) of this AD, any missing or damaged paint is found: Before further flight, do a detailed inspection of the cadmium plating for discrepancies, measure the depth of the plating as applicable, and do a general visual inspection of the base metal for corrosion or damage, in accordance with Airbus Alert Operators Transmission A32L004–14, dated July 28, 2014, including Appendixes 1, 2, 3, and 4, which do not have a date. If any discrepancy, damage, or corrosion is found, before further flight, do all applicable corrective actions, and do a detailed inspection of repaired areas for cracking or corrosion, in accordance with Airbus Alert Operators Transmission A32L004–14, dated July 28, 2014, including Appendixes 1, 2, 3, and 4, which do not have a date, except where Airbus Alert Operators Transmission A32L004–14, dated July 28, 2014, including Appendixes 1, 2, 3, and 4, specifies to contact Messier-Dowty if cracking or corrosion is found in a repaired area, before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(i) Reporting Requirement

At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, report the findings of the inspection required by paragraph (g) of this AD to Airbus, Customer Services Engineering—SEEL1, Attn: Philippe Kerangueven, Product Leader A330/A340, ATA–32, Landing Gear Systems, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; phone +33 (0) 5 67 19 18 42; fax +33 0 5 67 19 12 05; email *philippe.kerangueven@airbus.com*. The report must include the information specified in Appendix 2 of Airbus Alert Operators Transmission A32L004–14, dated July 28, 2014.

(1) If the inspection was done on or after the effective date of this AD: Within 90 days after that inspection.

(2) If the inspection was done before the effective date of this AD: Within 90 days after the effective date of this AD.

(j) Optional Method of Compliance

Accomplishment of the boroscope inspection of the internal diameter of the bogie beam for corrosion or damage to the protective treatments, measurement of the depth of the protective treatments as applicable, and accomplishment of all applicable corrective actions, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007; or Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008; are acceptable for the corresponding actions required by paragraphs (g) and (h) of this AD for that MLG unit; however, after accomplishment of the actions in the Accomplishment Instructions of Messier-Dowty Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007; or Service Bulletin A33/34–32–272, Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008; the actions specified in the Messier-Dowty service information identified in paragraphs (j)(1) through (j)(5) of this AD must not be accomplished on that same MLG unit. Where Messier-Dowty Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007; or Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008; specify to contact Messier-Dowty for repair information, the repair must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(1) Messier-Dowty Service Bulletin A33/34 32–285, dated July 9, 2010.

(2) Messier-Dowty Service Bulletin A33/34 32–285, Revision 1, dated October 4, 2011.

(3) Messier-Dowty Service Bulletin A33/34 32–285, Revision 2, dated October 4, 2012.

(4) Messier-Dowty Service Bulletin A33/34 32–285, Revision 3, dated September 11, 2013.

(5) Messier-Dowty Service Bulletin A33/34 32–285, Revision 4, dated January 23, 2014.

Note 1 to paragraph (j) of this AD: Inspections done using the instructions in Messier-Dowty Service Bulletin A33/34–32–285, Revision 5, dated August 14, 2014, do not affect the optional method of compliance provided by this paragraph.

(k) Parts Installation Limitation

As of the effective date of this AD, any overhauled MLG unit having a 201252 series or 201490 series part number may be installed on an airplane, provided the most recent MLG overhaul was done using a Messier-Dowty CMM that is not specified in paragraph (g)(1) or (g)(2) of this AD, or, prior to installation, the MLG unit passes the inspection required by paragraph (g) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1138; fax 425 227 1149. Information may be emailed to: 9 *ANM-116-AMOC-REQUESTS@faa.gov*. 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a

person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES 200.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0222, dated October 6, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-1981-0002*.

(n) 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) Airbus Alert Operators Transmission A32L004–14, dated July 28, 2014, including Appendixes 1, 2, 3, and 4, which are not dated.

(ii) Messier-Dowty Service Bulletin A33/34–32–272, dated November 16, 2007, including Appendixes A, B, C, and D, dated November 16, 2007.

(iii) Messier-Dowty Service Bulletin A33/34–32–272, Revision 1, dated September 22, 2008, including Appendixes A, B, C, and D, dated September 22, 2008.

(3) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com*.

(4) For Messier-Dowty service information identified in this AD, contact Messier-Dowty Limited, Cheltenham Road, Gloucester, GL2 9QH, England; telephone +44(0) 1452 712424; fax+ 44(0) 1452 713821; Internet *http://www.safranmbd.com*.

(5) 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.

(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 Renton, Washington, on December 29, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33289 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1049; Directorate Identifier 2013–NM–110–AD; Amendment 39–18361; AD 2016–01–02]

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 reports that the horizontal stabilizer trim actuator (HSTA) spur gear bolts inside the gearbox were found loose, broken, or backed out due to incorrect bending of the anti-rotation tab washer and the improper application of Loctite glue during installation. This AD requires replacing certain HSTAs with a new HSTA. This AD also requires revising the airplane flight manual (AFM) and the maintenance or inspection program, as applicable. We are issuing this AD to prevent failure of the HSTA and subsequent loss of control of the airplane.

DATES: This AD becomes effective February 17, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 17, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-1049;* 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 final rule, 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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1049.

FOR FURTHER INFORMATION CONTACT: Luke Walker, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7363; 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 January 23, 2015 (80 FR 3522).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–14, dated June 4, 2013 (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:

> There have been a number of reports where the HSTA spur gear bolts inside the gearbox were found loose, broken or backed out. Investigation revealed that the root cause is incorrect bending of the anti-rotation tab washer and the improper application of Loctite glue during installation.
>
> The function of these bolts is to generate sufficient preload between the two spur gears such that the full torque is transferred by friction between the two spur gears. Loosening of the bolts would reduce the pre-load between two spur gears and decrease the torque transfer. Partial or full torque would be re-distributed to the secondary load path (Tie-Rod) in torsion. The Tie-Rod is designed to withstand axial load only in case of failure of the primary load path (ACME screw), and not torsional load. The secondary load path (Tie-Rod) is therefore considered ineffective and no longer provides protection as a failsafe design of the system. Loose bolt(s) on the HSTA spur gear combined with the failure of the primary load path, could lead to failure of the HSTA and subsequent loss of the aeroplane.

In addition, Bombardier Aerospace (BA) has introduced a modified HSTA [part number] P/N 601R92305–5 (vendor P/N 8396–4) to rectify the loose bolt problem. However, this modified HSTA, has several quality control problems which could affect safety.

This [Canadian] AD is issued to mandate the replacement of the affected HSTA(s) with the new HSTA P/N 601R92305–7 (vendor P/N 8396–5).

This AD also requires revising the AFM and maintenance or inspection program, as applicable. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1049-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received. The following presents the comments received on the NPRM (80 FR 3522, January 23, 2015) and the FAA's response to each comment.

Request To Extend the Compliance Time in Paragraph (j)(2)(iii) of the NPRM (80 FR 3522, January 23, 2015)

SkyWest Airlines (SWA) requested that the compliance time in paragraph (j)(2)(iii) of the proposed AD (80 FR 3522, January 23, 2015) be extended to alleviate the impact on its fleet. SWA stated that currently HSTAs are replaced prior to the accumulation of 19,200 total flight hours, and in paragraph (j)(2)(iii) of the proposed AD, the replacement time is reduced to 10,000 total flight hours. SWA stated that it has 86 airplanes with HSTAs that are approaching 10,000 total flight hours. SWA is concerned that replacement HSTAs might not be available in time to comply with the requirements proposed in the NPRM.

We do not agree that the compliance time in paragraph (j)(2)(iii) of this AD should be extended. In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's recommendation for an appropriate compliance time, and the availability of required parts. Under the provisions of paragraph (m)(1) of this AD, however, we may consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed this AD regarding this issue.

Request To Reduce the Compliance Time for HSTA Replacement

Air Line Pilots Association International (ALPA) requested that the compliance time for replacement of the HSTAs be reduced to ensure that the identified safety issue is corrected within the Bombardier, Inc. CRJ fleet as soon as possible.

We do not agree with the commenter's request to reduce the compliance time. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely replacement of the HSTAs. In consideration of all of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the HSTAs can be replaced in a timely manner within the fleet, while still maintaining an adequate level of safety. Most ADs, including this one, permit operators to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to replace the HSTAs before the applicable compliance times specified in paragraph (j) of this AD. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. We have not changed this AD regarding this issue.

Request To Remove the Airplane Flight Manual (AFM) Revision Requirement

ALPA also requested that once the HSTAs have been replaced the FAA re-evaluate the need for the revision to the AFM to include a first flight check of the horizontal stabilizer trim. No justification was provided for the request to omit the AFM revision.

We do not agree with the commenter's request to remove the requirement to revise the AFM. We have determined that the first flight check of the horizontal stabilizer trim is still necessary after the HSTAs have been replaced to ensure the safety of the Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplane fleet. Also, this AFM revision requirement is included in Canadian AD CF–2013–14, dated June 4, 2013, which corresponds to this final rule. 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 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 (80 FR 3522, January 23, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 3522, January 23, 2015). We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- Supplement 23, ''Horizontal Stabilizer Trim Check,'' of Chapter 7 ''Supplements,'' of Bombardier CL–600–2B19 Airplane Flight Manual CSP A–012, Volume 3, Revision 61, dated April 2, 2013. This service information includes procedures for revising the AFM.
- Bombardier Service Bulletin 601R–27–161, Revision A, dated January 30, 2014. This service information describes procedures for installing a HSTA.
- Bombardier CL–600–2B19, Temporary Revision 2A–56, dated June 4, 2012, to Appendix A, Certification Maintenance Requirements (CMR), of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). This service information adds new CMR tasks to the Airworthiness Requirements of the MRM. These CMR tasks include an inspection, functional check, and operational check.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 85 airplanes of U.S. registry.

We also estimate that it will take about 10 work-hours 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 $38,569 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $3,350,615, or $39,419 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-2014-1049;* 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):

2016–01–02 Bombardier, Inc.: Amendment 39–18361. Docket No. FAA–2014–1049; Directorate Identifier 2013–NM–110–AD.

(a) Effective Date

This AD becomes effective February 17, 2016.

(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, serial numbers 7003 and subsequent, equipped with horizontal stabilizer trim actuator (HSTA) part numbers (P/N) 601R92305–1 (vendor P/N 8396–2), 601R92305–3 (vendor P/N 8396–3), or 601R92305–5 (vendor P/N 8396–4).

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports that the horizontal stabilizer trim actuator (HSTA) spur gear bolts inside the gearbox were found loose, broken, or backed out due to incorrect bending of the anti-rotation tab washer and the improper application of Loctite glue during installation. We are issuing this AD to prevent failure of the HSTA and subsequent loss of control of the airplane.

(f) Compliance

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

(g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD, revise the Limitations section and Normal Procedures section of the AFM to include the information in Supplement 23, ''Horizontal Stabilizer Trim Check,'' of Chapter 7 ''Supplements,'' of Bombardier CL–600–2B19 Airplane Flight Manual CSP A–012, Volume 3, Revision 61, dated April 2, 2013.

(h) Revision of Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate Task C27–40–103–04, ''Operational Check (ground maintenance test) of the horizontal stabilizer trim control unit,'' specified in Bombardier CL–600–2B19 Temporary Revision 2A–56, dated June 4, 2012, to Appendix A, Certification Maintenance Requirements, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). The compliance time for the initial operational check is within 500 flight hours after the effective date of this AD.

(i) No Alternative Actions or Intervals

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

(j) HSTA Replacement

(1) For airplanes equipped with an HSTA having P/N 601R92305–1 (vendor P/N 8396–2) or P/N 601R92305–3 (vendor P/N 8396–3): At the earlier of the times specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD, replace the HSTA with a new HSTA having P/N 601R92305–7 (vendor P/N 8396–5), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–161, Revision A, dated January 30, 2014. The compliance times specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD do not alleviate any existing life limit requirements.

(i) Within 3,700 flight hours after the effective date of this AD.

(ii) Within 27 months after the effective date of this AD.

(2) For airplanes equipped with an HSTA having P/N 601R92305–5 (vendor P/N 8396–4): At the earlier of the times specified in paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii) of this AD, replace the HSTA with a new HSTA having P/N 601R92305–7 (vendor P/N 8396–5), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–161, Revision A, dated January 30, 2014. The compliance times specified in paragraphs (j)(2)(i), (j)(2)(ii), and (j)(2)(iii) of this AD do not alleviate any existing life limit requirements.

(i) Within 4,400 flight hours after the effective date of this AD.

(ii) Within 32 months after the effective date of this AD.

(iii) Before the accumulation of 10,000 total flight hours on HSTA P/N 60192305–5 (vendor P/N 8396–4).

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601R–27–161, dated May 31, 2012, which is not incorporated by reference in this AD.

(l) Parts Installation Limitations

(1) As of the effective date of this AD, no person may install an HSTA, P/N 601R92305–1 (vendor P/N 8396–2) or P/N 601R92305–3 (vendor P/N 8396–3) on any Model CL–600–2B19 airplane.

(2) As of the effective date of this AD, no person may install an HSTA, P/N 601R92305–5 (vendor P/N 8396–4) having S/N 287, 724, 813, 841, 998, 1031, 1035, 1049, 1053, 1067, 1068, 1136, 1252, 1268, 1303,

1319, 1338, 1354, 1374, 1378, 1445, 1470, 1498, 1513, 1546, 1632, 1736, 1766, 1846, 1849, 2002 through 2009 inclusive, 2011, 2013 through 2016 inclusive, 2019, 2020, or 2022, on any Model CL–600–2B19 airplane.

(3) As of the effective date of this AD: It is acceptable to replace an HSTA P/N 601R92305–1 (vendor P/N 8396–2), P/N 601R92305–3 (vendor P/N 8396–3), or P/N 601R92305–5 (vendor P/N 8396–4) with an HSTA having P/N 601R92305–5 (vendor P/N 8396–4) that is not identified in paragraph (l)(2) of this AD, provided the actions required by paragraph (j)(2) of this AD are accomplished within the compliance time specified in that paragraph.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

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

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, 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.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–14, dated June 4, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1049-0002*.

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

(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 this AD specifies otherwise.

(i) Bombardier Service Bulletin 601R–27–161, Revision A, dated January 30, 2014.

(ii) Supplement 23, ''Horizontal Stabilizer Trim Check,'' of Chapter 7 ''Supplements,'' of Bombardier CL–600–2B19 Airplane Flight Manual CSP A–012, Volume 3, Revision 61, dated April 2, 2013.

(iii) Task C27–40–103–04, ''Operational Check (ground maintenance test) of the horizontal stabilizer trim control unit,'' in Bombardier CL–600–2B19 Temporary Revision 2A–56, dated June 4, 2012, to Appendix A, Certification Maintenance Requirements, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(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 December 23, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33288 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4514; Airspace Docket No. 15–AEA–9]

Amendment of Class E Airspace for the Following New York Towns: Elmira, NY; Ithaca, NY; Poughkeepsie, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment, withdrawal.

SUMMARY: This action withdraws a Final rule; technical amendment published in the **Federal Register** on November 30, 2015, amending Class E airspace at Elmira/Corning Regional Airport, Elmira, NY; Ithaca Tompkins Regional Airport, Ithaca, NY; and Duchess County Airport, Poughkeepsie, NY is being withdrawn. The FAA has determined that withdrawal of the final rule is warranted as additional analysis is needed.

DATES: Effective 0901 UTC. As of January 13, 2016 the final rule; technical amendment published November 30, 2015, at 80 FR 74676, is withdrawn.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On November 30, 2015, the FAA published in the **Federal Register** a final rule, technical amendment to amend Class E airspace at Elmira/Corning Regional Airport, Elmira, NY; Ithaca Tompkins Regional Airport, Ithaca, NY; and Duchess County Airport, Poughkeepsie, NY. (80 FR 74676). Docket No. FAA–2015–4514. Subsequent to publication the FAA found errors in the airspace descriptions that now need further analysis. Therefore, the final rule is being withdrawn.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the final rule technical amendment for FR Doc. FAA–2015–4514, Airspace Docket No. 15–AEA–9 as published in the **Federal Register** of November 30, 2015 (80 FR 74676) (FR Doc. 2015–30187), is hereby withdrawn.

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

Issued in College Park, Georgia, on December 18, 2015.

Ryan W. Almasy,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–00172 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. FAA–2015–8761]

RIN 2120–AA65

Amendment of Authority Citation for Standard Instrument Procedures

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

ACTION: Final rule.

SUMMARY: To update and clarify the Administrator's rulemaking authority to be consistent with other parts of its regulations, the FAA is amending the authority citation for part 97.

DATES: Effective 0901 UTC, January 13, 2016.

ADDRESSES: For 14 CFR part 97 rulemaking actions: All Standard Instrument Approach Procedures (SIAPs) and Takeoff Minimums and Obstacle Departure Procedures (ODPs) are available online at *https://nfdc.faa.gov.* Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located. For information on the availability of this information at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Robert Frenzel, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–3073.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 97 amends the authority citation for part 97; Standard Instrument Procedures, by adding an additional citation, 49 U.S.C. 106(f), at the beginning of the authority citation string. This action updates and clarifies the Administrator's rulemaking authority to be consistent with other parts of Title 14, Code of Federal Regulations.

This is an administrative change reflecting clarification of rulemaking authority, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary. Also, as provided in 5 U.S.C. 553(d), this rule is being published with an effective date of less than 30 days in order to keep current standard instrument approach procedures (SIAPs) previously published in the **Federal Register** with later effective dates, and other SIAPs soon to be published.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, sovereignty and use of airspace and Subpart iii, section 44701, general requirements. Under these sections, the FAA is charged with prescribing regulations to regulate the safe and efficient use of the navigable airspace; to govern the flight, navigation, protection, and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of the navigable airspace (49 U.S.C. 40103(b)), and to promote safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security (49 U.S.C. 44701(a)(5)). This regulation is within the scope of that authority as it further describes the authority of the FAA Administrator for part 97 rulemaking.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 97 as follows:

PART 97—STANDARD INSTRUMENT PROCEDURES

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

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

Issued in Washington, DC, on January 6, 2016.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2016–00522 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP26

Automobile or Other Conveyance and Adaptive Equipment Certificate of Eligibility for Veterans or Members of the Armed Forces With Amyotrophic Lateral Sclerosis Connected to Military Service

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) published an Interim Final Rule on February 25, 2015, to amend its adjudication regulations to provide a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment for all veterans with service-connected amyotrophic lateral sclerosis (ALS) and servicemembers serving on active duty with ALS. The amendment authorized automatic issuance of a certificate of eligibility for financial assistance in the purchase of an automobile or other conveyance and adaptive equipment to all veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS. The intent of this final rule is to confirm the amendment made by the interim final rule without change.

DATES: *Effective Date:* This final rule is effective January 13, 2016.

Applicability Date: The provisions of this regulatory amendment apply to all applications for a certificate of eligibility for an automobile or other conveyance and adaptive equipment allowance pending before VA on or received after February 25, 2015.

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 25, 2015 (80 FR 10001), VA amended its regulation at 38 CFR 3.308 to provide a certificate of eligibility for financial assistance in the purchase of an automobile or other

conveyance and adaptive equipment for all veterans with service-connected amyotrophic lateral sclerosis (ALS) and servicemembers serving on active duty with ALS.

VA provided 60 days in which to comment on the amendments made by the Interim Final Rule, with the comment period ending April 27, 2015. We received three comments. Two of the commenters expressed support for this amendment. The third commenter discussed the initial evaluation rating and entitlement to special monthly compensation for veterans with service-connected ALS and servicemembers serving on active duty with ALS. Because those comments were not directed to the subject of this amendment, we make no changes based on those comments. Based on the rationale set forth in the interim final rule published in the **Federal Register** at 80 FR 10001 on February 25, 2015, VA is adopting the provisions of the interim final rule as a final rule without change.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), we found that there was good cause to dispense with advance public notice and opportunity to comment on the interim final rule and good cause to publish that rule with an immediate effective date. The interim final rule was necessary to implement immediately the Secretary's decision to establish entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment for all veterans with service-connected ALS and members of the Armed Forces serving on active duty with ALS. Delay in the implementation of this rule would be impracticable and contrary to the public interest, particularly to veterans and members of the Armed Forces serving on active duty.

Because the survival period for persons suffering from ALS is generally 18–48 months or less from the onset of symptoms, any delay in establishing entitlement for a certificate of eligibility for automobile or other conveyance and adaptive equipment eligibility would have been extremely detrimental to veterans and members of the Armed Forces serving on active duty who are currently afflicted with ALS. Any delay in implementation until after a public-comment period could have delayed modifying the regulated certificate of eligibility process, depriving ALS veterans and members of the Armed Forces serving on active duty with ALS of quick and efficient access to automobile or other conveyance and adaptive equipment benefits.

Executive Orders 12866 and 13563

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

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov*, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/*, by following the link for VA Regulations Published From FY 2004 Through FYTD.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule will not affect any small entities. Only VA beneficiaries will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces and 64.109, Veterans Compensation for Service-Connected Disability.

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. Robert L. Nabors II, Chief of Staff, Department of Veterans Affairs, approved this document on January 7, 2016, for publication.

Accordingly, the Department of Veterans Affairs adopts the interim rule published February 25, 2015 (80 FR 10001), as final without change.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure; Claims; Disability benefits; Health care; Pensions; Veterans.

Dated: January 8, 2016.

Michael P. Shores,

Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2016–00490 Filed 1–12–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2015–0204; FRL–9940–84–Region 9]

Designation of Areas for Air Quality Planning Purposes; California; South Coast; Reclassification as Serious Nonattainment for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to reclassify the Los Angeles-South Coast Air Basin (South Coast) Moderate $PM_{2.5}$ nonattainment area, including areas of Indian country within it, as a Serious nonattainment area for the 2006 $PM_{2.5}$ national ambient air quality standards (NAAQS), based on the EPA's determination that the area cannot practicably attain these NAAQS by the applicable attainment date of December 31, 2015. As a consequence of this reclassification, California must submit, no later than 18 months from the effective date of this reclassification, nonattainment new source review (NNSR) program revisions and a Serious area attainment plan including a demonstration that the plan provides for attainment of the 2006 24-hour $PM_{2.5}$ standards in the South Coast area as expeditiously as practicable and no later than December 31, 2019.

DATES: This rule is effective on February 12, 2016.

ADDRESSES: The EPA has established docket number EPA–R09–OAR–2015–0204 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be publicly available in either location (*e.g.,* confidential business information (CBI)). To inspect the docket materials in person, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region 9, (415) 947–4192, *tax.wienke@epa.gov.*

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

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I. Proposed Action

On October 20, 2015 (80 FR 63640), the EPA proposed to approve portions of California's Moderate area plan to address the 2006 primary and secondary 24-hour $PM_{2.5}$ NAAQS in the South Coast and to reclassify the South Coast nonattainment area, including areas of Indian country within it, from Moderate to Serious nonattainment for these standards, based on the EPA's determination that the area cannot practicably attain these NAAQS by the applicable attainment date of December 31, 2015.[1] Under section 188(b)(1) of the CAA, prior to an area's attainment date, the EPA has discretionary authority to reclassify as a Serious nonattainment area ''any area that the Administrator determines cannot practicably attain'' the $PM_{2.5}$ NAAQS by the Moderate area attainment date.[2] As part of our proposed action, we reviewed recent $PM_{2.5}$ monitoring data for the South Coast available in EPA's Air Quality System (AQS) database. These data show that 24-hour $PM_{2.5}$ levels in the South Coast continue to be above 35 μg/m^3, the level of the 2006 $PM_{2.5}$ standards, and the recent trends in the South Coast area's 24-hour $PM_{2.5}$ levels are not consistent with a projection of attainment by the end of 2015.[3]

In the proposed rule, we explained that under section 188(c)(2) of the Act, the attainment date for a Serious area ''shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . . .'' The South Coast was designated nonattainment for the 2006 $PM_{2.5}$ NAAQS effective December 14, 2009.[4] Therefore, as a result of our reclassification of the South Coast area as a Serious nonattainment area, the attainment date under section 188(c)(2) of the Act for the 2006 $PM_{2.5}$ NAAQS in this area is as expeditiously as practicable but no later than December 31, 2019.

Our proposed rule also identified the Serious area attainment plan elements that California would, upon reclassification, have to submit to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act.[5] The EPA explained that under section 189(b)(2) of the Act, the State must submit the required provisions to implement best available control measures (BACM), including best available control technology (BACT), no later than 18 months after reclassification and must submit the required attainment demonstration no later than 4 years after reclassification. We noted, however, that section 189(b)(2) establishes outer bounds on the SIP submission deadlines and does not preclude the EPA's establishment of earlier deadlines as necessary or appropriate to assure consistency among the required submissions and to implement the statutory requirements in a timely manner to ensure expeditious attainment of the NAAQS.[6] Because an up-to-date emissions inventory serves as the foundation for a state's BACM and BACT determinations, the EPA

[1] *See* proposed rule at 80 FR 63640 (October 20, 2015) for a more detailed discussion of the background for this action, including the history of the $PM_{2.5}$ NAAQS established in 2006, health effects and sources of $PM_{2.5,}$ designation of the SJV as nonattainment for the $PM_{2.5}$ standards, and the EPA's actions on the submittals from the state of California to address the nonattainment area planning requirements for the 2006 $PM_{2.5}$ NAAQS in the SJV.

[2] Section 188(b)(1) of the Act is a general expression of delegated rulemaking authority. See ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (hereafter ''General Preamble'') at 13537, n. 15. Although subparagraphs (A) and (B) of section 188(b)(1) contain specific timeframes for EPA to reclassify any areas that it determines cannot practicably attain the PM standards by the applicable attainment date, these subparagraphs do not restrict the general authority to reclassify an area, as appropriate, at any time before the attainment date but simply specify that, at a minimum, the EPA's authority must be exercised at certain times. *See id.*

[3] The $PM_{2.5}$ monitoring data that EPA reviewed indicate that 24-hour $PM_{2.5}$ design values are at 38 ug/m3 in the South Coast, above the level of the 2006 $PM_{2.5}$ NAAQS (35 ug/m3). EPA also calculated ''maximum allowed'' 2015 98th percentile concentrations that would enable the area to attain the 2006 24-hour $PM_{2.5}$ NAAQS by the end of 2015 and found that even conservative estimates of the 98th percentile concentration in 2015 at two monitoring sites—Rubidoux and Mira Loma-Van Buren—were greater than the ''maximum allowed'' concentration. *See* 80 FR 63640, 63653 (October 20, 2015) and Memorandum dated August 21, 2015, Michael Flagg, US EPA Region 9, Air Quality Analysis Office.

[4] 74 FR 58688 (November 13, 2009).

[5] *See* proposed rule at 80 FR 63640 (October 20, 2015).

[6] *Id.* at 63658.

proposed to require the State to submit the emissions inventory required under CAA section 172(c)(3) within 18 months after the effective date of final reclassification. Similarly, because an effective evaluation of BACM and BACT requires evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment, the EPA proposed to require the State to submit any optional precursor insignificance demonstrations by this same date. The EPA proposed to require the State to submit the attainment demonstration required under section 189(b)(1)(A) and all other attainment-related plan elements for the South Coast area no later than three years after the effective date of final reclassification or by December 31, 2018, whichever is earlier.

With respect to the nonattainment new source review (NNSR) program revisions to establish appropriate ''major stationary source'' thresholds for direct $PM_{2.5}$ and $PM_{2.5}$ precursors in accordance with CAA section 189(b)(3), the EPA proposed to require the State to submit these NNSR SIP revisions for the South Coast area no later than 18 months after the effective date of final reclassification.

II. Summary of Final Action

Today we are finalizing only our proposal to reclassify the South Coast area as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS. We are not taking final action at this time on our proposal to approve elements of California's Moderate area plan for the 2006 $PM_{2.5}$ NAAQS in the South Coast and will complete that action at a later time.

As a consequence of our reclassification of the South Coast area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, California is required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act. For the reasons provided in Section III of this preamble, the EPA is requiring the State to adopt and submit all required components of the Serious Area plan for the South Coast area, including nonattainment new source review (NNSR) SIP revisions to address the statutory requirements for Serious areas under subpart 4, no later than 18 months after the effective date of this reclassification.

The attainment date under section 188(c)(2) of the Act for the 2006 $PM_{2.5}$ standards in this area is as expeditiously as practicable but no later than December 31, 2019.

III. Public Comments and EPA Responses

Because we are finalizing only our proposal to reclassify the South Coast area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, we are responding only to comments pertaining to the reclassification and its consequences. The EPA received several comment letters on our proposed actions, only one of which contains comments relevant to the reclassification. The comment letter was submitted by Earthjustice on behalf of the Center for Biological Diversity, Coalition for Clean Air, Communities for a Better Environment, East Yard Communities for Environmental Justice, and Sierra Club (''Earthjustice'') on November 19, 2015, prior to the close of the comment period on our proposal.[7]

We summarize and respond to the relevant comments below. In a separate rulemaking, we will take final action on California's submitted Moderate area plan for the 2006 $PM_{2.5}$ NAAQS in the South Coast and will respond to comments pertaining to our proposed action on the submitted plan at that time.

Comment 1: Earthjustice argues that section 188(b)(1) establishes specific outside deadlines for the EPA's reclassification of appropriate areas as Serious nonattainment and ''does not provide general authority to reclassify areas anytime EPA chooses before the attainment deadline.'' Citing CAA section 188(b)(1)(B), Earthjustice asserts that the EPA's discretionary authority to reclassify a Moderate area as a Serious area before the attainment deadline is available only within 18 months after the required date for the submission of a Moderate area SIP, which in turn is due within 18 months after the area's designation as nonattainment. Because the South Coast area was designated nonattainment for the 2006 p.m.2.5 NAAQS on December 14, 2009, according to Earthjustice, the Moderate area SIP for the area was due June 14, 2011, and the ''deadline for approving a voluntary reclassification request'' was therefore December 14, 2012. Thus, Earthjustice argues, ''EPA no longer has authority under the statute to use section 188(b)(1) to voluntarily reclassify the South Coast basin and provide four years for submission of a serious area plan.''

In support of these arguments, Earthjustice quotes from EPA's 1992 General Preamble,[8] which states that ''[f]or areas designated nonattainment after enactment of the 1990 [Clean Air Act Amendments], EPA must reclassify appropriate areas as serious within 18 months of the required submittal date for the moderate area SIP'' and that, read together with the statutory requirement to submit such SIPs within 18 months after nonattainment designations, the Act requires EPA to reclassify these areas as serious within three years of the nonattainment designation.

Response 1: We disagree with the commenter's argument that the EPA's discretionary authority in section 188(b)(1) is limited to the timeframes set forth in sections 188(b)(1)(A) and (B).

The EPA is reclassifying the South Coast area as Serious nonattainment pursuant to the general authority in CAA section 188(b)(1),[9] not pursuant to section 188(b)(1)(B). As explained in the 1992 General Preamble, ''[u]nder the plain meaning of the terms of section 188(b)(1), EPA has general discretion to reclassify *at any time before the applicable attainment date* any area EPA determines cannot practicably attain the standards by such date'' (emphases added).[10] With respect to the dates specified in subsections (A) and (B) of section 188(b)(1), the EPA specifically explained in the General Preamble that ''[t]hese subparagraphs do not restrict the general authority [in section 188(b)(1)] but simply specify that, at a minimum, it must be exercised at certain times.''[11] This interpretation of section 188(b)(1) as allowing the EPA to reclassify moderate areas as serious ''at any time EPA determines that an area cannot practicably attain the standards by the applicable attainment date'' facilitates the statutory objective of attaining the PM–10 standards—*e.g.,* by ensuring that additional control measures such as BACM are implemented sooner and by expediting the application of more stringent new source review requirements.[12] The EPA reiterated this interpretation of section 188(b)(1) in the 1994 p.m.–10

[7] *See* letter with attachments dated November 19, 2015 to Ms. Wienke Tax, US Environmental Protection Agency Region 9, from Adriano L. Martinez, Earthjustice, Los Angeles Office.

[8] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble'').

[9] Unlike the ''voluntary reclassification'' provision in CAA section 181(b)(3), which requires EPA to grant the request of any state to reclassify an ozone nonattainment area in that state to a higher classification, the ''discretionary reclassification'' provision in CAA section 188(b)(1) grants EPA general authority to reclassify areas in accordance with the statutory criteria therein, independent of state requests.

[10] General Preamble, 57 FR 13498, 13537 at n. 15 (April 16, 1992).

[11] *Id.*

[12] General Preamble, 57 FR 13498, 13537.

Addendum [13] and in several discretionary reclassification actions subsequent to the 1990 CAA Amendments.[14]

Specifically, with respect to areas designated nonattainment by operation of law upon enactment of the 1990 CAA Amendments (*i.e.,* ''initial'' PM–10 nonattainment areas), the EPA's longstanding interpretation of section 188(b)(1)(A) has been that ''the amended Act specifies certain dates by which EPA must propose to reclassify appropriate moderate areas as serious . . . and take final action,'' where the EPA determines that the area cannot ''practicably'' attain the PM–10 NAAQS by December 31, 1994.[15] The EPA further explained, however, that ''EPA also has discretionary authority under section 188(b)(1) to reclassify any of these areas as serious at any time, if EPA determines they cannot practicably attain the PM–10 NAAQS by December 31, 1994,'' [16] and provided examples of the circumstances that may warrant such discretionary reclassification at a later date—*i.e., after* the December 31, 1991 date specified in section 188(b)(1)(A).[17] In the PM–10 Addendum, the EPA stated that ''[s]ection 188(b)(1)(A) provides an accelerated schedule by which EPA is to reclassify appropriate initial PM–10 nonattainment areas'' but reiterated the Agency's interpretation of section 188(b)(1) as a general grant of authority to also reclassify initial PM–10 areas at later points in time before the attainment date.[18]

Likewise, the EPA has long interpreted section 188(b)(1)(B) as establishing a ''timeframe within which EPA is to reclassify appropriate areas designated nonattainment for PM–10 subsequent to enactment of the 1990 Amendments'' but not as a limitation on EPA's general authority to reclassify such areas at any time before the applicable attainment date.[19] In the PM–10 Addendum, the EPA reiterated its view that the directive in section 188(b)(1)(B) ''does not restrict EPA's general authority, but simply specifies that it is to be exercised, as appropriate, in accordance with certain dates.'' [20] The EPA recently finalized a discretionary reclassification action for a $PM_{2.5}$ nonattainment shortly before the applicable attainment date, consistent with this interpretation of CAA section 188(b)(1).[21]

The commenter quotes selectively from a portion of the General Preamble addressing areas designated nonattainment after enactment of the 1990 CAA Amendments but fails to acknowledge both the more extensive discussion of section 188(b)(1) that precedes the quoted text, as explained above, and the text in the PM–10 Addendum that reiterates the Agency's interpretation of section 188(b)(1)(B) specifically. Moreover, both the statutory text in CAA section 188(b)(1)(B) and the interpretive language in the General Preamble that the commenter quotes explicitly state that the EPA's obligation under CAA section 188(b)(1)(B) is to reclassify ''appropriate'' areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.[22] Congress granted the EPA broad discretion to identify the areas that are ''appropriate'' for such reclassification [23] and to reclassify additional areas after the timeframes specified in subsections (A) or (B). Thus, the fact that the EPA did not find the South Coast area ''appropriate'' for discretionary reclassification within the timeframe specified in section 188(b)(1)(B) does not preclude the EPA's discretionary reclassification of the area at a later date, based on a determination that the area cannot practicably attain the $PM_{2.5}$ NAAQS by the applicable attainment date.

Furthermore, under the commenter's interpretation of section 188(b)(1)(B), the EPA would have no authority to reclassify a Moderate area to Serious at any time between the date 3 years after designation (18 months after the required date for the State's submission of a Moderate Area SIP) and the applicable attainment date, which under section 188(c)(1) may be as late as the end of the sixth calendar year after the area's designation as nonattainment. Thus, for a period of up to 3 years, the EPA would be unable to reclassify such an area to Serious in order to require the State to adopt BACM measures and other Serious Area plan elements, even if information before the Agency indicated the area could not attain the NAAQS by the moderate area attainment date. Such a reading of section 188(b)(1) would frustrate the Congressional intent to ensure that areas that cannot attain the NAAQS in a timely manner adopt the best available controls and develop revised plans to provide for expeditious attainment. EPA's interpretation of section 188(b)(1) as a general grant of discretionary reclassification authority is reasonable in light of the overarching requirement in subpart 4 to ensure attainment of the NAAQS as expeditiously as practicable.

In sum, we disagree with the commenter's contention that the EPA's authority to reclassify a Moderate area as a Serious area under CAA section 188(b)(1) is available only within 18 months after the due date for the State's Moderate Area SIP. As the EPA explained in the General Preamble, in the PM–10 Addendum, and in several actions reclassifying PM–10 and $PM_{2.5}$ nonattainment areas as Serious areas under CAA section 188(b)(1), the EPA has consistently interpreted section 188(b)(1) as a general expression of delegated rulemaking authority that authorizes the Agency to reclassify any Moderate area as a Serious area at any

[13] ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998, 41999 (August 16, 1994) (the ''PM–10 Addendum'').

[14] *See* 58 FR 3334, 3336 (Jan. 8, 1993)(discharging EPA's statutory duty under section 188(b)(1)(A) to ''reclassify appropriate initial moderate PM–10 nonattainment areas as serious by December 31, 1991'' but noting EPA's broad discretion under section 188(b)(1) to reclassify additional areas at a later date); *see also* 80 FR 18528 (April 7, 2015) (final discretionary reclassification of San Joaquin Valley for 1997 p.m.2.5 NAAQS signed March 27, 2015).

[15] General Preamble, 57 FR 13498, 13537. Under section 188(c)(1) of the Act, December 31, 1994 was the latest permissible Moderate area attainment date for an area designated nonattainment for PM–10 by operation of law under the 1990 CAA Amendments.

[16] General Preamble, 57 FR 13498, 13537.

[17] *Id.* (''The EPA may exercise this discretion where, for example, EPA originally believed an area could attain the PM–10 NAAQS by December 31, 1994 but later determines that it cannot attain''); *see also* 56 FR 58656, 58657 (Nov. 21, 1991)(noting that ''EPA also has discretion to reclassify any of these areas as serious after December 31, 1991 (*e.g.,* after reviewing the State's PM–10 SIP), if EPA determines they cannot practicably attain the PM–10 NAAQS by December 31, 1994'') and 58 FR 3334, 3336 (Jan. 8, 1993) (noting that EPA may *in the future* reclassify additional PM–10 nonattainment areas using its discretionary authority in section 188(b)(1)).

[18] PM–10 Addendum, 59 FR 41998, 41999 (August 16, 1994) (''In the future, EPA anticipates that, generally, any decision to reclassify an initial PM–10 nonattainment area before the attainment date will be based on specific facts or circumstances demonstrating that the NAAQS cannot practicably be attained by December 31, 1994 . . .'').

[19] General Preamble, 57 FR at 13537 and PM–10 Addendum, 59 FR at 41999.

[20] PM–10 Addendum, 59 FR 41998, 41999 at n. 4 (August 16, 1994).

[21] *See* 80 FR 18528 (April 7, 2015) (final discretionary reclassification of San Joaquin Valley for 1997 p.m.2.5 NAAQS signed March 27, 2015).

[22] *See* CAA section 188(b)(1)(B) (requiring, for areas designated nonattainment after enactment of the 1990 CAA Amendments, that the Administrator ''reclassify appropriate areas'' within 18 months after the required date for the State's submission of a SIP for the Moderate Area).

[23] As EPA explained in its 1993 reclassification of ''appropriate'' initial PM–10 nonattainment areas from Moderate to Serious under section 188(b)(1)(A), the Act does not specify what information EPA must consider in exercising the authority delegated to it by section 188(b)(1) and thus grants EPA broad discretion to consider any relevant information, including information in SIP submittals. 58 FR 3334, 3336 at n. 7 (Jan. 8, 1993).

time before the applicable attainment date, based on a determination that the area cannot practicably attain the relevant NAAQS by that date.

Comment 2: Earthjustice argues that even if the EPA had discretion to reclassify the South Coast area under section 188(b)(1), a December 31, 2018 deadline for the Serious Area plan is ''arbitrary in the extreme'' and inconsistent with other deadlines that EPA has proposed to establish. First, Earthjustice asserts that the EPA's proposed deadline ignores the statutory requirement to demonstrate attainment by the most expeditious attainment date and allows the District to ''assume the maximum amount of time without any such demonstration.'' Second, Earthjustice claims that the EPA's proposed approach ''undermines the strict schedule established in subpart 4'' and cannot be reconciled with either December 14, 2016 or December 31, 2017, the statutory SIP submission deadlines that allegedly apply following voluntary reclassification or failure to attain, respectively. Third, Earthjustice argues that there is no basis for claiming that the District needs 3 years to prepare a serious area plan, in light of the 18-month deadlines in sections 189(a)(2)(B) and 189(b)(2) for moderate area plans and serious area plans, respectively, and the 18-month timeframe allowed in section 179(a) for states to cure disapprovals or failures to submit. Finally, Earthjustice argues that the proposed deadline is internally inconsistent with other components of the EPA's proposal, including the requirements for RFP and quantitative milestones, and undermines the EPA's and the public's ability to ensure timely compliance with these requirements.

Response 2: We disagree with the commenter's argument that the outside deadline for submitting a Serious area attainment plan for the 2006 $PM_{2.5}$ NAAQS following discretionary reclassification is December 14, 2016. This argument is premised on the commenter's assertion that the EPA's discretionary authority to reclassify the area under CAA section 188(b)(1) was available only within three years after the area's designation as nonattainment (*i.e.,* until December 14, 2012), and that CAA section 189(b)(2) established a deadline 4 years after this date (December 14, 2016) for the State to submit its Serious area attainment plan. The EPA did not reclassify the South Coast area by December 14, 2012 and was not obligated to do so under CAA section 188(b)(1), as explained above in Response 1. Thus, section 189(b)(2) does not establish a December 14, 2016 outer deadline for submission of the Serious area attainment plan.

Upon further consideration and in light of the specific circumstances in the South Coast $PM_{2.5}$ nonattainment area, however, the EPA is exercising its discretion to establish a deadline of 18 months from the effective date of this final reclassification action for the State to submit all required components of the Serious Area plan for the 2006 $PM_{2.5}$ NAAQS in the South Coast air basin. An 18-month deadline for submission of these SIP elements is appropriate in this instance because it both enables the EPA to evaluate the required attainment plan well before the outermost attainment date applicable to the area under CAA section 188(c)(2) and enables the State to develop its strategy for attaining the 2006 $PM_{2.5}$ NAAQS in conjunction with its development of a plan to provide for attainment of the 2012 primary annual $PM_{2.5}$ NAAQS in this same area, which is due October 15, 2016.[24] Although the State's obligations with respect to implementation of a Moderate area plan for the 2012 $PM_{2.5}$ NAAQS are separate and distinct from its obligations with respect to implementation of a Serious area plan for the 2006 $PM_{2.5}$ NAAQS, it is reasonable in this instance to require the State to develop its control strategies for both $PM_{2.5}$ NAAQS in the South Coast area in a similar timeframe, considering the benefits of streamlining these planning processes to the extent possible.

In addition, as the commenter notes, an 18-month deadline for submission of the Serious area plan is consistent with both the timeframe for initial Moderate area plan submissions upon designation of an area as nonattainment and the timeframe for Serious area plan submissions following an EPA determination of failure to attain and reclassification by operation of law under CAA section 188(b)(2).[25] It is reasonable for the EPA to exercise its discretion to establish a similar SIP submission deadline in this instance, given the proximity of this action to the Moderate area attainment date (December 31, 2015) and the likelihood that, should the attainment date pass, the EPA would have to determine under section 188(b)(2) that the South Coast area failed to attain the $PM_{2.5}$ NAAQS by that date. Although CAA section 189(b)(2) generally provides for up to 4 years after a discretionary reclassification for the State to submit the required attainment demonstration, we find it appropriate in this case to establish an earlier SIP submission deadline to assure timely implementation of the statutory requirements.[26] Furthermore, the 18-month SIP submission deadline that we are finalizing in this action requires California to submit its Serious Area plan for the South Coast area before the statutory SIP submission deadline that would apply upon reclassification by operation of law under section 188(b)(2).[27]

IV. Final Action

A. Reclassification as Serious Nonattainment and Applicable Attainment Date

In accordance with section 188(b)(1) of the Act, the EPA is taking final action to reclassify the South Coast area from Moderate to Serious nonattainment for the 2006 24-hour $PM_{2.5}$ standards of 35 $\mu g/m^3$, based on the EPA's determination that the South Coast area cannot practicably attain these standards by the applicable attainment date of December 31, 2015.

Under section 188(c)(2) of the Act, the attainment date for a Serious area ''shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . . .'' The South Coast area was designated nonattainment for the 2006 $PM_{2.5}$ standards effective December 14, 2009.[28] Therefore, as a result of our reclassification of the South Coast area as a Serious nonattainment area, the attainment date under section 188(c)(2) of the Act for the 2006 $PM_{2.5}$ standards in this area is as expeditiously as practicable but no later than December 31, 2019.

[24] The EPA designated and classified the South Coast Air Basin as Moderate nonattainment for the 2012 primary annual $PM_{2.5}$ NAAQS effective April 15, 2015. 80 FR 2206, 2215–16 (January 15, 2015). Under CAA section 189(a)(2)(B), California is required to adopt and submit a plan to provide for attainment of these NAAQS within 18 months after the nonattainment designation, *i.e.,* by October 15, 2016.

[25] CAA 189(a)(2)(B) and 189(b)(2).

[26] Section 189(b)(2) establishes outer bounds on the SIP submission deadlines and does not preclude the EPA's establishment of earlier deadlines as necessary or appropriate to assure consistency among the required submissions and to implement the statutory requirements, including the requirement that attainment be as expeditious as practicable.

[27] Under CAA section 188(b)(2), the EPA must determine within 6 months after the applicable attainment date whether the area attained the NAAQS by that date. If the EPA determines that a Moderate Area is not in attainment after the applicable attainment date, the area is reclassified by operation of law as a Serious Area, and the Serious Area attainment plan is due within 18 months after such reclassification. CAA sections 188(b)(2) and 189(b)(2).

[28] See 74 FR 58688 (November 13, 2009).

B. Reclassification of Reservation Areas of Indian Country

Seven Indian tribes are located within the boundaries of the South Coast $PM_{2.5}$ nonattainment area: the Cahuilla Band of Indians, the Morongo Band of Cahuilla Mission Indians, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, the Ramona Band of Cahuilla, the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, the Santa Rosa Band of Cahuilla Indians, and the Soboba Band of Luiseno Indians.

We have considered the relevance of our final action to reclassify the South Coast nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ standards to each tribe located within the South Coast area. As discussed in more detail in our proposed rule, we believe that the same facts and circumstances that support the reclassification for the non-Indian country lands also support reclassification for reservation areas of Indian country [29] and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the South Coast nonattainment area.[30] In this final action, the EPA is therefore exercising our authority under CAA section 188(b)(1) to reclassify reservation areas of Indian country and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction geographically located in the South Coast nonattainment area. Section 188(b)(1) broadly authorizes the EPA to reclassify a nonattainment area—-including any such area of Indian country located within such area—-that the EPA determines cannot practicably attain the relevant standard by the applicable attainment date.

In light of the considerations outlined above and in our proposed rulemaking that support retention of a uniformly-classified $PM_{2.5}$ nonattainment area, and our finding that it is impracticable for the area to attain by the applicable attainment date, we are finalizing our reclassification of the reservation areas of Indian country and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the South Coast nonattainment area to Serious for the 2006 $PM_{2.5}$ NAAQS.

The effect of reclassification would be to lower the applicable ''major stationary source'' emissions thresholds for direct $PM_{2.5}$ and $PM_{2.5}$ precursors for purposes of the NNSR program and the Title V operating permit program (CAA sections 189(b)(3) and 501(2)(B)), thus subjecting more new or modified stationary sources to these requirements. The reclassification may also lower the *de minimis* threshold under the CAA's General Conformity requirements (40 CFR part 93, subpart B) from 100 tpy to 70 tpy. Under the General Conformity requirements (40 CFR part 93, subpart B), federal agencies bear the responsibility of determining conformity of actions in nonattainment and maintenance areas that require federal permits, approvals, or funding. Such permits, approvals or funding by federal agencies for projects in these areas of Indian country may be more difficult to obtain because of the lower *de minimis* thresholds.

Given the potential implications of the reclassification, the EPA contacted tribal officials to invite government-to-government consultation on this rulemaking effort.[31] The EPA did not receive requests for consultation or comments on our proposed rule from any tribe. We continue to invite Indian tribes in the South Coast to contact the EPA with any questions about the effects of this reclassification on tribal interests and air quality. We note that although eligible tribes may opt to seek EPA approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan to address this reclassification.

C. $PM_{2.5}$ Serious Area SIP Requirements

As a consequence of our reclassification of the South Coast area as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS, California is required to submit additional SIP revisions to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act.

The Serious area SIP elements that California must submit within 18 months of reclassification are as follows:

1. Provisions to assure that BACM, including BACT for stationary sources, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than 4 years after the area is reclassified (CAA section 189(b)(1)(B));

2. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but no later than December 31, 2019, or where the State is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2019 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable (CAA sections 188(c)(2) and 189(b)(1)(A));

3. Plan provisions that require reasonable further progress (RFP) (CAA section 172(c)(2));

4. Quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP toward attainment by the applicable date (CAA section 189(c));

5. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the State demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e));

6. A comprehensive, accurate, current inventory of actual emissions from all sources of direct $PM_{2.5}$ and all $PM_{2.5}$ precursors in the area (CAA section 172(c)(3));

7. Contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date (CAA section 172(c)(9)); and

8. A revision to the NNSR program to establish appropriate ''major stationary source'' [32] thresholds for direct $PM_{2.5}$ and $PM_{2.5}$ precursors (CAA section 189(b)(3)).

Section 189(b)(2) states, in relevant part, that the State must submit the required BACM provisions ''no later than 18 months after reclassification of the area as a Serious Area'' and must submit the required attainment demonstration ''no later than 4 years after reclassification of the area to Serious.'' As stated above in section I, the EPA proposed to require the State to submit certain elements of the Serious area plan within 18 months of reclassification and other elements within 3 years of reclassification. For

[29] ''Indian country'' as defined at 18 U.S.C. 1151 refers to: ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

[30] See 80 FR 63640, at 63659, 63660 (October 20, 2015).

[31] As discussed in more detail in our proposed rule, the EPA sent letters to tribal officials inviting government-to-government consultation. The letters can be found in the docket.

[32] For any Serious area, the terms ''major source'' and ''major stationary source'' include any stationary source that emits or has the potential to emit at least 70 tons per year of PM_{10} (CAA section 189(b)(3)).

the reasons provided in Section III of this preamble (Public Comments and EPA Responses), the EPA is requiring the State to adopt and submit all required components of the Serious Area plan for the South Coast area, including NNSR SIP revisions to address the statutory requirements for Serious areas under subpart 4, no later than 18 months after the effective date of this reclassification.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is exempt from review by the Office of Management and Budget (OMB) because it relates to a designation of an area for air quality purposes and will reclassify the South Coast from its current air quality designation of Moderate nonattainment to Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The final rule requires the state to adopt and submit SIP revisions to satisfy the statutory requirements that apply to Serious areas, and would not itself directly regulate any small entities (*see* section III.C of this final rule).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more and does not significantly or uniquely affect small governments, as described in UMRA (2 U.S.C. 1531–1538). This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. The final action reclassifies the South Coast nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, which triggers existing statutory duties for the state to submit SIP revisions. Such a reclassification in and of itself does not impose any federal intergovernmental mandate. The final action does not require any tribes to submit implementation plans.

E. Executive Order 13132: Federalism

This action does not have federalism implications.

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

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Seven Indian tribes are located within the boundaries of the South Coast nonattainment area for the 2006 $PM_{2.5}$ NAAQS: the Cahuilla Band of Indians, the Morongo Band of Cahuilla Mission Indians, the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, the Ramona Band of Cahuilla, the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation, the Santa Rosa Band of Cahuilla Indians, and the Soboba Band of Luiseno Indians. We note that only one of the tribes located in the South Coast nonattainment area (the Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation) has requested eligibility to administer programs under the Clean Air Act. This final action affects the EPA's implementation of the new source review program because of the lower ''major stationary source'' threshold triggered by reclassification (CAA 189(b)(3)). The final action may also affect new or modified stationary sources proposed in these areas that require federal permits, approvals, or funding. Such projects are subject to the requirements of the EPA's General Conformity rule, and federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower *de minimis* thresholds triggered by reclassification.

Given these potential implications, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA contacted tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. The EPA invited tribal officials to consult during the development of the proposed rule and following signature of the proposed rule. As discussed in more detail in our proposed action, we sent letters to leaders of the tribes with areas of Indian country in the South Coast nonattainment area inviting government-to-government consultation on the rulemaking effort. No Indian tribe has expressed an interest in discussing this action with the EPA. We continue to invite Indian tribes in the South Coast to contact the EPA with any questions about the effects of this reclassification on tribal interests and air quality.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it reclassifies the South Coast nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, which triggers additional Serious area planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

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

This final action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This action is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because it does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action reclassifies the South Coast nonattainment area as Serious nonattainment for the 2006 $PM_{2.5}$ NAAQS, which triggers additional Serious area planning requirements under the CAA.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on February 12, 2016.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 14, 2016. 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

40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

40 CFR Part 81

Environmental protection, Air pollution control, Incorporation by reference.

Dated: December 22, 2015.

Jared Blumenfeld,

Regional Administrator, Region 9.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.245 is amended by adding paragraph (d) to read as follows:

§ 52.245 New Source Review rules.

* * * * *

(d) By August 14, 2017, the New Source Review rules for $PM_{2.5}$ for the South Coast Air Quality Management District must be revised and submitted as a SIP revision. The rules must satisfy the requirements of sections 189(b)(3) and 189(e) and all other applicable requirements of the Clean Air Act for implementation of the 2006 $PM_{2.5}$ NAAQS.

■ 3. Section 52.247 is amended by adding paragraph (e) to read as follows:

§ 52.247 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(e) By August 14, 2017, California must adopt and submit a Serious Area plan to provide for attainment of the 2006 $PM_{2.5}$ NAAQS in the South Coast $PM_{2.5}$ nonattainment area. The Serious Area plan must include emissions inventories, an attainment demonstration, best available control measures, a reasonable further progress plan, quantitative milestones, contingency measures, and such other measures as may be necessary or appropriate to provide for attainment of the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date, in accordance with the requirements of subparts 1 and 4 of part D, title I of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. Section 81.305 is amended in the table titled ''California—2006 24-Hour $PM_{2.5}$ NAAQS [Primary and secondary],'' by revising the entries under ''Los Angeles-South Coast Air Basin, CA.''

§ 81.305 California.

* * * * *

§ 81.305 California.

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CALIFORNIA—2006 24-HOUR $PM_{2.5}$ NAAQS

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
* * * * * * *				
Los Angeles-South Coast Air Basin, CA:				
Los Angeles County (part)		Nonattainment	02/12/16	Serious.

CALIFORNIA—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then North along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17 and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.	.....	Nonattainment	02/12/16	Serious.
Orange County	.....	Nonattainment	02/12/16	Serious.
Riverside County (part)	.....	Nonattainment	02/12/16	Serious.

CALIFORNIA—2006 24-HOUR $PM_{2.5}$ NAAQS—Continued

[Primary and secondary]

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [2]	Type
That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County Line (excluding the lands of the Santa Rosa Band of Cahuilla Mission Indians).	.....	Nonattainment	02/12/16	Serious.
That part of the lands of the Santa Rosa Band of Cahuilla Mission Indians which is excluded from the Riverside County (part) nonattainment area.	.....	Nonattainment	02/12/16	Serious.
San Bernardino County (part)	.....	Nonattainment	02/12/16	Serious.
That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.	.....	Nonattainment	02/12/16	Serious.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 30 days after November 13, 2009, unless otherwise noted.
[2] This date is July 2, 2014, unless otherwise noted.

* * * * *

[FR Doc. 2015–33304 Filed 1–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2015–0718; FRL–9940–29]

Methacrylate Type Copolymer, Compound With Aminomethyl Propanol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level

for residues of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol on food or feed commodities.

DATES: This regulation is effective January 13, 2016. Objections and requests for hearings must be received on or March 14, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0718, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2015–0718 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 14, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2015–0718, by one of the following methods.

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Background and Statutory Findings

In the **Federal Register** of November 23, 2015 (80 FR 72941) (FRL–9936–73), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10843) filed by BASF Corporation, 26 Davis Dr. Research Triangle Park, NC, 27709. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol; CAS Reg. No. 1515872–09–9. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. EPA received one comment to the Notice of Filing.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction

with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer does not contain, as an integral part of its composition, perfluoroalkyl moieties consisting of a CF3- or longer chain length.

8. The polymer's number average MW of 2,600 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol is 2600 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

EPA has not found 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of

safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol.

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

Not available.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Residue Limits

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

The Codex has not established a MRL for 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

EPA received one comment to the Notice of Filing. The commenter stated that the application of these chemicals on food should not be allowed and are poisoning the environment. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops and that they are poisoning the environment. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. The citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: January 4, 2016.

G. Jeffery Herndon,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.960, alphabetically add the following polymer to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * * * *	
2-propenoic acid, 2-methyl-, polymers with tert-Bu acrylate, Me methacrylate, polyethylene glycol methacrylate C_{16}-C_{18}-alkyl ethers and vinylpyrrolidone, tert-Bu 2-ethylhexaneperoxoate-initiated, compounds with 2-amino-2-methyl-1-propanol, minimum number average molecular weight (in amu), 2,600	1515872–09–9
* * * * * * *	

[FR Doc. 2016–00533 Filed 1–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0680; FRL–9940–90]

Propyzamide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of propyzamide, also known as pronamide, in or on leaf lettuce. Dow AgroSciences, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 13, 2016. Objections and requests for hearings must be received on or before March 14, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0680, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/test-guidelines-pesticides-and-toxic-substances.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify the request by the docket ID number EPA–HQ–OPP–2014–0680 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 14, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0680, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or

delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of Wednesday, December 17, 2014 (79 FR 75109) (FRL–9918–90), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4F8301) by Dow AgroSciences, LLC, 9330 Zionsville Rd., Indianapolis, IN 46268–1054. The petition requested that 40 CFR 180.317 be amended by establishing a tolerance for residues of the herbicide pronamide (propyzamide) and its metabolite containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide, in or on lettuce, leaf at 1.0 part per million (ppm). That document referenced a summary of the petition prepared by Dow AgroSciences, LLC, the registrant, which is available in the docket EPA–HQ–OPP–2014–0680 at *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Propyzamide has low acute toxicity via the oral, dermal, and inhalation routes of exposure, is non-irritating to the eyes or skin, and is not a dermal sensitizer.

The primary target organ for propyzamide is the liver. There are other target organs as well, including the thyroid, testes, and pituitary, but effects on these organs are secondary to primary effects on the liver. Liver-related effects include increases in absolute and relative liver weights, hypertrophy, elevated levels of enzymes associated with liver damage, and histopathology of liver cells. Adverse liver effects were consistently observed in every animal species studied, with progression towards more severe effects over time ultimately leading to tumorigenesis in rats and mice. Based on the studies submitted, the rat is the most sensitive species. In most studies, there is no gender sensitivity in response to propyzamide.

Propyzamide is a carcinogen in rats and mice, causing liver tumors in mice, thyroid tumors in male rats, and testicular tumors in rats. Based on MOA studies, tumorigenesis for all three tumor types has been shown to be mediated by liver enzymes induced in response to treatment with propyzamide. In mice, the MOA data clearly show rapid induction of *Cyp2b10* associated with the constitutive androstane nuclear receptor (CAR), as well as induction of peroxisomes and peroxisomal enzymes such as *Cyp4a10* associated with a second nuclear receptor, PPAR-α. Induction of the nuclear receptors leads to mitogenesis followed by hepatocellular proliferation and eventually, liver tumors.

In rats, propyzamide induces *Cyp2b1* 200-fold over background levels, but has no effect on other CYPs commonly associated with carcinogenic modes of action. In the rat *Cyp2b1* is a biological marker for the CAR receptor. The CAR pathway is associated with the activation of uridine diphosphate glucuronyl transferase (UGT) which catalyzes the condensation of glucuronic acid with thyroxine (T4), leading to enhanced biliary excretion of T4. Eventually the continued stimulus to produce more T4 leads to the formation of thyroid follicular tumors. In male rats, the tumorigenic dose of propyzamide for both thyroid tumors and Leydig cell tumors is 1,000 ppm in the diet (34–75 mg/kg/day based on age of the rats). Tumor precursor effects such as decreases in T4 levels, increases in liver weight, liver hypertrophy, and elevated testosterone metabolism occur at doses below or equivalent to the tumorigenic dose.

In nearly every oral repeated-dose study of propyzamide as well as in the 28-day dermal toxicity study in rats, there were dose-related decreases in body weight, body weight gain, and food consumption. Typically, these effects on body weight occurred at or above effects on the liver such as hypertrophy or increases in liver weight.

There was evidence of neurotoxicity in rats based on an increase in landing foot splay in females and decreases in motor activity in both genders in the acute neurotoxicity study. In the subchronic neurotoxicity study however, there was no evidence of neurotoxicity following dietary administration, and only body-weight effects were observed. There was no evidence of neurotoxicity in the rest of the toxicology database across other species or other strains of rat. There was no evidence of immunotoxicity.

There was no evidence of quantitative or qualitative increased susceptibility in the fetuses or the offspring of rats or rabbits following pre- and/or postnatal exposure to propyzamide. In the prenatal developmental toxicity study in rabbits and the multi-generation reproduction study in rats, any observed toxicity to the fetuses or offspring occurred at equivalent or higher doses than effects to parental animals.

Specific information on the studies received and the nature of the adverse effects caused by propyzamide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *''Pronamide Human Health Risk Assessment for Registration Review and to Support New Section 3 Use on Leaf Lettuce (Revised)''* on pages 14–22 in docket ID number EPA–HQ–OPP–2014–0680.

B. Toxicological Points of Departure/ Levels of Concern

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

A summary of the toxicological endpoints for propyzamide used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPYZAMIDE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations) ..	LOAEL = 40 mg/kg/ day UF_A = 10x ..... UF_H = 10x ..... UF_L = 10x ..... FQPA SF = 1x	Acute RfD = 0.04 mg/kg/day. aPAD = 0.04 mg/kg/ day.	*Acute Neurotoxicity Rat Study* No NOAEL established. LOAEL = 40 mg/kg/day based on increased landing foot splay and decreased motor activity.
Acute dietary (Females 13–49 years of age).	No endpoint attributable to a single exposure was identified, including developmental toxicity studies in rats and rabbits.		
Chronic dietary (All populations)	LOAEL = 40 mg/kg/ day. UF_A = 10x ..... UF_H = 10x ..... UF_L = 10x ..... FQPA SF = 1x	Chronic RfD = 0.04 mg/kg/day. cPAD = 0.04 mg/kg/ day.	POD = 4 mg/kg/day based on a weight-of-evidence approach from the following rat studies: *Acute Neurotoxicity Study.* No NOAEL established. LOAEL = 40 mg/kg/day based on increased landing foot splay and decreased motor activity POD = 4 mg/kg/day (LOAEL of 40 mg/kg/day ÷10x UF_L) *Subchronic Neurotoxicity Study* NOAEL = 2.38 mg/kg/day LOAEL = 11.28 mg/kg/day based on significant decreases in body weight, body weight gain, and food consumption in males *Combined Chronic Toxicity/Carcinogenicity Study* NOAEL = 8.46/10.69 mg/kg/day LOAEL = 42.59/55.09 mg/kg/day based on increased relative liver weight and histopathological lesions in the liver, thyroid, and ovaries *Male Pubertal Study* NOAEL = 2.5 mg/kg/day LOAEL = 10 mg/kg/day based on decreased serum T4
Incidental oral short-term (1 to 30 days).	LOAEL = 40 mg/kg/ day. UF_A = 10x UF_H = 10x UF_L = 10x FQPA SF = 1x	LOC for MOE = 1,000.	Same as Chronic dietary section above
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months).	NOAEL = 100 mg/ kg/day (dermal absorption rate = 24%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	*Subchronic Dermal Toxicity Rat Study* LOAEL = 500 mg/kg/day based on decreases in body weight and food consumption

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR PROPYZAMIDE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Cancer (oral, dermal, inhalation).	Classification: ''Not Likely to be Carcinogenic to Humans'' *at doses that do not result in induction of hepatic cell proliferation or metabolic enzymes leading to disruption of thyroid or gonadal endocrine axes.*		

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

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to propyzamide, EPA considered exposure under the petitioned-for tolerance as well as all existing propyzamide tolerances in 40 CFR 180.317. EPA assessed dietary exposures from propyzamide in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for propyzamide. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed that propyzamide residues were present at tolerance levels in all commodities for which tolerances have been established or proposed, and that 100% of the crops were treated with propyzamide.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed that propyzamide residues were present at tolerance levels in all commodities for which tolerances have been established or proposed, and that 100% of the crops were treated with propyzamide.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that propyzamide does not pose a cancer risk to humans at doses that do not result in induction of hepatic cell proliferation or metabolic enzymes leading to disruption of thyroid or gonadal endrocrine axes. The MOAs were adequately supported by studies that clearly identified the sequence of key events, dose-response concordance and temporal relationship to the particular tumor type. Quantification of carcinogenic risk is not required. The chronic RfD would be protective of both carcinogenic and non-carcinogenic effects observed in the mouse and rat carcinogenicity studies and MOA studies conducted at higher doses. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for propyzamide. Tolerance-level residues and 100 PCT were assumed for all food commodities.

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

Based on the Tier II Surface Water Concentration Calculator (SWCC) and Pesticide Root Zone Model Ground Water (PRZM–GW), the estimated drinking water concentrations (EDWCs) of propyzamide for acute exposures are estimated to be 102 parts per billion (ppb) for surface water and 21 ppb for ground water; for chronic exposures for non-cancer assessments are estimated to be 47 ppb for surface water and 18.6 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 102 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 47 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Propyzamide is currently registered for the following uses that could result in residential exposures: Turf grass and golf courses. EPA assessed residential exposure using the following assumptions: Post-application dermal and incidental oral exposures for children 1 to < 2 years old (physical activities on turf and hand-to-mouth ingestion of treated soil); and post-application dermal exposure for children 6 to < 11 years old (golfing), children 11 to < 16 years old (golfing and mowing), and adults (golfing, mowing, and physical activities on turf). Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

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

EPA has not found propyzamide to share a common mechanism of toxicity with any other substances, and propyzamide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that propyzamide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate

the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There was no evidence of quantitative or qualitative increased susceptibility in developing fetuses or in offspring of rats or rabbits following prenatal and/or postnatal exposure to propyzamide.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF was reduced to 1X. This decision is based on the following findings:

i. The toxicity database for propyzamide is complete.

ii. There is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity despite evidence of neurotoxicity in the acute study based on the increase in landing foot splay in female rats and the decrease in motor activity seen in both genders on day 1. This decision is based on no evidence of neurotoxicity in the subchronic study at dose levels tested via different routes of administration, and no evidence of neurotoxicity in the rest of the toxicology database across other species and other strains of rat.

iii. There is no evidence that propyzamide results in increased susceptibility in *in utero* rabbits in the prenatal developmental toxicity study or in young rats in the two-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to propyzamide in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by propyzamide.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to propyzamide will occupy 46% of the aPAD for all infants < 1 year old, the population subgroup receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic dietary exposure to propyzamide from food and water will utilize 11% of the cPAD for children 1 to 2 years old, the population subgroup receiving the greatest exposure. Based on the explanation in Unit III.C.3. regarding residential use patterns, chronic residential exposure to residues of propyzamide is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be background exposure level). Propyzamide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that the combined short-term food, water, and residential exposure results in an aggregate MOE of 1,700 for children 1 to < 2 years old (chronic dietary exposure with post-application incidental oral exposure from turf use). Because EPA's level of concern for propyzamide is a MOE of 1,000 or below, this MOE is not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be background exposure level). Propyzamide is currently registered for uses that could result in intermediate-term residential exposure. However, since the maximum single and yearly application rates are the same, the short-term assessment is protective of intermediate-term incidental oral exposure.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.C.iii., Propyzamide is classified as ''Not Likely to be Carcinogenic to Humans'' at doses that do not result in induction of hepatic cell proliferation or metabolic enzymes leading to disruption of thyroid or gonadal endocrine axes. Therefore, quantification of aggregate cancer risk is not required.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies are available to enforce the tolerance expression of residues in/on plant commodities (PAM II Method I, using gas-liquid chromatography with electron-capture detection (GLC/ECD)) and livestock commodities (Method GRM 02.21, using gas chromatography with negative-ion chemical ionization mass spectrometry detection (GC/MS)). These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program,

and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established any MRLs for propyzamide.

V. Conclusion

Therefore, tolerances are established for residues of propyzamide (pronamide), 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide, in or on lettuce, leaf at 1.0 ppm.

VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 31, 2015.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.317, add alphabetically ''Lettuce, leaf'' to the table in paragraph (a) to read as follows:

§ 180.317 Propyzamide; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Lettuce, leaf	1.0
* * * * *	

* * * * *

[FR Doc. 2016–00534 Filed 1–12–16; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 509, 519, 522, 536, 537, 552, and 570

[GSAR–TA–01; Docket No. 2015–0016; Sequence No. 1]

General Services Administration Acquisition Regulation (GSAR); Technical Amendments

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to make editorial changes. This technical amendment includes updating references and links, as well as deleting repetitive information that is covered elsewhere within the General Services Administration Acquisition Manual (GSAM). Changes incorporate both internal acquisition guidance, and the regulatory acquisition policies.

DATES: *Effective:* January 13, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Leah Price, Procurement Analyst, by phone at 703–605–2558, or email at *leah.price@gsa.gov* for clarification of content. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite GSAR–TA–01; Technical Amendments.

SUPPLEMENTARY INFORMATION: GSA is amending the GSAR to make editorial changes throughout the GSAM. There are no significant content changes resulting from this technical amendment.

Outdated references and links have been updated. Throughout multiple GSAM parts, the Central Contractor Registration (CCR) and the Excluded Parties List System (EPLS) have been changed to System for Award Management (SAM). This follows similar Federal Acquisition Regulation

(FAR) updates resulting from FAR Case 2012–033, for which a final rule was published in the **Federal Register** at 78 FR 37676 on June 21, 2013. Commerce Business Daily has also been replaced with its successor system, FedBizOpps. Multiple Web page links have also been updated, as have organizational references.

Repetitive information has been removed from the GSAM. Definitions for certain terms have been deleted from their respective sections because these definitions have been added to the non-regulatory portion of the GSAM at Part 502 as a result of GSAR Case 2013–G503.

List of Subjects in 48 CFR Parts 501, 504, 509, 519, 522, 536, 537, 552, and 570

Government procurement.

Dated: January 5, 2016.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 501, 504, 509, 519, 522, 536, 537, 552, and 570 as set forth below:

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 501 continues to read as follows:

Authority: 40 U.S.C. 121(c).

501.403 [Amended]

■ 2. Amend section 501.403 by removing from paragraph (c) ''SPE (V)'' and adding ''SPE (MV)'' in its place.

501.404 [Amended]

■ 3. Amend section 501.404 by removing from paragraph (c) ''SPE (V)'' and adding ''SPE (MV)'' in its place.

PART 504—ADMINISTRATIVE MATTERS

■ 4. The authority citation for 48 CFR part 504 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

■ 5. Amend section 504.1103 by—
■ a. Redesignating paragraphs (1) through (4) as paragraphs (a) through (d), respectively;
■ b. Revising the newly redesignated paragraph (a); and
■ c. Removing from newly redesignated paragraphs (b) and (d) ''CCR'' wherever it appears and adding ''SAM'' in their places, respectively.

The revision reads as follows:

504.1103 Procedures.

* * * * *

(a) Verify that the prospective contractor's legal business name, Doing-Business-As (DBA) name (if any), physical street address, and Data Universal Number System (DUNS) number or DUNS+4 number, as found in the System for Award Management (SAM), match the information that will be included in the contract, order, or agreement resulting from the vendor's quote or proposal. Correct any mismatches by having the vendor amend the information in the SAM and/or the quote or proposal. The SAM information can be accessed through the SAM Web site (*www.sam.gov*) by creating a user account.

* * * * *

■ 6. The authority citation for 48 CFR parts 509, 519, and 522 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 509—CONTRACTOR QUALIFICATIONS

509.105–2 [Amended]

■ 7. Amend section 509.105–2 in paragraph (c) by removing ''the Chief Acquisition Officer'' and adding ''Acquisition Policy'' in its place.

509.403 [Amended]

■ 8. Amend section 509.403 by removing the Definitions ''Debarring official'' and ''Suspending official''.

■ 9. Amend section 509.405–1 by—
■ a. Removing from paragraph (a), introductory text, ''on the current EPLS'' and adding ''as a current exclusion in the System for Award Management (SAM)'' in its place;
■ b. Removing from paragraph (b), introductory text, ''on the current EPLS'' and adding ''as a current exclusion in the SAM''; and
■ c. Removing from paragraph (c) ''GSA Suspension and Debarment Official'' and adding ''Senior Procurement Executive'' in its place.

509.405–2 [Amended]

■ 10. Amend section 509.405–2 by removing ''GSA Suspension and Debarment Official'' and adding ''Senior Procurement Executive'' in its place.

PART 519—SMALL BUSINESS PROGRAMS

519.7006 [Amended]

■ 11. Amend section 519.7006 by removing from paragraph (b) ''in the ''Excluded Parties List System'')'' and adding ''as an exclusion in the System for Award Management (SAM))'' in its place.

519.7007 [Amended]

■ 12. Amend section 519.7007 by—
■ a. Removing from paragraph (a)(3) ''in the ''Excluded Parties List System'')'' and adding ''as an exclusion in the (SAM))'' in its place; and
■ b. Removing from paragraph (b) ''Central Contractor Registration (CCR) at *www.ccr.gov*'' and adding ''SAM at *www.sam.gov*'' in its place.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

522.001 [Removed]

■ 13. Remove section 522.001.
■ 14. Amend section 522.804–2 by revising the fourth and fifth sentence to read as follows:

522.804–2 Construction.

* * * The current goals for minority participation vary by location and are listed in the Technical Assistance Guide for Construction Participation Goals for Minorities and Females. This guide can be accessed at *http://www.dol.gov/ofccp/index.htm.*

522.805 [Amended]

■ 15. Amend section 522.805 by—
■ a. Removing from paragraph (b) ''*http://www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm*'' and adding ''*http://www.dol.gov/ofccp/contacts/ofnation2.htm*'' in its place; and
■ b. Removing from paragraph (c) ''*http://www.dol.gov/esa/regs/compliance/posters/pdf/eeopost.pdf*'' and adding ''*http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm*'' in its place.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 16. The authority citation for 48 CFR part 536 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

536.602–1 [Amended]

■ 17. Amend section 536.602–1 by removing from paragraph (b), introductory text, and paragraph (d) ''Commerce Business Daily'' and adding ''FedBizOpps'' in their places, respectively.

■ 18. The authority citation for 48 CFR parts 537 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 537—SERVICE CONTRACTING

537.110 [Amended]

■ 19. Amend section 537.110 by removing from paragraph (a) ''Ability One'' and adding ''AbilityOne'' in its place.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

552.215–70 [Amended]

■ 20. Amend section 552.215–70 by removing ''514.201–7(b) and'' from the introductory text.

■ 21. Amend section 552.216–72 by—

■ a. Revising the date of clause; and

■ b. Removing from paragraph (g), ''(QI), 2100 Crystal Drive, Arlington, VA 22202, Telephone: (703) 605–9444'' and adding ''(I). Contact information can be found at: *http://www.gsa.gov/portal/category/21404''* in its place.

The revision reads as follows:

552.216–72 Placement of Orders.

* * * * *

Placement of Orders (JAN 2016)

* * * * *

■ 22. Amend section 552.216–74 by—

■ a. Revising the date of the clause;

■ b. Redesignating the undesignated paragraphs as (a) through (c), respectively; and

■ c. Revising the newly redesignated paragraph (c).

The revisions read as follows:

552.216–74 Task-Order and Delivery-Order Ombudsman.

* * * * *

Task-Order and Delivery-Order Ombudsman (JAN 2016)

* * * * *

(c) The GSA Ombudsman is located at the General Services Administration (GSA), Office of Government-wide Policy (OGP), Office of Acquisition Policy (MV). Contact information for the GSA Ombudsman can be found at: *http://www.gsa.gov/ombudsman.*

■ 23. Amend section 552.228–5 by—

■ a. Revising the date of clause; and

■ b. Removing from paragraph (a) ''52.528–5'' and adding ''52.228–5'' in its place.

The revision reads as follows:

552.228–5 Government as Additional Insured.

* * * * *

Government as Additional Insured (JAN 2016)

* * * * *

552.232–1 [Amended]

■ 24. Amend section 552.232–1 by removing from the introductory text ''532.7104'' and adding ''532.908(a)'' in its place.

■ 25. Amend section 552.238–74 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a)(5) ''*http://www.fms.treas.gov/intn.html''* and adding ''*http://www.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm''* in its place.

The revision reads as follows:

552.238–74 Industrial Funding Fee and Sales Reporting.

* * * * *

Modifications (Federal Supply Schedule) (JAN 2016)

* * * * *

PART 570—ACQUIRING LEASEHOLD INTERESTS IN REAL PROPERTY

■ 26. The authority citation for 48 CFR part 570 is revised to read as follows:

Authority: 40 U.S.C. 121(c).

570.102 [Amended]

■ 27. Amend section 570.102, by removing from the Definition ''Small business'' ''*http://www.sba.gov/size/sizetable_2002.html''* and adding ''*https://www.sba.gov/content/small-business-size-standards''* in its place.

570.108 [Amended]

■ 28. Amend section 570.108 by removing from paragraph (a) ''the Excluded Parties List System (EPLS)'' and adding ''exclusions in the System for Award Management (SAM)'' in its place.

■ 29. Amend section 570.701, in the table, by revising paragraphs (a), (b), (f), (j), and (k) to read as follows:

570.701 FAR provisions and clauses.

* * * * *

If . . .	Then include . . .
(a) the estimated value of the acquisition exceeds the micro-purchase threshold identified in FAR 2.101.	52.204–3 Taxpayer Identification. 52.204–6 Data Universal Numbering System (DUNS) Number. 52.204–7 System for Award Management. 52.219–1 Small Business Program Representations. 52.219–28 Post-Award Small Business Program Rerepresentation (use if lease term exceeds five years). 52.232–23 Assignment of Claims. 52.232–33 Payment by Electronic Funds Transfer—System for Award Management. 52.233–1 Disputes.
(b) the estimated value of the acquisition exceeds $10,000	52.222–21 Prohibition of Segregated Facilities. 52.222–22 Previous Contracts and Compliance Reports. 52.222–25 Affirmative Action Compliance. 52.222–26 Equal Opportunity. 52.222–35 Equal Opportunity for Veterans. 52.222–36 Equal Opportunity for Workers with Disabilities. 52.222–37 Employment Reports on Disabled Veterans and Veterans of the Vietnam Era.
* * * * * * *	
(f) the estimated value of the acquisition exceeds the simplified lease acquisition threshold.	52.203–2 Certificate of Independent Price Determination. 52.203–7 Anti-Kickback Procedures. 52.204–5 Women-Owned Business (Other than Small Business). 52.209–5 Certification Regarding Responsibility Matters. 52.215–2 Audit and Records—Negotiation. 52.219–8 Utilization of Small Business Concerns. 52.223–6 Drug-Free Workplace. 52.233–2 Service of Protest.

If . . .	Then include . . .
* * * * * * *	
(j) the estimated value of the acquisition exceeds $10 million	52.222–24 Pre-award On-site Equal Opportunity Compliance Evaluation.
(k) the contracting officer requires cost or pricing data for work or services exceeding the threshold identified in FAR 15.403–4.	52.215–10 Price Reduction for Defective Certified Cost or Pricing Data. 52.215–12 Subcontractor Certified Cost or Pricing Data.
* * * * * * *	

[FR Doc. 2016–00475 Filed 1–12–16; 8:45 am]

BILLING CODE 6820–161–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–BA77

[Docket No. FWS–HQ–FAC–2015–0005; FXFR13360900000–156–FF09F14000]

Injurious Wildlife Species; Listing Salamanders Due to Risk of Salamander Chytrid Fungus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule; request for comments; notice of availability of economic analysis.

SUMMARY: The U.S. Fish and Wildlife Service is amending its regulations under the Lacey Act to add all species of salamanders from 20 genera, of which there are 201 species, to the list of injurious amphibians. With this interim rule, both importation into the United States and interstate transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any live or dead specimen, including parts, of these 20 genera of salamanders are prohibited, except by permit for zoological, educational, medical, or scientific purposes (in accordance with permit conditions) or by Federal agencies without a permit solely for their own use. This action is necessary to protect the interests of wildlife and wildlife resources from the introduction, establishment, and spread of the chytrid fungus *Batrachochytrium salamandrivorans* into ecosystems of the United States. The fungus affects salamanders, with lethal effects on many species, and is not yet known to be found in the United States. Because of the devastating effect that we expect the fungus will have on native U.S. salamanders if introduced and, therefore, the need to act immediately to prevent the disease from being introduced into the United States, the Service is publishing this interim rule.

DATES: This interim rule is effective as of January 28, 2016. Interested persons are invited to submit written comments on this interim rule on or before March 14, 2016

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. FWS–HQ–FAC–2015–0005 and follow the instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Public Comments Processing, Attn: FWS–HQ–FAC–2015–0005; Division of Policy, Performance, and Management Programs; United States Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Comments on the Content of the Interim Rule* for more information). All submissions received must include ''Docket No. FWS–HQ–FAC–2015–0005'' for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see *Comments on the Content of the Interim Rule.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and find Docket No. FWS–HQ–FAC–2015–0005.

FOR FURTHER INFORMATION CONTACT: Jason Goldberg or Susan Jewell, Injurious Wildlife Listing Coordinators, United States Fish and Wildlife Service, Branch of Aquatic Invasive Species; MS: FAC; 5275 Leesburg Pike; Falls Church, VA 22041–3803 telephone 703–358–1715. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Under the Lacey Act (18 U.S.C. 42, as amended), the Secretary of the Interior may list by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, and the offspring or eggs of any of the foregoing that are injurious to human beings, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States.

We have determined that salamanders that can carry the fungus *Batrachochytrium salamandrivorans* (Bsal) are injurious to wildlife and wildlife resources of the United States. This determination was based on a review of the literature and an evaluation under the criteria for injuriousness by the Service. The salamander species listed by this interim rule are those found within a genus for which we have confirmation that at least one species in that genus is a carrier of Bsal, and there is no countervailing conclusive evidence suggesting that some species within the genus are not carriers. We find that, due to shared characteristics by species within a genus, other species within these genera are also highly likely to be carriers of Bsal. Although additional salamander species could be at risk from Bsal infection or could serve as a carrier, we are not listing species in those genera because they have not yet been tested.

The U.S. Fish and Wildlife Service (Service, USFWS, or we) is amending its regulations under the Lacey Act to add to the list of injurious wildlife all species of live and dead specimens from 20 genera, including body parts, from the amphibian order Caudata, which includes animals commonly referred to as salamanders, newts, and other names (hereafter, salamanders). The purpose of listing these species as injurious wildlife is to prevent the introduction, establishment, and spread of the fungus (Bsal) in the wild in the United States. The fungus affects only salamanders, has lethal effects on many salamander species, and is not yet known to be found in the United States.

The United States has the greatest diversity of salamanders in the world, the salamanders are a vital part of native ecosystems, and numerous salamander populations are at risk of endangerment from Bsal. Experience with the introduction of Bsal into the Netherlands and associated deleterious

effects to native salamanders, along with laboratory research, confirms that Bsal can be introduced and cause substantial and immediate harm in the United States.

A risk assessment conducted by the U.S. Geological Survey concluded that the potential for Bsal introduction into the United States is high, the United States has suitable conditions for Bsal survival, and the consequences of introduction into the United States are expected to be severe and occur across a wide range of the United States. The main pathway for the global spread of Bsal is the international trade in salamanders. The ability and effectiveness of measures to prevent or control Bsal is currently low. Trade in wildlife occurs on a global scale, and amphibians are one of the most commonly traded animals. Therefore, listing the 20 genera will be effective at reducing the likelihood that Bsal enters the United States and presents a threat to native salamander species.

Of the 190 native U.S. salamander species, at least 2 species are lethally vulnerable to Bsal and at least 1 is tolerant of Bsal infection. At least four are resistant to Bsal infection, of which one is expected to be a carrier because Bsal was able to invade the skin of that species long enough to move or transmit the fungus to other salamanders. In addition, researchers have identified a non-native species that is lethally vulnerable to Bsal that is found within a fifth genus that also includes native species. On this basis, the Service finds that at least 67 native species from 5 genera are carriers of Bsal.

Native salamander species that demonstrate limited disease under experimental conditions may demonstrate more severe clinical disease when infection is combined with additional stressors in the wild. We concluded from our analysis that the introduction of Bsal into the United States can cause significant, adverse, population-level effects in native species. As keystone species, loss of salamanders from Bsal infection would have significant impacts on ecosystems, including food webs and nutrient cycling.

All 20 genera of salamanders, plus any new species that may be identified in the future within the genera listed by this interim rule, are found to be injurious. Even if a salamander found to be injurious could not establish a population in the wild, an infected salamander in captivity can still transmit Bsal to native populations if that salamander escapes or if material touching it is disposed of improperly. Bsal is capable of surviving outside of a host and causing extensive damage to wildlife and wildlife resources, including federally endangered and threatened species. Eradicating Bsal would be extremely difficult once introduced and established, the ability to rehabilitate disturbed ecosystems is expected to be low, and controlling Bsal is not practical. Prophylactic treatments for imports of salamanders to manage Bsal are in development but are not yet fully tested or feasible.

We are amending our regulations under an interim rule and are foregoing a proposed rule. The interim rule will take effect on the date specified above in **DATES**, with public comment to conclude as set forth in **DATES**. Based on public comments received, the interim rule may be revised. If Bsal is introduced into the United States, it is expected to have negative effects on many species of native salamanders. No conclusive evidence exists that suggests that Bsal is found in the United States. Therefore, the opportunity exists to take urgent action now to prevent the introduction of Bsal. Listing 20 genera of salamanders as injurious wildlife is an essential step in helping to keep Bsal out of the United States by preventing introduction of salamanders that serve as carriers of the fungus and are capable of introducing it to the United States. This interim rule lists some species that are currently in trade and some that are not; the focus is on species that are likely carriers of Bsal and capable of transmitting it to the same or other species.

Consistent with the statutory language and congressional intent, it is the Service's longstanding and continued position that the Lacey Act, 18 U.S.C. 42, prohibits both the importation into the United States and all interstate transportation between States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, including interstate transportation between States within the Continental United States, of injurious wildlife, regardless of the preliminary injunction decision in *U.S. Association of Reptile Keepers* v. *Jewell,* No. 13–2007 (D.D.C. May 12, 2015). The Service's interpretation of 18 U.S.C. 42(a)(1) finds support in the plain language of the statute, the Lacey Act's purpose, legislative history, and congressional ratification. First, the statute's use of the disjunctive ''or'' to separate the listed geographic entities indicates that each location has independent significance. Second, Congress enacted the Lacey Act in 1900 for the purpose of, among other things, regulating the introduction of species in localities, not merely large territories, where they have not previously existed. See 16 U.S.C. 701. Third, the legislative history of Congress's many amendments to the Lacey Act since its enactment in 1900 shows that Congress intended, from the very beginning, for the Service to regulate the interstate shipment of certain injurious wildlife. Finally, recent Congresses have made clear that Congress interprets 18 U.S.C. 42(a)(1) as prohibiting interstate transport of injurious wildlife between the states within the continental United States. In amending § 42(a)(1) to add bighead carp and zebra mussels as injurious wildlife without making other changes to the provision, Congress repeated and ratified the Service's interpretation of the statute as prohibiting all interstate transport of injurious species.

The prohibitions on importation and all interstate transportation are both necessary to prevent the introduction, establishment, and spread of injurious species that threaten human health or the interests of agriculture, horticulture, forestry, or the wildlife or wildlife resources of the United States. By listing the 20 genera as injurious wildlife, both importation and interstate transportation of any live or dead specimen, including parts, is prohibited, except by permit (in accordance with conditions) for zoological, educational, medical, or scientific purposes or by Federal agencies without a permit solely for their own use.

The Service conducted an economic analysis and regulatory flexibility analysis as required under the rulemaking process. The draft economic analysis considers five alternatives: (1) No action; (2) list species that were shown by Martel *et al.* (2014) and other sources to be carriers of Bsal; (3) list all species in genera where there is at least one confirmed carrier and all species in the genus are likely to be a carrier, and there is no countervailing conclusive evidence suggesting that some species within the genus are not carriers; (4) list all salamanders; and (5) require a health certificate stating that the animal being moved is free of Bsal, in lieu of or in addition to listing.

The annual retail sales loss of listing 201 species, based on the 20 genera listed, is estimated to be $3.9 million, of which $2.3 million are losses to small businesses. Impacts per small business may be as high as $453,000 for importers and $23,000 for domestic breeders. The cost estimate represents the loss of revenue from listing the species to companies or individuals involved in the importation, interstate movement, or final consumer sales of salamanders that are imported and

moved between States. No significant economic impact on a substantial number of small entities is anticipated. The economic loss including direct, indirect, and induced effects from loss in revenue to pet stores is estimated to be $10.0 million. Benefits from decreases in risk from Bsal for ecological, commercial, recreational, and non-use values are not quantifiable. The benefits from these additional factors are unknown, but are certainly positive.

From 2004 to 2014, nearly 2.5 million live salamanders of at least 59 species were imported into the United States. The 228,000 average annually imported salamanders are primarily for the pet trade. Fewer than 100 total businesses, institutions, and individuals imported salamanders over this time period (USFWS OLE 2015) for a retail value of $44 million dollars. Salamander imports and the number of businesses declined during this period, which may lead to an overestimation of the economic losses due to the uncertainty of industry and consumer responses over the time period used. The timeframe of the trade analysis does not make a difference from a biological perspective of risk. Species are being listed regardless of whether they are in trade. The alternatives are based on the level of perceived risk, which is informed by the current state of scientific knowledge.

This interim rule is effective as of the date specified above in **DATES.** Interested persons are invited to submit written comments on this interim rule on or before the date set forth in **DATES**.

Background

Purpose of Listing as Injurious

The purpose of listing the 20 genera of live and dead specimens, including parts, from the order Caudata commonly referred to as salamanders, newts, and other names (hereafter, salamanders) as injurious wildlife is to prevent the accidental or intentional introduction of salamanders into the United States that are expected to serve as carriers of *Batrachochytrium salamandrivorans* (hereafter, Bsal), a fungus that poses a risk to native species of salamanders. If Bsal is introduced into wild populations of native salamanders, we expect it to cause significant damage to wildlife and the wildlife resources of the United States.

Need for the Interim Rule

Under the Lacey Act (Act) (18 U.S.C. 42, as amended), the Service, through the Secretary of the Interior, may prescribe by regulation any wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, or the offspring or eggs of any of the foregoing found to be injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States. Salamanders are amphibians, and the Service has the authority to list them under the Lacey Act when it finds that they are injurious to one or more of the statutory interests. We may list species before they are introduced into the United States and, therefore, are able to harm interests of the United States as defined under the Act. We have determined that salamanders that potentially carry Bsal are injurious to wildlife and wildlife resources of the United States. With this interim rule, we are attempting to prevent the introduction and subsequent establishment of the chytrid fungus, Bsal, which is a pathogen capable of causing significant harm to native salamander species and their ecosystems. As described below under *Role of Salamanders in the Ecosystem,* the benefits that these native salamander species provide to ecosystems in ensuring ecosystem health and stability, and, in turn, the ecosystem services that benefit people, are significant.

Martel *et al.* (2014) and Cunningham *et al.* (2015) (as explained further in Chytridcrisis (2015b)) identified some of the salamander species that can carry Bsal and are at risk from infection. The research tested a limited number of the approximately 681 known species of salamanders that exist worldwide and found that not every species was negatively affected by the fungus. However, the results clearly indicate a severe threat for many species of salamanders that will be negatively affected by this pathogen, including 2 of the 7 species tested that are also native to the United States and were found to be lethally vulnerable to the fungus. Recent research has highlighted concerns of emerging infectious disease of fungal origin that can cause a significant loss in biodiversity and ecosystem services (Fisher *et al.* 2012); Bsal appears to be the latest.

The research results about Bsal and concerns about emerging infectious disease, especially Spitzen-van der Sluijs *et al.* (2013), Martel *et al.* (2013), and Martel *et al.* (2014), have generated a strong response from academia, industry groups, and conservation and other organizations who have written the Service seeking quick and decisive action to ensure Bsal does not have a similar impact on salamander populations that *Batrachochytrium dendrobatidis* (Bd) has had on frogs. We also received a petition from the Center for Biological Diversity and SAVE THE FROGS! on May 18, 2015, to take action to prevent the introduction of Bsal into the United States (Center for Biological Diversity and SAVE THE FROGS! 2015). In response to the scientific findings, letters to the Service, and the petition the Service initiated a review to determine whether salamanders capable of carrying Bsal should be listed as injurious. Based on the Service's genus-level carrier extrapolation from data obtained from Martel *et al.* (2014), and because Bsal has not been found in the United States (Martel *et al.* 2014; Muletz *et al.* 2014; Bales *et al.* 2015), the opportunity exists to take urgent action to prevent the introduction of Bsal. This action will help safeguard U.S. wildlife and natural resources, while providing time for monitoring and other measures to be developed that may allow safe trade in salamanders to resume later.

We reviewed Bsal and the salamander species that carry this fungus using the Injurious Wildlife Evaluation Criteria, described in more detail as part of this interim rule in *Factors That Contribute to Salamanders Being Considered Injurious,* which the Service developed to evaluate whether a species qualifies as injurious under the Act. The resulting analysis serves as a basis for the Service's regulatory decision regarding injurious wildlife species listings. This interim rule finds that Bsal is a significant threat to the wildlife and wildlife resources of the United States and lists 20 genera of salamanders that we have determined to be injurious because they are likely carriers of Bsal.

Rulemaking under the Act is governed by the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*). The process of issuing a proposed rule, providing the opportunity for public comment, and completing a final rule can take a significant amount of time to complete. During this time, the species proposed for listing are still allowed to be imported and transported, offering increased opportunities for introduction, establishment, and harm. Under section 553(b)(3)(B) of the APA, however, a proposed rule is not required ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' There is good cause to forgo notice and public comment on a proposed rule in this instance and instead take immediate action in the form of an interim rule to help prevent this fungus from being introduced, established, or spread in the United

States. Providing notice and public comment prior to implementing the injurious wildlife prohibitions would be contrary to the public interest because of the need to take immediate action due to the significant risk from Bsal. For these reasons, we also find good cause in accordance with 5 U.S.C. 553(d)(3) to make the interim rule effective less than 30 days after the date of publication. Due to the significant risk of introduction, establishment, and spread of Bsal in the United States, this interim rule will take effect 15 days after publication in the **Federal Register**. Based on prior experience, a shorter-than-normal effective date will also help reduce the risk that importers will rush to import these species before the listing becomes effective. For example, in the case of snakeheads (Channidae), the Service documented a nearly three-fold increase in the importation of snakeheads after the proposed rule was first announced (67 FR 48855; July 26, 2002) and before the final rule took effect, approximately two months later (67 FR 62202; October 4, 2002). However, we also recognize that an immediate effective date is not practical when live animals may be in transit on the day the interim rule takes effect. A delay of 15 days before the interim rule goes into effect will allow for the reasonable completion of imports and transports already in progress and give wildlife inspectors and other law enforcement officers time to enforce the interim rule.

Experience with the introduction of Bsal into the Netherlands and associated deleterious effects to native salamanders, along with laboratory research, confirms that Bsal can be introduced, establish, and spread and cause substantial and immediate harm in the United States (Spitzen-van der Sluijs *et al.* 2013; Martel *et al.* 2014; Cunningham *et al.* 2015; Chytridcrisis 2015b). The United States leads all other countries in salamander diversity (Partners in Amphibian and Reptile Conservation, Stein and Kutner 2000). Based on scientific evidence, we know that the fungus is lethal to at least 2 salamander species native to the United States. Of the 190 native U.S. species, we find that at least 67 species are carriers and 20 are not carriers. The remaining 103 species have not been evaluated, and many of these species may also be affected by this potentially deadly fungus. While the Service's greatest concern will be for species that are lethally vulnerable to Bsal, salamander species known to be tolerant of or susceptible to Bsal infection under experimental conditions may also develop clinical disease or increased severity of disease, respectively, when infection is combined with additional stressors in the wild, as has been found for other diseases, including those in amphibians (Wobeser 2007; Kerby *et al.* 2011; Kiesecker 2011).

In the United States, Bsal has either not been introduced, has been introduced but has failed to establish, or is present but has not been positively detected. Although we do not have any conclusive evidence showing that introductions have occurred, history from other pathogens similar to Bsal, such as Bd, however, suggests that the fungus is likely to spread quickly throughout the United States if it is not prevented from being introduced. Moreover, efforts to control or eradicate introduced or established invasive species and manage the costs they incur to society are generally less effective and more expensive and difficult than efforts that prevent establishment (Leung *et al.* 2002; Finnoff *et al.* 2007). Prevention of invasive species is typically the most cost-effective measure to avoid the damage that such species cause (Leung *et al.* 2002; Lodge *et al.* 2006; Keller and Springborn 2014). As noted in the National Invasive Species Management Plan, ''prevention is the first line of defense'' and ''can be the most cost effective approach because once a species becomes widespread, controlling it may require significant and sustained expenditures'' (National Invasive Species Council 2008).

If Bsal has unknowingly been introduced but failed to establish for unknown reasons, it is still important to take action now because additional introductions increase the likelihood of establishment and harm. As more salamanders that can carry Bsal are imported into the United States, the probability increases that one or more of those salamanders, through a phenomenon called propagule pressure or ''introduction effort,'' described in Lockwood *et al.* (2005) as a measure of the number of nonnative individuals released into a region, will give Bsal the opportunity to establish and spread.

Listing the salamanders as injurious will help keep Bsal out of the United States by preventing the importation of salamanders capable of carrying the fungus and serving as the vector of introduction into U.S. ecosystems, thereby causing injurious effects consistent with the Act. Given the expected consequences that Bsal's introduction would have to wildlife and wildlife resources of the United States, we are listing species that we have determined to be injurious. This interim rule lists some species that are currently in trade as well as some that are not. We have the authority under the Act to list certain species as injurious even if they are not currently in trade or known to exist in the United States.

The salamander species listed by this interim rule are those found within genera for which we have evidence that at least one species in that genus is a carrier of Bsal with no countervailing conclusive evidence that other species in that genus are not carriers. We describe our rationale for this course of action below under *Classification and Status as Carriers.* Our decision-making included the following considerations: All 20 genera of salamanders, plus any new species identified within the genera listed by this interim rule, are found to be injurious because suitable climate exists in parts of the United States to support Bsal; even if a salamander listed by this interim rule could not establish a population in the wild, an infected salamander in captivity (or the water and soil in which it came into contact) can transmit Bsal to native populations; Bsal is capable of causing extensive damage to wildlife and wildlife resources, including federally endangered and threatened species; eradicating Bsal would be extremely difficult once introduced and established; and controlling Bsal is not practical.

Although this interim rule takes effect on the date specified above in **DATES**, it will still provide the public with a period of time to comment on the listing and associated documents. The final rule will contain responses to comments received on the interim rule, state the final decision, and provide the justification for that decision.

Listing Species That Carry Pathogens

Pathogens are agents such as viruses, bacteria, and fungi that cause diseases in animals and plants. The Service does not have the direct authority under the Act to list pathogens as injurious. We also cannot list or regulate fomites (materials such as water that can transmit pathogens). However, wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, or reptiles that are hosts to pathogens, such as viruses, bacteria, or fungi that cause disease, can be injurious if the likelihood, scope, and severity of effects significantly affect one or more of the interests listed in the Act. Even if the host species cannot establish populations in the wild, it can present significant risk if the pathogen the host is carrying can infect wildlife or wildlife resources or affect human beings or the interests of agriculture, horticulture, or forestry in the United States. Among other impacts, diseases

caused by introduced pathogens reduce biodiversity (the variety of different types of life on earth) and have been implicated in the local extinction of many animal taxa (Daszak *et al.* 2000).

We have previously listed species under the Act that serve as hosts to pathogens, as in the case of fish in the salmon family Salmonidae (32 FR 20655; December 21, 1967, 33 FR 6827; May 4, 1968, and 58 FR 58976; November 5, 1993). Members of the family Salmonidae (salmon, trout, and char) are not injurious provided they are free from certain pathogens. However, salmon that are alive or are dead and uneviscerated (internal organs have not been removed) without a health certificate declaring that the fish are pathogen free are injurious to wildlife and wildlife resources due to the risk of transmitting pathogens that cause devastating diseases in fish. Although prophylactic treatments for imports of salamanders to manage Bsal are in development, they are not yet fully tested or feasible.

Listing and Evaluation Process

The regulations contained in part 16 of title 50 of the Code of Federal Regulations (CFR) implement the Lacey Act and include the lists of all species determined by the Service or by Congress to be injurious. Under the terms of the Act, the Secretary of the Interior may prescribe by regulation those wild mammals, wild birds, fish, mollusks, crustaceans, amphibians, reptiles, and the offspring or eggs of any of the foregoing that are injurious to humans, to the interests of agriculture, horticulture, or forestry, or to the wildlife or wildlife resources of the United States. The lists of injurious wildlife species are found at 50 CFR 16.11–16.15. Under these regulations, species are added to the lists of injurious wildlife to protect statutorily defined interests from potential and known negative effects. Most species listed have the capacity to establish populations in the wild, spread, and cause harm. However, a species can be listed based solely on its capacity to cause harm. As noted in the previous section, dead, uneviscerated salmonids without a health certificate are not capable of establishing in the United States, but they are injurious because the pathogens they may carry are harmful.

Under the Act, the Service can list species that are nonnative or indigenous to the United States. In the case of an indigenous species, for example, the Service may find that it is injurious because its transport and release into another State outside the species' range will cause harm to human beings, agricultural or forestry interests, or natural systems. Furthermore, a species does not have to be currently imported or present in the wild in the United States for the Service to list it as injurious. For species not yet imported into the United States, the objective of listing is to prevent that species' importation and likely introduction and possible establishment and spread in the wild, thereby preventing injurious effects consistent with the purposes of the Act. For species that are present in the United States, the Act prevents the further introduction, establishment, or spread of the species by prohibiting interstate transport.

Importation into the United States of an injurious species is prohibited. Transportation between the States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States of an injurious species is also prohibited. These prohibited activities may be undertaken by permit for zoological, educational, medical, or scientific purposes (in accordance with permit regulations at 50 CFR 16.22), or by Federal agencies without a permit solely for their own use, upon filing a written declaration with the District Director of Customs and the U.S. Fish and Wildlife Service inspector at the port of entry. The Act does not regulate intrastate transport (transport within a State or territory) or possession of injurious species. Any regulations pertaining to the transport or use of these species within a particular State or U.S. territory are the responsibility of that State or territory.

The Service uses criteria, identified below, to evaluate whether a species does or does not qualify as injurious under the Act. The analysis that is developed using these criteria serves as a general basis for the Service's regulatory decision regarding injurious wildlife species listings. Biologists and risk managers within the Service who are knowledgeable about a species that is being evaluated assess both the factors that contribute to and the factors that reduce the likelihood of injuriousness.

(1) Factors that contribute to being considered injurious:

- The likelihood of release or escape;
- Potential to survive, become established, and spread;
- Impacts on wildlife resources or ecosystems through hybridization and competition for food and habitats, habitat degradation and destruction, predation, and pathogen transfer;
- Impacts to threatened and endangered species and their habitats;
- Impacts to human beings, forestry, horticulture, and agriculture; and
- Wildlife or habitat damages that may occur from control measures.

(2) Factors that reduce the likelihood of the species being considered as injurious:

- Ability to prevent escape and establishment;
- Potential to eradicate or manage established populations (for example, making organisms sterile);
- Ability to rehabilitate disturbed ecosystems;
- Ability to prevent or control the spread of pathogens or parasites; and
- Any potential ecological benefits to introduction.

In the case of this interim rule, the issue is not whether a given salamander species is invasive, but rather the role of salamanders in introducing the Bsal fungus into the United States and the scope and severity of effects caused by salamanders that are carriers of Bsal on human beings or the interests of agriculture, horticulture, or forestry, or the wildlife or wildlife resources of the United States.

Comments on the Content of the Interim Rule

We are soliciting public comments and supporting data on the draft economic analysis, the draft regulatory flexibility analysis, and this interim rule to add all species from 20 genera of salamanders to the list of injurious amphibians under the Act. We will review the public comments for the preparation of our final rule. The draft economic analysis and regulatory flexibility analysis and this interim rule will be available on *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2015–0005. You may submit your comments and materials concerning this interim rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this interim rule, will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2015–0005, or by appointment, during normal

business hours at the Service's office in Falls Church, VA (see **FOR FURTHER INFORMATION CONTACT**).

We are soliciting public comments and supporting data to gain additional information, and we specifically seek comment on the following questions:

(1) How many of the species listed by this rule are currently in production for wholesale or retail sale, and in how many and which States?

(2) How many businesses sell one or more of the species listed by this rule?

(3) How many businesses breed one or more of the species?

(4) What species listed as threatened or endangered by one or more States would be affected by the introduction of Bsal?

(5) What provisions in the interim rule should the Service have considered with regard to: (a) The impact of the provision(s) (including any benefits and costs), if any, and (b) what alternatives, if any, the Service should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the rule on small entities?

(6) How could the interim rule be modified to reduce costs or burdens for some or all entities, including small entities, consistent with the Service's requirements? For example, we seek comment on the distinct benefits and costs, both quantitative and qualitative, of (a) the prohibitions on importation and (b) the prohibitions on interstate transport of the species listed by this rule. What are the costs and benefits of the modifications?

(7) Is there any evidence suggesting that Bsal has been introduced into the United States or may have already established?

(8) Are there other pathways for Bsal into the United States that we should address? If so, what are they?

(9) Is there evidence suggesting that any of the species listed by this rule are not carriers of Bsal? If so, what species?

(10) Is there any evidence suggesting that additional species are carriers of Bsal and should be listed by this rule? If so, what species?

(11) Are there methods (such as thermal exposure) that would allow salamanders imported into the United States to be reliably treated to help ensure Bsal is not introduced into the United States, and how could compliance be monitored?

(12) Should the Service add eggs or other reproductive material of listed salamanders to the list of injurious wildlife because they may also carry Bsal?

(13) For the species we are listing, are the scientific and common names the most appropriate ones accepted by the scientific community?

(14) What are relevant Federal, State, or local rules that may duplicate, overlap, or conflict with the interim rule?

We will also submit the rule for peer review concurrent with public comments. In conducting peer review, we will follow guidance from the Office of Management and Budget ''Final Information Quality Bulletin for Peer Review'' (OMB 2004) and the Service's own guidance.

Species Information for Salamanders

Salamander Nomenclature and Taxonomy

Salamander nomenclature and taxonomy remained relatively unchanged from the 1960s until the 1990s, when advances in DNA sequencing enabled researchers to examine species relationships more closely (Petranka 1998). The Service does not have a uniform policy for taxonomically identifying amphibians. In this interim rule, we use taxonomic nomenclature as described by AmphibiaWeb (*http://amphibiaweb.org*) and the Integrated Taxonomic Information System (ITIS) (*http://www.itis.gov*). The system used by AmphibiaWeb represents one of the most widely accepted salamander taxonomic systems in the scientific community because it relies on criteria including, but not limited to, monophyly (common descent from a single ancestor), stability, expertise of scientists, and general acceptance by the amphibian community (Amphibiaweb 2015b). As a Federal resource for taxonomic information, the Service also uses ITIS as an agency resource (ITIS 2015).

The two databases have some differences. For example, AmphibiaWeb contains some species that are not in ITIS. We addressed all species found in either ITIS or AmphibiaWeb for a given genus to avoid confusion over which species we intended to list by this interim rule. We have also used additional resources where necessary to clarify taxonomy, specifically:

- The Kurdistan newt (*Neurergus microspilotus*) is in ITIS but is not in AmphibiaWeb. According to the American Museum of Natural History (AMNH 2015a), it is likely the same species as *N. derjugini;* consequently, we have included both scientific names in 50 CFR 16.14.
- Martel *et al.* (2014) identified the great crested newt (*Triturus cristatus*) as being lethally vulnerable to Bsal. Another species in the genus, *T. vittatus* (no common name), appears in the U.S. Fish and Wildlife Service's Office of Law Enforcement's (USFWS OLE) Law Enforcement Management Information System (LEMIS) data (USFWS OLE 2015). LEMIS is an electronic database utilized by all Service law enforcement offices, including Service Conservation Officers, Wildlife Inspectors, Refuge Officers, and Special Agents. LEMIS serves as the portal in which all Service wildlife violations are documented and intelligence is gathered and shared between law enforcement offices across the country. LEMIS also serves as the conduit for all declared (lawful) imports and exports of wildlife and wildlife products and the database of all wildlife trade data in the United States, both legal and illegal. *T. vittatus* does not appear in ITIS or AmphibiaWeb but is listed in AMNH (2015b). Because it appears in LEMIS data, we are including it in 50 CFR 16.14 as a species under the same genus, even though that species does not appear in either ITIS or AmphibiaWeb.
- LEMIS also includes the species *Triturus hongkongensis* (no common name), even though it is not a valid scientific name in ITIS or AmphibiaWeb. The name may be confused with *Paramesotriton hongkongensis* (no common name) due to its similarity.
- As a result, even though sources such as AmphibiaWeb state that there are approximately 679 species of salamanders (AmphibiaWeb 2015c), for purposes of this interim rule, we have identified approximately 681 species.
- *Hynobius fuca* and *H. fucus* appear to be the same species (Taiwan lesser salamander) (AMNH 2015c); we have included both of these names in 50 CFR 16.14.
- *Speleomantes strinatii* is a synonym for *Hydromantes strinatii* (Nanjappa, pers. comm.; Caudata Culture 2015b), of which the French cave salamander or Strinati's cave salamander are common names; we have included all of these names in 50 CFR 16.14.

In this interim rule, when we refer to salamanders, we include a variety of animals from the order Caudata, including those commonly referred to as salamanders and newts. Other common names, such as mudpuppy, also exist for certain animals in Caudata.

Salamander Biology

Salamanders belong to the class Amphibia, a group of cold-blooded animals with a spinal column. The word ''amphibian'' is derived from the fact that most of the species spend part of their lives in water and part on land. The class Amphibia also includes frogs

and toads, which have legs but no tails as adults, and caecilians, which have tails but no legs. Morphologically, salamanders are characterized by their relatively large, vertically flattened tails, two front and two hind legs that are approximately the same size (Petranka 1998), and skin with glands that can be either rough or smooth (Stebbins and Cohen 1997). Salamanders range in length from around 4 centimeters (1.5 inches) to over 1.5 meters (5 feet) (Stebbins and Cohen 1997).

Salamanders can live for long periods, but documented lifespans vary. Larger salamanders tend to live longer than smaller ones, and with proper care, salamanders in captivity frequently live longer than those in the wild (Duellman and Trueb 1986). Records for captive animals range from 5 years for most plethodontids to 55 years for the Japanese giant salamander (*Andrias japonicus*) (Duellman and Trueb 1986). The Olm or blind cave salamander (*Proteus anguinus*), which lives in caves in southern Europe, has been documented living for at least 48 years in the wild, with an estimated lifespan of more than 100 years (Live Science 2015).

Salamanders are carnivorous and eat a wide variety of prey, depending on habitat and the stage of their life cycle. Terrestrial salamanders eat earthworms, insect eggs, and other small invertebrates, while aquatic salamanders eat all of these in addition to small fish, aquatic insects, and other amphibians. Some salamander larvae can also be omnivorous and eat both plants and animals.

Many salamanders have unique structural features, including costal grooves (grooves on the sides of the body that increase skin surface area for water absorption and transport) and nasolabial grooves (vertical slits between the nostril and upper lip used for sensing chemical stimuli in the environment), that can be used to differentiate between salamander species (Petranka 1998). Important features for identifying salamanders include head shape and size, fin shape and color, gill morphology, color patterns, number of toes, size, body shape, tooth patterns, and number of costal grooves. Some species appear similar. For example, similarity of appearance within the family Salamandridae can make it difficult to differentiate between species, requiring close inspection of small physical characteristics.

Salamanders occupy a wide range of habitats, including streams, trees, land (including forests, grasslands, and rocky slopes), underground, and caves (Amphibiaweb 2015a). Salamanders are cryptic (difficult to find) partly because they occupy moist, cool places, such as underneath logs and between rock crevices on land or under rocks and logs in the water.

Salamander courtship between males and females is regulated by chemicals that are released from specialized glands in the skin. Most salamanders reproduce by laying eggs in water with two exceptions: members of family Plethodontidae lay their eggs on land, and the European species known as the alpine salamander (*Salamandra atra*) gives birth to live young (Stebbins and Cohen 1997). Eggs are surrounded by a protective jelly or membrane that keeps them from drying out. Almost all species of salamanders breed during specific seasons, and the length of time between mating and egg-laying varies considerably between species (Petranka 1998). Species that lay aquatic eggs place them in either streams or ponds, and species that lay their eggs on land choose hidden places, such as underground burrows, decaying logs, and moist rock crevices (Petranka 1998).

One example of a species that spends most of its life on land, but that moves to aquatic areas to breed, is the California tiger salamander (*Ambystoma californiense*). During winter rains, this species migrates across land to aquatic pools, such as cattle tanks and ephemeral pools, for breeding purposes. At the breeding pools, individuals come in contact with each other, even though they may not come in contact with each other during most of the rest of their lives on land (Barry and Shaffer 1994).

Habitat Conditions and Native Range of U.S. Salamanders

With more native salamander species than any other country in the world, the United States is a salamander diversity hotspot (Partners in Amphibian and Reptile Conservation 2015; Stein and Kutner 2015). Salamanders are widespread in the United States. (Caudata Culture 2015a; U.S. National Park Service 2015). Areas of particularly high salamander diversity include the southeastern United States, with large numbers of plethodontid salamanders in the southern Appalachian Mountains (Richgels *et al.* in review).

Salamanders in the United States occupy a wide range of habitats, including streams, trees, land (including forests, grasslands, and rocky slopes), underground, and caves (Amphibiaweb 2015a). These locations are most conducive to the relatively cool, moist conditions under which both salamanders and Bsal thrive (Duellman and Trueb 1986; Piotrowski *et al.* 2004; Blooi *et al.* 2015a). Central and North American salamanders as a group are active at average temperatures of 11 °C (52 °F) to 20 °C (68 °F) (Duellman and Trueb 1986), fully encompassing the optimum temperature for Bsal growth as described below under *Climate Tolerance.* Most salamanders require some amount of constant moisture, either for respiration, as in the lungless family Plethodontidae, or for temperature regulation (Duellman and Trueb 1986).

Twenty species, subspecies, or populations of U.S. salamanders from six genera are currently listed as endangered or threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA). An additional three species (three genera) are candidates for listing (U.S. Fish and Wildlife Service 2015). The specific vulnerability and carrier status of these species to Bsal is described below in *Vulnerability and Carrier Status of Threatened and Endangered Species*.

Of the 190 salamander species native to the United States, we find that at least 67 species in 5 genera and in 3 families are capable of being carriers of Bsal: Salamandridae, Sirenidae, and Plethodontidae. In North America, species in the family Salamandridae occur on the west coast of the United States and Canada from southern California to southeastern Alaska, and much of the eastern half of the United States and extreme southeastern Canada (Amphibiaweb 2015a; Caudata Culture 2015a). Members of the family Sirendidae occur throughout the southeastern Atlantic and Gulf of Mexico coastal plains and the Mississippi River Valley (Leja 2005) (lesser siren (*Siren intermedia*)) and in the Atlantic coastal plains from south Florida to Virginia (greater siren (*Siren lacertina*)) (Hendricks 2005). The distribution of salamanders of the family Plethodontidae in the western hemisphere is from southern Canada to Bolivia and Brazil, except for members of the genus *Hydromantes,* which occur in California (Amphibiaweb 2015a, Caudata Culture 2015a).

Role of Salamanders in the Ecosystem

Salamanders play important roles in ecosystem function and as indicators of ecosystem health and stability (Davic and Welsh 2004). For example, salamanders of family Plethodontidae have life-history characteristics that make them exceptional indicators of forest health (Welsh and Droege 2001).

In forests, salamanders are also among the most abundant vertebrates. Despite the relatively small size of most

salamanders compared to most other native vertebrates, this sheer abundance contributes to a significant amount of biomass in the ecosystem, and, therefore, salamanders make significant contributions to nutrient cycling and transport (Burton and Likens 1975). For example, Ambystomatid salamanders can make significant contributions to energy and nutrient transport in forest ecosystems (Regester *et al.* 2006) and in pond ecosystems (Holomuzki *et al.* 1994). By consuming arthropods (insects and related invertebrates) that would otherwise release carbon dioxide into the atmosphere by decomposing leaf litter in forests, salamanders reduce carbon emissions from leaf litter decomposition, which has implications for the global carbon cycle (Wyman 1998; Best and Welsh 2014). Salamanders that live underground also contribute to soil dynamics by creating, modifying, and otherwise regulating the systems of underground burrows in which they live (Davic and Welsh 2004).

In vernal pond communities, *Ambystoma* species are the top predators and, therefore, control the abundance of aquatic invertebrates and other amphibians (Petranka 1998). The high numbers of many amphibians, including salamanders, in some ecosystems also provide a substantial source of prey for other vertebrates in the ecosystem (Harper *et al.* 2008; Davic and Welsh 2004); therefore, other native species that prey on salamanders can also be affected by disease-related declines.

Species Information for Bsal

General Description of Chytrid Fungus

In drawing some of our conclusions about the effects of Bsal on U.S. wildlife and wildlife resources, the Service has used Bd as a surrogate. Considerably more is known about Bd than Bsal due to its discovery and description more than 15 years ago (Berger *et al.* 1998, Longcore *et al.* 1999), while Bsal was discovered 2 years ago (Martel *et al.* 2013). The severe effects that Bd, a species closely related to Bsal, has had on amphibian populations, has raised additional alarm about the expected consequences of a Bsal introduction and the need to take immediate action under an interim rule. The two risk assessments of Bsal that have been conducted both used Bd in determining the risk of Bsal based on transmission, spread, and population-level effects (Richgels *et al.* in review; Stephen *et al.* 2015).

Until Bsal was discovered, the fungal disease chytridiomycosis was thought to be caused by a single species of pathogenic fungus, Bd, which was the only chytridiomycete taxon known to parasitize vertebrate hosts (Longcore 1999; Johnson and Speare 2003). Bd has been implicated in the decline and extinction of amphibian species at the global scale (Berger *et al.* 1998; Daszak *et al.* 2003; Lips *et al.* 2006; Walker *et al.* 2008; Vredenburg *et al.* 2010; Cheng *et al.* 2011). Bd has been found on every continent except Antarctica, and it is known to have affected more than 500 species of amphibians, including all orders of amphibians (frogs, salamanders, and caecilians) worldwide (Chytridcrisis 2015a; Fisher *et al.* 2009; Olson *et al.* 2013).

Bsal came to the attention of the scientific community only recently. Spitzen-van der Sluijs *et al.* (2013) observed a 96 percent decline in fire salamanders (*Salamandra salamandra*) in the Netherlands but was ''unable to attribute this to any known cause of amphibian decline, such as chytridiomycosis [at the time, thought only to be caused by Bd], ranavirus or habitat degradation.'' Martel *et al.* (2013) later identified the cause of the salamander decline in the Netherlands as a newly described species of fungus now known as Bsal. Their work confirmed that Bsal is related to Bd and is also capable of causing chytridiomycosis. Analysis of a broad range of representative chytrid fungi show that Bsal represents a previously undescribed species that shares early evolutionary origins with the pathogenic fungus Bd (Martel *et al.* 2013). Until Bsal was discovered, Bd was the only species from that phylum known to infect vertebrates.

While Bd has been found in North America, Bsal has not yet been found in North America, and the two fungi do not have the same effects on the same animals. As the authors noted, ''Chytridiomycosis has resulted in the serious decline and extinction of [more than] 200 species of amphibians worldwide and poses the greatest threat to biodiversity of any known disease * * *. We [have discovered] a second * * * chytrid pathogen, [Bsal], that causes lethal skin infections in salamanders * * *. Our finding provides another explanation for the phenomenon of amphibian biodiversity loss that is emblematic of the current global biodiversity crisis.'' The natural host ranges of Bsal remain unknown, but so far it has been found only in salamanders and appears capable of causing lethal chytridiomycosis only in salamanders (Martel *et al.* 2014).

How the Fungus Affects Salamanders

The ''salamandrivorans'' in *Batrachochytrium salamandrivorans* translates to ''salamandereating'' and accurately describes the effects of the fungus on salamanders. Bsal infects the skin of amphibians but not deeper tissues or internal organs (Berger 2004; Martel *et al.* 2013). The cells of the fungus (thalli) embed themselves in the skin cells of the salamander, thereby causing erosive lesions.

Lesions consist of sores on the skin that erode and ulcerate, with secondary bacterial infection occurring after the sores appear (Martel *et al.* 2013), although many of the salamanders reported at the beginning of the European Bsal outbreak seemed to lack obvious external lesions (Spitzen-van der Sluijs *et al.* 2013). Experimental infections of fire salamanders in the laboratory caused death 12 to 18 days after exposure, with the same clinical signs and pathological lesions found in the European outbreak (Martel *et al.* 2013). Martel *et al.* (2013) found that infected fire salamanders developed shallow skin lesions and deep ulcerations all over the body, and became anorexic, apathetic, and suffered from neurological signs including a loss of voluntary movement and muscle coordination. Death occurred within 7 days of clinical signs first appearing in species with lethal vulnerability.

Bsal does not appear to affect reproductive tissue, such as eggs or gametes. Using Bd for comparison, Bd requires keratin, a structural component of organisms found in amphibian skin, which is not found in salamander eggs or gametes (Berger 1998).

Climate Tolerance

Temperature has a significant impact on the growth and disease development of Bsal in salamanders (Martel *et al.* 2014). Bsal appears to prefer a temperature range for growth and infection of 10–15 °C (50–59 °F) (Blooi *et al.* 2015a; Stephen *et al.* 2015, Martel *et al.* 2013). Bsal has shown some growth in temperatures as low as 5 °C (41 °F) and dies at 25 °C (77 °F) and above (Martel *et al.* 2013). In a laboratory study, salamanders were most easily infected by Bsal at temperatures of 15 °C (59 °F) and 20 °C (68 °F), while Bsal growth was inhibited at 25 °C (77 °F) (Blooi *et al.* 2015a). The same temperature response was also observed for Bsal raised in culture (Blooi *et al.* 2015a).

This experimental data suggests that salamanders living at lower temperatures are more at risk to

infection by Bsal. Animals that survive at temperatures above the optimal range for fungal growth are likely to be at reduced risk to infection. However, the average temperature ranges of North and Central American salamander species is from 11 °C (52 °F) to 20 °C (68 °F) (Duellman and Trueb 1986; the citation does not separate North and Central American data), so salamanders regularly reaching 25 °C (77 °F) in the natural environment is uncommon. Bales *et al.* (2015) noted that the native salamander species, and by extension ecosystems, most at risk from a Bsal introduction would likely be those that occupy similar thermal ranges as the European fire salamander (Bales *et al.* 2015).

Ecology and Habitat Preferences

The chytrid fungus Bd can live outside of a host and requires water to disperse because it reproduces asexually by forming motile zoospores; preliminary studies of Bsal indicate that similar modes of survival and transmission are highly likely (Longcore 1999; Martel *et al.* 2013). As the threat assessment by Stephen *et al.* 2015) noted, ''Bd is known to remain viable for several days to weeks in water (Johnson and Speare 2013) and moist organic matter (Johnson and Speare 2003), even in the absence of nutrients. It is likely that Bsal can also survive in moist environments, independent of an amphibian host.''

Environmental Conditions Needed To Survive

The transmission and ecology of Bsal in the wild is likely to be similar to Bd based on the close taxonomic relationship between the species, their structural similarities, and their comparable pathophysiology (Martel *et al.* 2013, Stephen *et al.* (2015). Johnson and Speare (2003) reported that Bd can survive in tap water and deionized water for up to 3 and 4 weeks, respectively, and up to 7 weeks in lake water. Bsal is also likely to survive in moist environments independent of an amphibian host. While we do not have information on the response of Bsal to desiccation, Bd is highly impacted by drying and can survive desiccation for no more than 1 hour in the laboratory (Garmyn *et al.* 2012); Bsal would likely respond in a similar way. Bsal appears to be adapted to temperatures and humidity conditions most conducive to salamander survival, thus supporting the hypothesis that the pathogen co-evolved with salamanders in the part of the world from which it is endemic, most likely in Asia (Martel *et al.* 2014).

Population- and Ecosystem-Level Effects of Bsal

Population-Level Effects

Several pathogens, including Bsal, Bd, ranaviruses, and *Saprolegnia* sp. (water molds), have caused significant population-level declines in a range of amphibian species, and disease is thought to be a major driver of global amphibian decline (Bosch *et al.* 2001; Martel *et al.* 2013; Daszak *et al.* 2003). Disease poses a greater risk to small, isolated populations as well as those with decreased genetic diversity (Smith *et al.* 2008). Within the United States, diseases have been cited as contributing factors in the listing or recovery of several native amphibian species under the ESA. Examples include Bd in the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) (76 FR 61956, October 6, 2011), an undiagnosed disease in Sonora tiger salamanders (*Ambystoma tigrinum stebbinsi*) (62 FR 665, January 6, 1997), and Bd in the mountain yellow-legged frog (*Rana muscosa*) (82 FR 24256, April 29, 2014; Vredenburg *et al.* 2010).

As noted above in *General Description of Fungus,* Bsal is the most recently discovered pathogen associated with population-level amphibian declines, including a 96 percent reduction in Dutch populations of the European fire salamander between 2010–2013 (Spitzen-van der Sluijs *et al.* 2013; Martel *et al.* 2013). Due to the overall sensitivity of amphibian populations to disease; a history of adverse, population-level effects in native amphibians; a direct association between Bsal and the decline of at least one European salamander population; and the adverse effects of some native salamanders to Bsal under experimental conditions, we conclude that the introduction of Bsal into the United States would cause significant, adverse, population-level effects in a number of native species.

Ecosystem-Level Effects

The preferred temperature range of Bsal can help predict those ecosystems that are at greatest risk should Bsal be introduced into the United States (Stephen *et al.* 2015). The native salamander species, and by extension ecosystems, most at risk from a Bsal introduction would likely be those that occupy similar thermal ranges as the European fire salamander (Bales *et al.* 2015).

Salamanders are important parts of the ecosystems in which they occur. Salamanders are often the most abundant vertebrates in terrestrial forest and riparian (the banks of watercourses) ecosystems, where they may compose a total biomass greater than or equal to birds or small mammals (Davic and Welsh 2004). This means that, despite their small size, the total weight of all salamanders in a given area may be more than the combined total weight of all birds or all small mammals. Because of their abundance under normal circumstances, salamanders are important prey species themselves and are energy sources for higher predators (Davic and Welsh 2004), including fish, reptiles, birds, and mammals.

Salamanders may be the dominant predator in headwater streams and ephemeral waterbodies where fish are absent (Davic and Welsh 2004). Within some food webs, salamanders are considered keystone predators due to their control of invertebrate prey populations and their resulting regulation of detritus decomposition and nutrient cycling (Davic and Welsh 2004). By definition, keystone species are those that occupy niches that affect ecosystems and have little functional overlap with other species (Davic and Welsh 2004). Therefore, loss of these keystone species would result in significant ecosystem-level change.

In addition to their roles in food webs and nutrient cycling, salamanders participate in a number of interspecific (between species) ecological relationships. Salamander species interact with one another through competition and predation to control the composition of their assemblages (taxonomically related species that occur within the same geographic community) (Davic and Welsh 2004; Fauth *et al.* 1996). Frequently, a single species is dominant within a given assemblage, particularly in terrestrial habitats, but which species dominates varies by location and ecosystem (Davic and Welsh 2004). We find that ecosystems where the dominant salamander species is vulnerable to lethal or susceptible infections with Bsal would be at risk from an introduction of this pathogen.

Salamanders also interact with invertebrate species in other ecologically important ways. Semi-aquatic salamander species can move mollusks and shrimp eggs between waterbodies during their migrations, allowing these invertebrates to inhabit new areas (Davic and Welsh 2004). Additionally, one species of salamander, the mudpuppy (*Necturus maculosus*), is a required host for developing stages of the salamander mussel (*Simpsonaias ambigua*), a native, freshwater mollusk for which a positive 90-day finding has been made under the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*) (76 FR 59836; September 27, 2011) (Davic and Welsh 2004; Gangloff and Folkerts 2006; United States Fish and Wildlife Service 2015b, United States Fish and Wildlife Service 2015c). We conclude that invertebrate species that depend on salamanders for aspects of their life cycle or ecology are likely to be adversely affected if their host species declines in response to a Bsal introduction.

Invasiveness of Salamanders and Bsal

Invasiveness of Salamanders

Some salamanders have the ability to invade new environments in which they are not native. Globally, 90 percent of salamander introductions have occurred through intentional releases (Tingley *et al.* 2010). As of 2010, salamanders comprised 22 percent of all recorded amphibian introductions, with the highest number of salamander introductions (15) from the family Salamandridae, followed by salamanders from the families Ambystomatidae (4), Cryptobranchidae (2), and Proteidae (2) (Tingley *et al.* 2010).

Nonnative salamander introductions have been documented in the United States. As described below under *Likelihood of Release or Escape,* the United States Geological Survey (USGS) Nonindigenous Aquatic Species database has U.S. records for 14 salamander species that have been observed outside their native range. Of those, 11 are native to the United States but were discovered outside of their native ranges, and 3 (Japanese newt (also called the Japanese fire-bellied newt, *Cynops pyrrhogaster*), Oriental fire belly newt (also called the Oriental fire-bellied newt, *Cynops orientalis*), and the spotless stout newt (*Pachytriton labiatus*)) are exotic species from outside the United States (USGS 2015). In Florida, the Oriental fire belly newt and spotless stout newt, which are native to China (family Salamandridae), have been found in the wild near an animal importer's facility, either as the result of intentional releases or escapes from enclosures (Krysko *et al.* 2011).

Other invasions have been attributed to the use and subsequent release of salamanders used as fishing bait. Surveys of anglers have indicated that they routinely release salamanders into the areas where they fish, which includes areas that are not part of the salamander's native U.S. habitats, suggesting that animals are routinely moved long distances (Picco and Collins 2008). Furthermore, Picco and Collins (2008) found that salamanders sold as bait were highly infected with both ranavirus and Bd, thereby increasing the likelihood of disease transmission into new areas of the United States through the act of fishing.

Invasiveness and Transmission of Bsal

As noted above under *General Description of Fungus,* Europe has been experiencing a severe decline in wild fire salamander populations in the Netherlands (Spitzen-van der Sluijs *et al.* 2013). This decline is so significant that fire salamander populations are facing local extinction in the Netherlands, though other populations throughout Europe appear to be stable (AmphibiaWeb 2015c). A sharp decline in numbers has been observed since 2010, despite the species being listed as endangered on the Netherlands Red List, and at population levels that were thought to be stable. This enigmatic decline was not attributed to any known cause of amphibian decline, such as chytridiomycosis due to Bd, ranavirus, or habitat degradation. In late 2013, Bsal was isolated from infected fire salamanders in the Netherlands (Martel *et al.* 2013).

Martel *et al.* (2014) later established the highly pathogenic nature of this new chytrid fungus. Molecular testing found Bsal in specimens collected from the wild (though none from North America) and even in an archival (museum) sample that was 150 years old (Martel *et al.* 2014). A wide variety of salamanders are negatively affected by the pathogen, but frogs, toads, and caecilians do not appear to be (Martel *et al.* 2014). The pathogenic nature of the fungus and its ability to infect a wide variety of salamanders, as described below in *Classification and Status as Carriers,* definitively demonstrate an invasive threat to salamanders in the United States.

In Bd, the ability of the pathogen to be transmitted between individuals is dependent upon the density of populations (Rachowicz and Briggs 2007) and the presence of a vector that can carry the disease to uninfected populations (Greenspan *et al.* 2012); we expect the same for Bsal. Experiments have shown that Bsal can be transmitted from one species to another when the species come into contact (Martel *et al.* 2014).

Salamanders that breed in ponds and temporary wetlands are often explosive breeders, meaning that hundreds to multiple thousands of individuals will reproduce at the same time (Gill 1978), creating dense numbers of individuals and increasing opportunities for the pathogen to spread. Pathogens are also likely to be transmitted by salamander species that travel long distances for breeding and dispersal migrations, such as those that exhibit a metapopulation structure (Bancroft *et al.* 2011). A metapopulation is a group of discrete breeding populations of the same species (Gill 1978). For example, within salamander metapopulations, California tiger salamanders (*Ambystoma californiense*) have been documented traveling up to 1.2 miles (1.9 kilometers) from upland habitat to aquatic breeding sites (USFWS 2000), and newts travel many kilometers to breeding sites (Gill 1978).

Salamander species that have abundant populations with widespread distributions can also contribute to the spread of Bsal because of the increased likelihood that they will come in close contact with other salamanders that could then become infected. Salamanders that can carry Bsal from one place to another are more likely to do so if they have a broad range where they will come in contact with other members of the same species (for abundant distributions) or other species (for widespread distributions). Species with broad distributions are adapted to a wide range of environmental conditions that are more likely to overlap with habitat suitable for Bsal as well as habitat suitable for that species, providing increased opportunities for Bsal to spread.

For example, the rough-skinned newt (*Taricha granulosa*) has a wide range along the West Coast from Alaska to California, and the eastern newt (*Notophthalmus viridescens*) ranges widely across the eastern United States, occurring in 34 States (Amphibiaweb 2015a). Both species have had lethal responses with laboratory infections of Bsal (Martel *et al.* 2014), and both are capable of carrying Bsal. In addition to its broad range, *N. viridescens* also migrates long distances; this species will frequently travel many kilometers to migrate to new ponds (Gill 1978), further increasing the risk of this species spreading Bsal.

Pathway Analysis

Introduction Pathways

The main pathway for the global spread of Bsal is the international trade in salamanders (Martel *et al.* 2014). The introduction of Bsal into mainland Europe is linked with the commercial trade of Asian salamanders (*Cynops* spp.) from East Asia, particularly Thailand, Vietnam, and Japan (Martel *et al.* 2014). As described above in *How the Fungus Affects Salamanders,* eggs and gametes are not expected to be pathways. However, salamanders that

have been identified as carriers, whether live or dead, are expected to transmit Bsal through their skin, which contains keratin. We are also concerned that any salamanders that are infected and lethally vulnerable may die in transport and continue to carry Bsal into the United States. As such, we also expect dead salamanders and body parts to be a pathway.

Individual amphibians in trade are often transported in containers with many other individuals of the same species or with many other species that can all be from different sources. These conditions are highly conducive to pathogen transmission and dispersal. Pathogens can transfer from host to host in crowded conditions, and crowded conditions create stress on animals that can reduce amphibian hosts' natural ability to ward off infections (Rowley *et al.* 2007, Rachowicz *et al.* 2005, Rollins-Smith *et al.* 2011).

Bsal can also be introduced into the environment through the improper disposal of contaminated water or other materials used to transport salamanders. As described above under *Environmental Conditions Needed to Survive,* the fungus can likely persist in such materials independent of whether a salamander is present. Water and other materials have served as fomites to introduce other similar pathogens into the environment. For example, Bd has been found in water used to transport amphibians that were traded in Hong Kong (Kolby *et al.* 2014). As the authors noted, ''[T]he abundance of aquatic amphibian species traded by Hong Kong . . ., prolonged environmental persistence of infectious . . . Bd particles, and employment of trade activities that neither disinfect water nor safely dispose of deceased animals creates an ideal pathway for disease transmission to native Hong Kong amphibians.''

Drawing on this evidence, the primary pathway for the entry of salamanders that are hosts of Bsal into the United States is through the international commercial wildlife trade. Overall, 99.9 percent of salamander importation into the United States is for commercial purposes (USFWS OLE 2015). From 2010 to 2014, salamanders were imported through 14 ports of entry into the United States; the 3 ports of entry with the largest numbers of imported salamanders were Los Angeles (California), Tampa (Florida), and New York (New York) (Richgels *et al.* in review). After import, many of the salamanders are transported to animal wholesalers, who then transport the salamanders to pet retailers.

The most likely pathway of a salamander that is a host to Bsal into the United States would include a pet store or online retailer. Individuals would purchase the salamander from a pet store (or online retailer) and keep it in captivity as a pet. Many amphibians and reptiles first kept as pets are released by their owners into the wild either intentionally or accidentally (Kraus 2009, Krysko *et al.* 2011). For example, owners may no longer be able to care for their pets or an animal may escape its enclosure. In addition to the risk from a release of an infected pet salamander into the wild, the water that is used to house an infected pet in captivity would feasibly contain Bsal zoospores. As a result, the discharge of untreated water used to house infected, captive animals could be a pathway for releasing infective zoospores into the environment and exposing native salamanders to Bsal (Stephen *et al.* 2015).

International Trade in Salamanders

Trade in wildlife occurs on a global scale, and amphibians are one of the most commonly traded animals (Smith *et al.* 2009). More than 52,149,000 documented amphibians were imported into the United States from 2004 to 2014, based on the Service's LEMIS data (USFWS OLE 2015). Salamanders comprised 2,504,590 (4.8 percent) of the total imports of amphibians (USFWS OLE 2015). The 2004 to 2014 LEMIS dataset should be considered as a conservative estimate because many import records identified the animal being imported only as a member of the Class Amphibia (rather than identifying it to species or genus level). In addition, incorrect salamander identifications to genus and species level appear to have commonly occurred in reporting to LEMIS (USFWS OLE 2015). LEMIS data shows that 65 percent of imported salamanders came from captive sources and 35 percent were from wild sources (USFWS OLE 2015). The LEMIS data recorded only 83 percent of declared imports at the species level, whereas 17 percent were recorded to the genus level (USFWS OLE 2015).

The four salamander genera most commonly imported into the United States from 2004 to 2014 were *Cynops, Paramesotriton, Triturus,* and *Pachytriton* (USFWS OLE 2015). *Cynops, Triturus,* and *Paramesotriton* are three genera that can serve as carriers for Bsal (Martel *et al.* 2014). Of the 20 genera listed by this interim rule, 15 have been traded over the 11 years. Salamanders that can carry Bsal have comprised 95 percent of imported salamanders.

The species with the highest number of imports into the United States from 2004 to 2014 was the Oriental fire belly newt; this species comprised 54 percent of the total number of imported salamanders (USFWS OLE 2015). Twelve species of salamanders that are native to the United States were also imported into the United States from other countries from 2004 through 2014 (USFWS OLE 2015).

Risk Assessments and Salamander Effects From Bsal

Bsal Risk Assessments

Two Bsal risk assessments are available to help determine the risk associated with Bsal introduction into North America. The USGS conducted a risk assessment for the United States that helped us determine the level of risk associated with Bsal introduction (Richgels *et al.* in review). Stephen *et al.* (2015) also conducted a Bsal risk assessment for Canada that showed Canada is also at risk.

The USGS risk assessment concludes that the potential for Bsal introduction into the United States is high, the United States has suitable conditions for Bsal survival, and the consequences of introduction into the United States are expected to be severe and occur across a wide range of the United States (Richgels *et al.* in review). To evaluate the potential for Bsal introduction, the USGS assessment combined information on the number of individual salamanders imported at each port of entry and the number of pet supply establishments by county. Based on this evaluation, Bsal introduction potential was highest in central and southern Florida, southern California, and near New York City, New York (Richgels *et al.* in review).

To determine the consequences of Bsal introduction into the United States, the USGS risk assessment evaluated environmental suitability, species richness, and predicted species susceptibility. Overall, the total risk of Bsal to native salamanders is high. Based on both likely introduction and resultant consequences, the risk of Bsal is the highest for the Pacific coast, southern Appalachian Mountains, and mid-Atlantic regions (Richgels *et al.* in review). The areas most likely to have consequences from Bsal introduction are the Pacific Coast and Appalachian Mountains (Richgels *et al.* in review). Based on environmental suitability, areas of the United States most suited to Bsal growth (Blooi *et al.* 2015a), including the Southwest, Southeast, and Pacific regions, are also the areas of highest salamander diversity (Richgels

et al. in review). Yap *et al.* (2015) also identified the southeastern and western United States as zones of high risk.

Some species may be protected from Bsal by temperatures in their regions that are outside of the Bsal optimal growth range (Richgels *et al.* in review), but the average temperature preferences of salamanders from Central and North America (Duellman and Trueb 1986), which range from −2.0 °C (28.4 °F) to 30.0 °C (86.0 °F), suggest that most salamander species, including those within the United States, are active near the thermal growth optimum for Bsal (Blooi *et al.* 2015a). Most U.S. salamander species are also dependent upon forests, a habitat type dominated by relatively cool, moist conditions, for the majority of their life cycle (Davic and Welsh 2004).

Vulnerability and Carrier Status

The urgent need to prevent Bsal introduction risks was raised by evidence presented by Martel *et al.* (2014), who tested Bsal on 35 species from all three orders of amphibians: frogs, salamanders, and caecilians. Martel *et al.* (2014) further screened 5,391 specimens collected from 4 continents for evidence of Bsal infection.

Martel *et al.* (2014) defines a ''resistant'' salamander as one that either was not infected or developed a short-term infection without clinical signs following exposure to Bsal; a ''tolerant'' salamander is one that maintains a more prolonged infection with no signs of disease; a ''susceptible'' salamander becomes infected and has clinical signs of disease with the possibility of subsequent recovery; and a salamander that responds in a ''lethal'' manner to Bsal dies as a result of infection. According to Martel *et al.* (2014), resistant salamanders are not a risk for transmitting Bsal. However, based on the available scientific data, we concluded that resistant species with evidence of short-term infection, as well as those reported to have tolerant, susceptible, or lethal responses to Bsal, are ''carriers'' capable of transmitting Bsal to other salamanders and introducing the fungus into the United States. The Service finds that a species is considered to be a ''non-carrier'' when Martel *et al.* (2014) classified the species as ''resistant'' and no histologic or field surveillance data was found to suggest that short-term Bsal infection could occur; ''non-carriers'' are considered incapable of transmitting Bsal to other salamanders or introducing the fungus into the United States.

We also find the likelihood of a species within the same genus being a carrier can be drawn from a comparison to Bd, which as described above under *General Description of Chytrid Fungus* is a close relative of Bsal. As noted earlier, the two risk assessments of Bsal that have been conducted both used Bd in determining the risk of Bsal based on transmission, spread, and population-level effects (Richgels *et al.* in review; Stephen et al. 2015). Considerably more is known about Bd than Bsal due to its discovery and description more than 15 years ago (Berger *et al.* 1998; Longcore *et al.* 1999), while Bsal was discovered only 2 years ago (Martel *et al.* 2013). Bd has caused amphibian declines and extinctions worldwide (Skerratt *et al.* 2007). Bd affects species in patterns (Skerratt *et al.* 2007), and more closely related species have similar outcomes for Bd at the family level (Smith *et al.* 2009; Bancroft *et al.* 2011). Amphibians experiencing the most severe declines are grouped by relatedness, which is likely due to the shared evolutionary histories of closely related species with a similar response to chytridiomycosis (Corey and Waite 2008). The U.S. Department of Agriculture (USDA) uses a similar approach. Closely related species are considered more likely to have similar traits and are used in risk assessments to determine threats from a target species of interest; a potential pest is regarded as a threat when other species in a genus pose a similar threat (Wapshere 1974; Gilbert *et al.* 2012).

We find that, due to shared characteristics by species within a genus, other species within these genera are also highly likely to be carriers of Bsal if one species has been identified as a carrier, even if not every species in the genus has been tested to verify that it is a carrier of Bsal. Our analysis found no conclusive countervailing evidence that species differed within a genus with respect to their ability to act as carriers. As such, we expect all species in a genus to respond similarly as carriers or non-carriers to Bsal. Therefore, based on existing scientific evidence, and as described in more detail below, we are listing all species in the 20 genera, including 201 known species, that we now conclude constitute a threat to introducing and spreading Bsal in the United States because such species can carry the fungus and transmit it to other species which would be negatively impacted.

While frogs and caecilians showed resistance to Bsal, many salamanders exhibited a strong, adverse response to Bsal infection; many species from outside of the native range of the fungus (Asia) exhibited lethal vulnerability. Our analysis of Martel *et al.* (2014) and follow-up communication (Martel, pers. comm.) found 25 species from 19 genera are carriers of Bsal. Additional communications (Chytridcrisis 2015b; Cunningham *et al.* 2015; Nanjappa, pers. comm.) identified another two species from two separate genera as carriers: The pygmy marbled newt (*Triturus pygmaeus*) and the golden striped salamander (*Chioglossa lusitanica*). Because Martel *et al.* (2014) had previously identified members of the *Triturus* genus as carriers, it is already accounted for within the 19 genera. The addition of this species brings the total number of known carrier species to 26. In addition to *Triturus, Chioglossa* was identified as another genus capable of serving as a carrier by Chytridcrisis (2015b), Cunningham *et al.* (2015), and Nanjappa (pers. comm.). As a result, the total number of species known to serve as carriers of Bsal is 27 from 20 genera. These 20 genera include the following: *Chioglossa, Cynops, Euproctus, Hydromantes, Hynobius, Ichthyosaura, Lissotriton, Neurergus, Notophthalmus, Onychodactylus, Paramesotriton, Plethodon, Pleurodeles, Salamandra, Salamandrella, Salamandrina, Siren, Taricha, Triturus,* and *Tylototriton.*

In conducting its analysis, the Service initially focused on identifying species for listing as injurious that scientific evidence demonstrates are capable of carrying Bsal. As we described above, however, we find that, due to shared characteristics by species within a genus, other species within these genera are also highly likely to be carriers of Bsal, even if not every species in the genus has been tested to verify that it is a carrier of Bsal. This conclusion is because more closely related species, such as those found within the same genus, share common traits. Our analysis found no conclusive evidence to the contrary that suggested that all species within such genera are not carriers.

We have focused our findings on salamanders and the genera in which they are found that we concluded are capable of carrying Bsal, and we are not listing genera that Martel *et al.* (2014) identified are not carriers of Bsal: Based on our analysis of their data, such salamanders are not capable of introducing Bsal to the United States or otherwise transmitting Bsal to native populations. In addition, we are not listing genera at this time where there is no data because we do not have a basis for doing so, even though the Service recognizes that it is possible that untested genera may also be capable of carrying Bsal. Likewise, we are not listing hybrids derived from species consisting of a listed genera and an

unlisted one because we do not know their status as carriers. However, consistent with our view that species within a genus are likely to be carriers of Bsal if one species within that genus has been identified as a carrier, hybrids consisting of two species from within the same genus are expected also to be carriers.

In conclusion, we have decided to list all 201 species in the 20 genera where at least one species has been positively identified as a carrier of Bsal and there is no countervailing conclusive evidence suggesting that some species within the genus are not carriers. Where one species has been identified as a carrier, we find that the other species in that genus are also carriers. This finding includes hybrids consisting of species found within the genus.

In reaching this conclusion, it is worth noting that Martel *et al.* (2014) classified the slimy salamander (or northern slimy salamander, *Plethodon glutinosus*) as resistant to infection. Martel *et al.* (2014) demonstrated by histology, however, that Bsal could invade the skin of the slimy salamander, even though it was otherwise resistant through challenge testing and did not show signs of infection. Our examination of the supplementary data of Martel *et al.* (2014), including histology (microscopy) tests and subsequent discussions with the authors, indicate that there is sufficient evidence that Bsal was able to invade the skin of this species long enough to move or transmit the infection to other salamanders (Martel *et al.* 2014; Martel, pers. comm.; Lips, pers. comm.). Because we expect all species within a genus to respond in a similar way as a carrier or not of Bsal, we conclude that all species of *Plethodon* are carriers.

Martel *et al.* (2014) also classified the palmate newt (*Lissotriton helveticus*) as resistant to infection even though the Italian newt (*Lissotriton italicus*) was identified as lethally vulnerable to Bsal. Martel conducted histological tests that showed the palmate newt could carry Bsal even though it demonstrated resistant vulnerability. Our examination of the data of Martel *et al.* (2014), as well as a personal communication from K. Lips (2015), indicates that there is sufficient evidence that Bsal was able to invade the skin of the palmate newt long enough to pass the infection to other salamanders. Because we expect all species within a genus to respond in a similar way as a carrier or not of Bsal, we also conclude that all species of *Lissotriton* are carriers.

In addition, Martel *et al.* (2014) classified the Hokkaido salamander (*Hynobius retardatus*) as resistant to Bsal under experimental conditions. However, we find that the misty salamander (*H. nebulosus*) is a carrier based on detection of Bsal by Martel *et al.* (2014) in a free-ranging specimen from Japan. The histology tests that were conducted for the slimy salamander and the palmate newt, and which we used to find that these species are carriers, were not conducted for the Hokkaido salamander. Bsal's ability to invade the skin of the Hokkaido salamander remains unknown because histologic examination of the skin was not conducted for the species. Because the Hokkaido salamander was resistant in experimental tests but was not tested histologically to look for invasion in the skin, we find that the Hokkaido salamander has an inconclusive status as a carrier and base our finding of whether species from the genus *Hynobius* are carriers on results identified for the misty salamander (a carrier from the same genus). Because we expect all species within a genus to respond in a similar way as a carrier or not of Bsal, we concluded that all species from the genus *Hynobius* are also carriers.

Finally, although Martel *et al.* (2014) did not test species from the genus *Onychodactylus* in the laboratory, Martel *et al.* (2014) observed Bsal on the Japanese clawed salamander (*O. japonicas*) in a free-ranging specimen from Japan. Based on that evidence, we concluded that this species is a carrier. Because we expect all species within a genus to respond in a similar way as a carrier or not of Bsal, we concluded that the other species in the genus *Onychodactylus* are also carriers.

Vulnerability and Carrier Status of Native Species

There are 190 species of salamander in 23 genera native to the United States (AmphibiaWeb 2015b). Of the 201 salamander species that we conclude are carriers of Bsal (20 genera in 4 families), 67 species (5 genera in 3 families) are native to the United States. Of the remaining 123 species native to the United States, we found that 20 species are not carriers and the vulnerability and carrier status of the remaining 103 species from the other 16 genera is unknown.

We based our findings of the 67 native species on tests conducted by Martel *et al.* (2014), who tested 7 native species in the laboratory for Bsal vulnerability. The native species that Martel *et al.* (2014) tested were the eastern newt (*Notophthalmus viridescens*), rough-skinned newt (*Taricha granulosa*), lesser siren (*Siren intermedia*), slimy salamander (*Plethodon glutinosus*), spring salamander (*Gyrinophilus porphyriticus*), marbled salamander (*Ambystoma opacum*), and spotted salamander (*A. maculatum*). Of these, 2 species were found to be lethally affected, 1 was tolerant, and 4 were described as resistant, although additional evidence indicates that one of the resistant species is capable of transmitting the fungus, resulting in a positive carrier status. As we described above in *Vulnerability and Carrier Status,* although the Service found evidence that species within a genus may vary in their specific vulnerability (that is, lethal, susceptible, tolerant, or resistant, as defined in Martel *et al.* (2014)), we expect all species in a genus to respond similarly as carriers or non-carriers to Bsal due to the shared characteristics between species. Therefore, we are listing all species within a genus where at least one species in that genus has been identified as a carrier of Bsal.

Based on the results of Martel et al. (2014), at least 2 native U.S. species, the eastern newt and rough-skinned newt, were found to be lethally vulnerable to Bsal. The French cave salamander (*Hydromantes strinatii*), which is not native to the United States, was also tested and identified as lethally vulnerable to Bsal (Martel *et al.* 2014). The *Notophthalmus* genus has two additional native species: The black-spotted newt (*N. meridionalis*) and the striped newt (*N. perstriatus*). The *Taricha* genus has three additional native species: The red-bellied newt (*T. rivularis*), Sierra newt (*T. sierra*), and California newt (*T. torosa*). The *Hydromantes* genus has three native U.S. species: The limestone salamander (*H. brunus*), Mount Lyell salamander (*H. platycephalus*), and Shasta salamander (*H. shastae*).

At least 1 native U.S. species from the *Siren* genus, the lesser siren, has a tolerant vulnerability (Martel *et al.* (2014). The genus has one additional native species: The greater siren (*S. lacertina*).

Four native species have been identified as resistant by Martel *et al.* (2014), but we have concluded that one of these species is still capable of carrying Bsal. As we describe above in *Vulnerability and Carrier Status,* we conclude that the slimy salamander is resistant to sustained infection but it can serve as a short-term carrier of Bsal. The *Plethodon* genus has 54 other species, all of which are native to the United States (AmphibiaWeb 2015b), bringing the total number of native carrier species to 67.

Three additional native salamander species were identified as resistant to

Bsal infection: The spring salamander (*Gyrinophilus porphyriticus*), marbled salamander (*Ambystoma opacum*), and spotted salamander (*A. maculatum*) (Martel *et al.* 2014). They are not expected to be carriers; therefore, we conclude that the 20 native U.S. species in their genera are not capable of carrying Bsal. This includes 4 species from the genus *Gyrinophilus* and 16 species from the genus *Ambystoma* (AmphibiaWeb 2015b).

Of the 190 native U.S. salamander species, carrier status has not been assessed in 103 species from 16 genera. The untested genera are *Amphiuma, Aneides, Batrachoseps, Cryptobranchus, Desmognathus, Dicamptodon, Ensatina, Eurycea, Hemidactylium, Necturus, Phaeognathus, Pseudobranchus, Pseudotriton, Rhyacotriton, Stereochilus,* and *Urspelerpes* (AmphibiaWeb 2015b). Although based on the gradient responses, from resisting infection to lethal response, among the genera Martel *et al.* (2014) tested experimentally, some of these additional species could be at risk from Bsal infection or could serve as a carrier, we are not listing species in those genera because these genera have not yet been tested.

Vulnerability and Carrier Status of Threatened and Endangered Species

None of the salamander species listed as endangered or threatened under the ESA in the United States has been specifically tested for Bsal vulnerability under laboratory conditions; Bsal has not been detected in their wild populations (Martel *et al.* 2014, Bales *et al.* 2015). However, several species from the same genera have been tested and on that basis identified as carriers. As we describe above in *Vulnerability and Carrier Status,* while the Service did find evidence that shows some species within a genus may vary in their specific vulnerability, the carrier status of tested species can be extrapolated to related species including those that are listed as endangered or threatened, are candidates for ESA listing, and under review.

Of the genera that include native species that we have identified as carriers, the following species are federally listed as threatened or endangered: Jemez Mountains salamander (*P. neomexicanus*), Cheat Mountain salamander (*P. netting*), Shenandoah salamander (*P. shenandoah*) and, one species, the striped newt (*Notophthalmus perstriatus*) is a candidate species (USFWS 2015).

Seven of the species, subspecies, or distinct population segments (DPSs) listed as federally endangered or threatened are classified within the *Ambystoma* genus, which we find is not a carrier of the fungus: Reticulated flatwoods salamander (*A. bishopi*), California tiger salamander (three DPSs), frosted flatwoods salamander (*A. cingulatum*), Santa Cruz long-toed salamander (*A. macrodactylum croceum*), and Sonora tiger salamander (Martel *et al.* 2014; USFWS 2015).

No information is available regarding Bsal vulnerability or carrier status of the remaining 11 ESA-listed or candidate species or subspecies native to the United States: desert slender salamander (*Batrachoseps aridus*), Ozark hellbender, Salado salamander (*Eurycea chisholmensis*), San Marcos salamander (*E. nana*), Georgetown salamander (*E. naufragia*), Texas blind salamander (*E. (Typhlomolge) rathbuni*), Barton springs salamander (*E. sosorum*), Jollyville Plateau salamander (*E. tonkawae*), Austin blind salamander (*E. waterlooensis*), Berry Cave salamander (*Gyrinophilus gulolineatus*), and the Alabama waterdog (*Necturus alabamensis*).

In addition to those species currently recognized as federally endangered, threatened, or candidates for listing under the ESA, 36 species of native salamander from 16 genera are in various stages of review for possible ESA listing in the future (USFWS 2015). Of the genera that include native species that we have identified as carriers, the following species are currently under review for ESA listing: Limestone salamander (petitioned), Shasta salamander (petitioned), the black-spotted newt (positive 90-day finding completed), Cheoah bald salamander (*P. cheoah,* petitioned), Fourche Mountain salamander (*P. fourchensis,* petitioned), Peaks of Otter salamander (*P. hubrichti,* positive 90-day finding completed), South Mountain gray-cheeked salamander (*P. meridianus,* petitioned), and the white-spotted salamander (*P. punctatus,* petitioned) (Martel *et al.* 2014; USFWS 2015).

Three species under ESA review are members of genera that are not carriers: (Streamside salamander (*Ambystoma barbouri*) (substantial 90-day finding completed—76 FR 59836, September 27, 2011), Tennessee cave salamander (*Gyrinophilus palleucus*) (substantial 90-day finding completed—76 FR 59836, September 27, 2011), West Virginia spring salamander (*G. subterraneus*) (substantial 90-day finding completed—76 FR 59836, September 27, 2011) (Martel *et al.* 2014; USFWS 2015).

No information is available regarding the carrier status for the remaining 25 native species in 11 genera that are currently under review for ESA listing (USFWS 2015).

Additional Factors That Contribute to Consideration of Salamanders as Injurious

Likelihood of Release or Escape

In general, there is widespread concern over the increasing spread of pathogens moved through the wildlife trade (for example, Karesh *et al.* 2005). Substantial evidence shows that Bd has spread extensively throughout the world through the amphibian trade (Fisher and Garner 2007; Schloegel *et al.* 2009; Schloegel *et al.* 2012; Galindo-Bustos 2014; Kolby 2014; Kolby *et al.* 2014). Similar mechanisms of transmission and persistence in the closely related Bsal pathogen, along with detection of Bsal in captive salamanders imported by the pet trade into Great Britain, indicate that global movement of Bsal, similar to that of Bd, is not only possible but is already occurring (Cunningham 2015). Considering the occurrence of Bsal in the global pet trade, the risk to North American native species, and the number of salamanders that are imported into and transported throughout the United States through trade, Bsal is likely to be introduced into and spread throughout native salamander populations in the United States unless immediate action is taken to limit the import and interstate transport of salamanders that are likely to carry Bsal.

Infected salamanders can transmit Bsal to other species even if the introduced salamander fails to establish a population. Evidence indicates that at least some of the salamanders capable of carrying Bsal can escape or be released and introduce Bsal into the environment. As described earlier, evidence exists for release of salamanders into the wild in the United States (Picco and Collins 2008; USGS 2015). As noted above in *Invasiveness of Salamanders,* the USGS Nonindigenous Aquatic Species database has records for 14 salamander species that have been observed outside their native range. Of those, 11 are native to the United States and were discovered outside of their native ranges, and 3 are exotic species from outside the United States. These findings mean that salamanders have been shown to exist, even if temporarily, outside their native range. As such, they are capable of transmitting Bsal into nonindigenous ecosystems. Infected native species that are imported and escape or are released into native habitats would also be capable of carrying Bsal into native

salamander ecosystems where Bsal has not previously been found.

Infective Bsal zoospores can also be released into the environment if water or other materials used to house infected salamanders enter the environment due to improper disinfection and disposal methods. The water and materials become fomites to introduce the fungus into the environment if not decontaminated or disposed of properly. As described above under *Environmental Conditions Needed to Survive,* Bsal can likely live independent of a host long enough to infect other salamanders. Bd is known to remain viable for weeks in water and moist organic matter. Given our finding that Bd can serve as a surrogate for predicting Bsal's effects in salamanders at the population level, and since Bd does not require an amphibian host to remain viable, we expect that Bsal can also persist outside salamanders (as long as it has sufficient water or soil) long enough to come into contact with uninfected salamanders and start the disease cycle anew. As stated earlier, we also find that Bsal can be transmitted on dead salamanders or body parts.

As discussed above in *Introduction Pathways,* there is evidence that Bd has escaped into the environment through untreated wastewater, increasing the likelihood that Bsal could also escape if brought in via contaminated water or improperly disposed of materials. While standards for the treatment and prevention of Bd exist, in part due to recognition of its status as an internationally notifiable disease under the World Organization for Animal Health (OIE), the effectiveness and widespread application of those standards are uncertain given that international protocols for responding to Bd do not exist and the need to improve international mechanisms to respond to disease-related threats to biodiversity (Voyles *et al.* 2014).

Given the number of specimens that have been imported into the United States and Canada, it is unclear why Bsal has not yet been found in these countries (Muletz *et al.* 2014; Bales *et al.* 2015; Richgels *et al.* in review; Stephen *et al.* 2015). A comparison of Bd, which has spread in the United States, to Bsal yields some insights. Based on genetic analyses and examination of historical specimens, Bd may have originated from different places, including Japan, South Africa, or South America (Farrer *et al.* 2011; Rodriguez *et al.* 2014). In contrast, Bsal may have originated only from Asia, giving it fewer pathways to the United States (Martel *et al.* 2014). Importation of salamanders into the United States has also declined in recent years, suggesting that the propagule pressure may also be a factor by limiting the number of times in which Bsal could possibly be introduced through trade (Lockwood *et al.* 2005; USFWS OLE 2015). Bd may have spread more quickly than Bsal because of its ability to infect frogs, whereas research suggests that Bsal does not (Martel *et al.* 2014). Based on LEMIS data, frogs are traded in higher volumes than salamanders, increasing the probability of trade of a Bd-infected individual over a Bsal-infected individual. The USGS Nonindigenous Aquatic Species database also provides evidence for this higher level of trade, in that greater numbers of frogs are reported than salamanders. In addition, many frogs in trade, such as *Rana catesbeiana* (bullfrogs), are adaptable to a wide variety of environments and can easily become invasive once released in a watershed, as bullfrogs have become in the American West (Jennings and Hayes 1994; Rosen and Schwalbe 1995; Funk *et al.* 2011; Sepulveda *et al.* 2015; USGS 2015).

Taken together with the other data we reviewed, this evidence suggests that Bsal is less likely to enter the United States than Bd. However, without action, the pathways for introduction and escape of Bsal are a significant and imminent threat that can best be managed by listing salamanders that can carry Bsal as injurious wildlife, thereby minimizing opportunities for Bsal to be introduced, establish, and spread in the United States.

Potential To Survive, Become Established, and Spread

There is evidence that several of the species capable of carrying Bsal can survive long enough in the wild to transmit Bsal. The USGS Nonindigenous Aquatic Species database has records of 14 species and populations that have been observed in the United States outside of their native range (USGS 2015). Of those, 11 are native and have established populations outside of their native U.S. range: Eastern tiger salamander (*Ambystoma tigrinum*), barred tiger salamander (*Ambystoma mavortium mavortium*), blotched tiger salamander (*Ambystoma mavortium melanostictum*), long-toed salamander (*Ambystoma macrodactylum*), three-toed amphiuma (*Amphiuma tridactylum*), black-bellied salamander (*Desmognathus quadramaculatus*), Santeetlah dusky salamander (*Desmognathus santeetlah*), mudpuppy, eastern newt, lesser siren, and rough-skinned newt. The three species from outside the United States include Japanese newt, Oriental fire belly newt, and spotless stout newt (*Pachytriton labiatus*).

According to Richgels *et al.* (in review), ''Although prevalence of Bsal in live amphibian shipments, probability of release of infected materials (including live or dead animals or wastewater), and likelihood of interaction between infectious material and naïve free-ranging salamanders is unknown, given the large quantities of imported amphibians, even a small probability of infected animals or materials escaping into the wild could lead to introduction of [Bsal].'' As discussed earlier under *Introduction Pathways* and *Environmental Conditions Needed to Survive,* Bsal is expected to be able to survive outside of salamander hosts for several weeks given suitable conditions in water. If a salamander comes in contact with Bsal and then transmits it during a time when salamanders congregate, such as during breeding as described above under *Habitats, Reproductive Processes, and Seasonal Habits,* the potential for Bsal to survive, establish, and spread through animals or animal parts is significant. As we describe above under *How the Fungus Affects Salamanders,* Bsal can be transmitted on dead tissue where keratin is present, particularly skin, but do not find that Bsal can be transmitted through reproductive tissue including eggs and gametes.

As Richgels *et al.* (in review) noted, ''[T]he patterns of global Bd spread suggests that given release, exposure of native populations is likely. If Bsal follows similar patterns to the spread of Bd and no additional risk mitigation steps are taken, Bsal is likely to be introduced to the US.'' The Service finds that the capacity of infected salamanders to serve as the vector for infecting wild salamanders, together with the capacity of Bsal to survive for an extended period independent of an amphibian host, suggests that Bsal has a high likelihood of surviving, establishing, and spreading once it is introduced into a new area.

Impacts on Wildlife Resources or Ecosystems

If Bsal is introduced into the United States, we expect the species with lethal vulnerability would be at greatest risk. However, disease outbreaks can result from a combination of biotic and abiotic factors, including species vulnerability, exposure, behavior, immunity, co-infections, and environmental conditions (Wobeser 2007). Therefore, the vulnerability of individuals under laboratory conditions is an incomplete predictor of disease effects (Wobeser

2007). Native salamander species known to be tolerant of Bsal infection under experimental conditions may demonstrate more severe clinical disease when infection is combined with additional stressors in the wild, as has been found for other diseases, including those in amphibians (Wobeser 2007; Kerby *et al.* 2011; Kiesecker 2011). For example, Bodinof *et al.* (2011) noted that Bd may be found more frequently in hellbenders that are immune-compromised or that Bd infection increases the adverse effects of such species to other infections. Considering these cumulative factors, as well as the lack of data for the majority of native salamander species, our assessment of risk in native species is likely conservative.

Bsal can severely affect wildlife resources. At least 2 native species are lethally vulnerable to Bsal and at least 1 is tolerant to Bsal infection. At least 67 native species can act as carriers or sources of infection for other species. While not all species have been tested for their response to Bsal, based on the high rates of infection that have been observed, the fungus may have significant negative effects on additional species.

As described above in *Ecosystem-Level Effects,* salamanders are important parts of the ecosystems in which they occur. They are often the most abundant vertebrates in their ecosystems, and, as a vital part of the food web, they are both important prey for and predators of many species (Holomuzki *et al.* 1994; Regester *et al.* 2006). In some places, they are considered keystone species that help control some invertebrate populations and affect cycling of nutrients in an ecosystem, contributing significantly to overall ecosystem health. For example, by consuming arthropods that would otherwise release carbon dioxide into the atmosphere by decomposing leaf litter in forests, salamanders slow carbon emissions from leaf litter decomposition, which has implications for the global carbon cycle (Best and Welsh 2014). As described earlier, invertebrate species that depend on salamanders for aspects of their life cycle or ecology are likely to be adversely affected if their host species declines in response to a Bsal introduction. Loss of these keystone species would result in significant ecosystem-level change.

Salamanders constitute much of the vertebrate biomass of forests, and they play an important role in ecosystems as insect consumers, shapers of the landscape, and climate mediators (Burton and Likens 1975; Davic and Welsh 2004; Wyman 1998; Best and Welsh 2014). If native U.S. salamander species were to experience declines from Bsal infection as the fire salamander experienced in the Netherlands (Spitzen-van der Sluijs *et al.* 2013), we expect detrimental ecological effects.

The eastern newt, one of the lethally vulnerable species, is one of the most widespread salamander species in North America (Roe and Grayson 2008, Martel *et al.* 2014). As top predators in pond ecosystems, eastern newts regulate frog tadpole abundance and, therefore, affect the amount and type of nutrients available in the ponds, keeping them in ecological balance (Morin *et al.* 1983; Morin 1995). If eastern newt populations decline because of Bsal infection in the wild, imbalances could result in ponds and ecosystems throughout the eastern United States. Eastern newts also travel long distances between aquatic and terrestrial habitats (Roe and Grayson 2008), so if the species was to be eliminated from an area, the amount of nutrients available in upland areas would also be affected.

The other native U.S. species known to be lethally vulnerable to Bsal, the rough-skinned newt, is geographically widespread along the Pacific Coast of North America from Santa Cruz, California, to southeastern Alaska (Martel *et al.* 2014; Amphibiaweb 2015a). The rough-skinned newt plays an important role in ecosystems through its consumption of invertebrates that break down leaf litter and release carbon into the atmosphere (Davic and Welsh 2004). If rough-skinned newt populations were to experience severe declines from Bsal infection, a result could be significant additional inputs of carbon in the atmosphere, as has been observed with other species (Wyman 1998; Best and Welsh 2014).

As Richgels *et al.* (in review) noted, some parts of the United States may reach temperatures above the thermal tolerance of Bsal on a seasonal basis. However, wildlife and habitats would suffer losses if local populations of salamanders affected by Bsal prior to temperatures rising as part of the regular seasonal cycle suffered declines (and possible extirpation) and were unable to return to pre-infection levels in those ecosystems.

For these reasons, we conclude that the negative impact to wildlife resources or ecosystems is expected to be high if Bsal is introduced into U.S. ecosystems.

Impact to Threatened and Endangered Species and Their Habitats

None of the salamander species listed as endangered or threatened under the ESA in the United States have been specifically tested for Bsal vulnerability under laboratory conditions; Bsal has not been detected in their wild populations (Martel *et al.* 2014, Bales *et al.* 2015). Of the genera that include native species that we have identified as carriers, 4 species are federally listed as threatened or endangered or are candidates for listing. In addition, 8 species of native salamanders from genera that were identified as carriers are in various stages of review for possible ESA listing in the future (USFWS 2015). Because not all species have been tested, it is possible that the fungus will negatively affect other ESA-protected species.

Impacts to Human Beings, Forestry, Horticulture, and Agriculture

We do not expect direct effects to forestry, horticulture, or agriculture. Bsal does not appear to infect humans or other animals except for salamanders. Trees and other plants are also not affected. Indirectly, the introduction or establishment of Bsal would have negative effects on humans primarily from the loss of native wildlife biodiversity. These losses would affect the aesthetic, recreational, and economic values currently provided by native wildlife and healthy ecosystems. Educational values would also be diminished through the loss of biodiversity and ecosystem health. However, we are not listing the species because of the indirect impacts to forestry, horticulture, or agriculture, but rather due to their impacts to wildlife and wildlife resources.

Wildlife or Habitat Damages That May Occur From Control Measures

Richgels *et al.* (in review) stated, ''[T]here are few known viable treatment or management options for responding to the introduction of Bsal . . . hence mitigation strategies should focus on prevention or reduction of introduction events.'' As discussed below in *Ability to Prevent or Control the Spread of Pathogens or Parasites,* current control strategies appear to focus on treating salamanders in a controlled laboratory setting. We are not aware of control measures that are effective in treating infected salamanders over a large-scale area that could eliminate Bsal without killing the salamanders themselves.

In an effort to control Bsal, it might be possible to kill all salamanders in an area and repopulate it after the fungus has been given enough time to clear from the environment. However, the life history of salamanders makes it highly unlikely that all individuals, including those that are infected, could be completely eradicated. Many species are

long-lived and inhabit areas that may be hard to reach. In addition, the effects on other wildlife of chemically treating an area in order to eradicate infected salamanders is unknown but could be expected to be severe.

Ability To Prevent Escape and Establishment

We considered whether it was practical for an exporting foreign nation to produce a health certificate stating that a possible carrier of Bsal has been found to be free of the fungus. Such action would help ensure that Bsal does not escape from an exporting nation by being carried on an infected salamander. However, there are significant concerns regarding the effectiveness and sensitivity of current testing methods (including the return of false negatives), lack of validation and sufficient testing capacity, and agency resources required to conduct inspections, interpret results, and issue health certificates. Although some countries may have the necessary skills to prepare a health certification that salamanders are free of Bsal, not all exporting nations may have the necessary skills or resources. Scientists and diagnostic laboratories are also working to standardize laboratory protocols (Ballard, pers. comm.).

As discussed below in *Ability to Prevent or Control the Spread of Pathogens or Parasites,* the ability and effectiveness of measures to prevent or control Bsal is currently low. While less certain, we also expect the ability to prevent escape and establishment is also low. Nonregulatory actions, such as implementing voluntary Best Management Practices or individual State action, are possible. The Service, for example, is working with partners on efforts such as Habitattitude™, which encourages responsible consumer actions with respect to pet ownership. Such actions include finding alternatives to releasing pets into the environment. Voluntary actions, such as applying heat therapy as described in Blooi *et al.* (2015a) and Blooi *et al.* (2015b), may help reduce the threat posed by Bsal. However, at this time it is not possible to determine the likelihood of success of such measures.

As described earlier under *Invasiveness of Salamanders* and *General Description of Chytrid Fungus,* salamanders have escaped into the ecosystem, and Bd, a related fungus, has also escaped and established in the United States. Therefore, we expect the likelihood of the Service's ability to prevent escape and establishment of Bsal through infected salamanders to be low. Although voluntary actions are vital to help minimize the threat of invasive species, the Service is highly concerned about the extensive damage that introduction of Bsal would do to this nation's resources. As a result, we concluded that we cannot rely on voluntary actions alone to address the severity of the threat that Bsal poses and that other measures to prevent escape and establishment are not sufficient to ensure Bsal is not successfully introduced.

Therefore, we find that we cannot rely on these approaches to prevent escape and establishment of Bsal and that our current capacity to prevent escape and establishment is low.

Potential To Eradicate or Manage Established Populations

While some introduced salamanders in the United States have been successfully controlled, such as the lesser siren (which was eliminated from a backyard pond outside its native U.S. range), others such as the three-toed amphiuma have not (USGS 2015). However, evidence for control is sparse. Given the high rates of infection among salamanders tested by Martel *et al.* (2014), and the lack of control measures for Bsal that could be employed outside of a controlled facility, it is likely that Bsal would persist once introduced into the environment given appropriate environmental conditions, especially if a tolerant or susceptible salamander established a population and continued to spread Bsal.

Ability To Rehabilitate Disturbed Ecosystems

Bsal infection can lead to the loss of keystone species in the ecosystem. The ability to rehabilitate disturbed ecosystems is expected to be low. We considered whether the Service's National Fish Hatchery System (NFHS) could be used to maintain salamanders in refugia while areas are treated, much as we maintain a population of the San Marcos salamander, which is listed as threatened, at the Uvalde National Fish Hatchery. However, it is impractical to equip NFHS facilities to be able to rapidly protect numerous salamander populations and maintain them for an extended time such as might be required due to Bsal's introduction. Although, as described in the next section, a few options exist to treat individual salamanders, none have been identified that can be used to clear Bsal from a widespread area. Consequently, we expect that once Bsal has been introduced, it will persist and spread with little opportunity for widespread disinfection from ecosystems.

Studies have also questioned the effectiveness of captive-breeding programs to address threats, such as infectious disease, to amphibians, including salamanders (Harding *et al.* 2015). Research on booroolong frogs (*Litoria booroolongensis*) demonstrated that exposing them to Bd did not improve their chances of mitigating future reinfection (Cashins *et al.* 2013). We expect, given similarities of Bd to Bsal, that salamanders will also show a similar response to Bsal infection. As a result, it may not be possible to stimulate an immune response in captive salamander populations that would allow them to be reintroduced into ecosystems where Bsal may still exist.

Therefore, the ability to rehabilitate disturbed ecosystems is expected to be low because the Service would be unable to ensure that it could treat and protect all salamander populations expected to be affected by Bsal in the wild.

Ability To Prevent or Control the Spread of Pathogens or Parasites

The ability and effectiveness of measures to prevent or control Bsal is currently low. Few options can ensure potentially infected salamanders do not carry Bsal. Blooi *et al.* (2015a) has shown that treating salamanders infected with Bsal by exposing them ''to 25 °C [77 °F] for 10 days resulted in complete clearance of infection and clinically cured all experimentally infected animals. This treatment protocol was validated in naturally infected wild fire salamanders.'' The authors found that temperature treatment could be an effective option given the host salamander's thermal tolerance. However, the treatment does have some shortcomings. It is unknown whether all salamander species can tolerate the thermal regime required (Kolby, pers. comm.). Blooi *et al.* (2015a) also noted that there is some uncertainty as to whether the method is completely effective, as evidence of Bsal was found after thermal treatment, although it is possible that the evidence consisted of dead cells only.

Other treatment options also exist, such as treatment with antifungal medications that can be applied on animals that do not tolerate 25 °C (77 °F) (Martel, pers. comm; Blooi *et al.* 2015b). It may be possible to treat amphibians in the wild for Bd with antifungals by capturing individuals and soaking them in a bath of the chemical, then releasing them back into the environment. This process does not seem to be as effective as desired, but may delay the eventual outcome of an outbreak enough to help individuals persist in the population (Hardy *et al.* 2015). Blooi *et al.* (2015b)

identified a method for treating infected salamanders with a combination of antifungals and temperature control that successfully cleared Bsal; however, such treatment worked only for controlled settings such as those found in a laboratory or conservation facility and is impractical to treat widespread areas in the natural environment given the likely cost, personnel, and time needed to locate and treat all salamanders in the wild. As we have noted above under *Environmental Conditions Needed to Survive,* Bsal is likely capable of persisting in the environment without a host by transmission to infected materials. Even if all individuals of a population could be successfully treated, the threat of reintroduction from environmental contamination would still exist.

Given the expected severity of consequences of Bsal introduction, all imported salamanders that could be carriers would need to be treated, which is not practical at this time due to the limited conditions under which this treatment is effective. Not all species will tolerate treatment, and reliable diagnostic capacity is needed to verify that animals do not carry Bsal following treatment. If an outbreak occurs, it would not be practical to locate and treat all individuals in the wild in U.S. ecosystems. While antifungal agents could be applied to all animals, either in the laboratory or perhaps applied over a large geographic area, we are concerned about side effects on the animals being treated. We are also concerned about possible negative environmental effects if a chemical was widely applied (Gyllenhammar *et al.* 2009; Hasselberg *et al.* 2008).

Any Potential Ecological Benefits to Introduction

There are no known benefits of Bsal or of salamanders carrying Bsal. The risks to native wildlife and wildlife resources greatly outweigh any unlikely benefits. There are no other potential ecological benefits for the introduction of Bsal or of Bsal-infected or Bsal-carrier salamanders into the United States.

Conclusion

Overall, there is a high risk to the wildlife and wildlife resources of the United States from salamanders that are capable of carrying Bsal. The United States leads all other countries in salamander diversity. Of the 190 native U.S. species, the vulnerability of 7 has been tested. We find that the fungus can infect and is lethal to at least 2 salamander species native to the United States and that a total of 67 native species are carriers of Bsal. The vulnerability and carrier status of 103 species have not been evaluated, many of which may also be vulnerable to this potentially deadly fungus. The disease may stress species with less lethal vulnerability under wild conditions; if these species are stressed by other factors, Bsal could cause harm to additional species in the face of cumulative stressors. The benefits that these native salamander species provide to ecosystems, and in turn the ecosystem services that benefit people, are significant. The Service concludes that preventing Bsal from infecting native salamanders will prevent harmful effects to the wildlife and wildlife resources of the United States and merits listing of salamanders capable of carrying Bsal as injurious.

Salamanders capable of carrying Bsal have the potential to escape and spread Bsal. Species capable of carrying Bsal can survive long enough in the wild to transmit the fungus or can transmit it to other carriers while in transit. Bsal can also be introduced and infect native salamanders by improper disposal of material that comes in contact with infected salamanders, and persist long enough in the environment without a host to represent a threat.

There is evidence that all species within a genus, where at least one species has been identified as a carrier of Bsal, can also be a threat. Our analysis found no conclusive evidence to the contrary. We find that, due to shared characteristics by species within a genus, other species within these genera are also highly likely to be carriers of Bsal, even if not every species in the genus has been tested to verify that it is a carrier of Bsal. Hybrids consisting of species found entirely within a genus identified as a carrier are also expected to be carriers.

The main pathway for the global spread of Bsal is the international trade in salamanders. The most likely pathway of a salamander that is a host to Bsal into the United States would include a pet store or online retailer. Listing salamanders that are capable of carrying Bsal as injurious wildlife will significantly confine this pathway and limit Bsal's capacity to be introduced, establish, and spread in the United States.

The current capacity to prevent escape and establishment is low. Rehabilitation of disturbed ecosystems is expected to be very difficult. The ability and effectiveness of measures to prevent or control Bsal is currently low. There are no known benefits of Bsal.

The Service is listing live and dead specimens, including parts. We find the risk of transmission of Bsal to other salamanders is high from both live and dead specimens. Any salamanders that are infected and lethally vulnerable may die in transport and continue to carry Bsal into the United States. The risk is also high from improper disposal of materials that might be contaminated by those live or dead specimens. While we cannot list contaminated materials as injurious under the authority of the Act, by listing the carriers of Bsal, we seek to prevent the introduction of such materials.

The Service is not adding eggs or gametes because Bsal does not appear to affect reproductive tissue such as eggs or gametes. The Service is not listing genera that we find are not carriers of Bsal because such salamanders are not capable of introducing Bsal to the United States or otherwise transmitting it to native populations. We are also not listing genera where there is no data, even though it is possible that untested genera may also be capable of carrying Bsal.

For the reasons stated, the Service finds the 20 genera of salamanders to be injurious to the wildlife and wildlife resources of the United States. The potential for Bsal introduction into the United States is high, the United States has suitable conditions for Bsal survival, and the consequences of introduction into the United States are expected to be significant and occur across a wide range of the United States. By listing species that can carry Bsal, we are taking immediate action to help ensure the fungus does not enter the United States and infect native salamander populations and cause severe individual mortality, population declines, and ecosystem harm. We are not listing genera for which data is unavailable because we do not have a basis for doing so.

Required Determinations

Regulatory Planning and Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility

and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that the regulatory system must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these principles.

Executive Order 12866, Economic Analysis of Federal Regulations under Executive Order 12866 (OMB 1996), and Circular A–4 (OMB 2003) identify guidelines or ''best practices'' for the economic analysis of Federal regulations. In the context of the specific regulation under consideration, we anticipate minor economic impacts.

The rule listing 20 genera of salamanders would prohibit an estimated 217,000 salamanders from being imported per year, and a minimum of 338 domestically bred salamanders may be affected due to the interstate transportation prohibition. The maximum annual loss to entities that deal in these species is $3.8 million in revenue. The maximum annual loss to the economy is estimated to be $10.0 million. The preferred alternative (Alternative 3, described below) does not meet the cost criteria for a significant rule. Furthermore, the preferred alternative is not expected to have a significant economic impact on a substantial number of small entities.

In the long term, the rule is expected to benefit the economy. Efforts to control or eradicate invasive species, and manage the costs they incur to society, once they have become established are generally recognized as being less effective and more expensive than efforts to prevent potentially invasive species from establishing in the first place (Leung *et al.* 2002, Finnoff *et al.* 2007). As a result, sectors of the economy that will not need to expend resources to control or manage injurious wildlife will be expected to gain from a timely listing process.

The Service considered five alternatives under Executive Order 12866 for the economic analysis for this rule: (1) No action; (2) listing species that were identified by Martel *et al.* (2014) and other sources to be carriers of Bsal; (3) listing all species in genera in which there is at least one confirmed carrier and all species in the genus are likely to be a carrier; (4) listing all salamanders; and (5) requiring a health certificate stating that the animal being moved is free of Bsal, in lieu of or in addition to listing. The purpose of considering alternatives is to identify whether there is a more effective option that can achieve the desired goals of the rule.

Alternative 1 was no action. This is the status quo. We would not list any species of salamanders as injurious. We did not select this option because of the significant risk that Bsal poses to native species and other wildlife resources in the United States. We expect that significantly greater financial and natural resources losses will be incurred by us and our partners in having to manage and respond to Bsal if the fungus establishes and spreads in the United States than by taking action now to prevent and minimize its introduction. No loss of retail sales or economic output due to actions by the Service would result from this alternative. It is expected that costs would be incurred by the salamander and ancillary industries due to Bsal management and the impact of Bsal on the supply of salamanders.

Alternative 2 was listing only those species that Martel *et al.* (2014) and Cunningham *et al.* (2015) (as explained further in Chytridcrisis 2015b) confirmed are carriers of Bsal. The list of species that Martel *et al.* (2014) and Cunningham *et al.* (2015) evaluated is considerably smaller and consists of 27 species. As described earlier in *Vulnerability and Carrier Status,* we have determined that all species in a genus will share similar characteristics that make them capable of serving as a carrier of Bsal. Between 2004 and 2014 (USFWS OLE 2015), 1.6 million salamanders of these species were imported that would have been sold for an estimated retail value of $22.8 million; the maximum annual loss to entities that deal in these species would be $2.1 million in revenue. The maximum annual loss to the economy under this alternative is estimated to be $5.6 million.

Alternative 3 was listing all species in genera where there is at least one confirmed carrier and all species in that genus are likely to be a carrier. As we described earlier, we have a sound scientific basis to conclude that all species in a genus will share similar characteristics in regards to whether they are capable of serving as a carrier of Bsal. Martel *et al.* (2014) did not find any examples of species in a genus where one species was likely to be a carrier and another species was not, with two exceptions as discussed above. Given the significant risk that Bsal poses, we find it is important to list all species that are likely to be carriers of the fungus. This alternative was selected for this interim rule. Between 2004 and 2014 (USFWS OLE 2015), 2.4 million salamanders of these genera were imported that would have been sold for an estimated retail value of $41.4 million; the maximum annual loss to entities that deal in these species would be $3.8 million in revenue. The maximum annual loss to the economy under this alternative is estimated to be $10.0 million.

Alternative 4 was listing all salamanders in the world. There are approximately 681 species of salamanders. Although some species that we are not listing may be negatively vulnerable to or serve as carriers of Bsal, we are taking immediate action against those species that current scientific research and analysis has confirmed are carriers of Bsal, along with other species in the genus that share the same traits that make them highly likely to be carriers of Bsal. Between 2004 and 2014 (USFWS OLE 2015), 2.5 million salamanders were imported that would have been sold for an estimated retail value of $43.9 million. The maximum annual loss to entities that deal in these species is estimated to be $4.0 million in revenue. The maximum annual loss to the economy under this alternative is estimated to be $10.7 million.

Alternative 5 would have required a health certificate that must accompany salamanders being imported and transported across State lines that states that the animal being imported or moved through interstate movement is free of Bsal in lieu of or in addition to listing. The Service did not select this option because of concerns regarding the effectiveness of current testing methods, the lack of available testing capacity, expenses associated with testing each shipment, and inadequate agency resources to conduct inspections, interpret the results, and issue health certificates. It is uncertain what the loss in revenue and economic output would be due to this alternative. The minimum effect would be identical to Alternative 1 (No Action), and the maximum effect would be that of Alternative 4 (prohibiting all salamanders). The effect on the number imported or transported depends on the cost of compliance. Therefore, of the 2.5 million salamanders that were imported between 2004 and 2014 (USFWS OLE 2015), all or none may have been imported or transported under these circumstances. They would have been sold for up to an estimated retail value of $43.9 million. The maximum annual loss to entities that deal in these species is $4.0 million in revenue. The maximum annual loss to the economy is estimated to be $10.7 million.

We considered other alternatives that we rejected because we do not have the authority under the Lacey Act to

implement them ourselves. For example, we do not have the authority or capacity to establish and enforce a quarantine system. As a result, we cannot require all shipments to wait in quarantine for a period of time sufficient to prove that imported animals do not carry Bsal or to treat them prophylactically.

We also considered encouraging partners to take nonregulatory action, such as voluntary Best Management Practices or individual State action. The Service will pursue such actions as it moves forward, and we are working with partners on efforts such as Habitattitude™, which encourages responsible consumer actions with respect to pet ownership. Voluntary actions, such as applying heat therapy as described in Blooi *et al.* (2015a) and Blooi *et al.* (2015b), may help reduce the threat posed by Bsal. Although voluntary actions are vital to help minimize the threat of invasive species, the Service is highly concerned about the extensive damage that introduction of Bsal would do to this nation's resources and concluded that we cannot rely on voluntary actions alone in this instance to address the severity of the threat that Bsal poses.

Regulatory Flexibility Act

The Secretary of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), is not required. The factual basis for this certification is provided in a draft regulatory flexibility analysis in the economic analysis, prepared to accompany this rule, which we briefly summarize below. See **FOR FURTHER INFORMATION CONTACT** or *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2015–0005 for the complete document.

Although an interim rule allows us to move more quickly to implement the listing, it does not change the substantive basis for the listing decision, modify the types of organizations that would be affected by the rule, or affect the future administration of the Act as it applies to small entities to which the listing decision applies. In general, entities that are affected by an injurious listing decision would include:

(1) entities importing animals, gametes, viable eggs, and hybrids of species; and

(2) entities (including breeders and wholesalers) with interstate sales of animals, gametes, viable eggs, and hybrids. (However, this rule does not include provisions pertaining to gametes and viable eggs.)

The ultimate effects of any listing on these entities would depend on the amount of interstate sales within the taxon's market. Impacts would also depend upon whether or not close substitutes for the species listed by this rule exist. In this case, the rule:

a. Will not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Listing 20 genera of salamanders would prohibit an estimated 217,000 salamanders imported per year; 338 domestically bred salamanders would face the interstate transportation prohibition. The maximum annual loss to entities that deal in these species is $3.8 million in revenue. Small businesses are expected to incur $2.3 million of the burden. Impacts per small business may be as high as $453,000 for importers and $23,000 for domestic breeders.

The interim rule makes no changes in the compliance requirements of any business. The Service is unaware of any duplicative, overlapping, or conflicting Federal rules. Several States implement similar acts that are more restrictive than the Federal law.

Small Business Regulatory Enforcement Fairness Act

The interim rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Would not have an annual effect on the economy of $100 million or more. The rule listing 20 genera of salamanders, including 201 species, would prohibit an estimated 217,000 salamanders imported per year, and prohibit the interstate movement of at least 338 domestically bred individuals. The maximum annual loss to entities that deal in these species is $3.8 million in revenue. Small businesses are expected to incur $2.3 million of the burden. Impacts per small business may be as high as $453,000 for importers and $23,000 for domestic breeders. In addition, businesses would also face the risk of fines if caught transporting these salamanders or their parts across State lines. The penalty for violation of the Act is not more than 6 months in prison and not more than a $5,000 fine for an individual and not more than a $10,000 fine for an organization.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Businesses breeding or selling the listed salamanders would be able to substitute other species and maintain business. Some businesses, however, may close. We do not have data for the potential substitutions, and, therefore, we do not know the number of businesses that may close.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

a. This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector.

b. The rule would 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. 1531 *et seq.*) is not required.

Takings

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), the rule does not have significant takings implications. A takings implication assessment is not required. This rule would not impose significant requirements or limitations on private property use. While import and interstate transport of any of the listed species is prohibited, any person who currently owns one of the listed species can continue to possess the salamander and engage in intrastate transport and other activities within their State or territory, as allowed under State, tribal, or territorial law.

Federalism

In accordance with Executive Order 13132 (Federalism), this interim rule does not have significant Federalism effects. A Federalism assessment is not required. This rule would not have any

direct effects on 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, in accordance with Executive Order 13132, we determine that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the interim rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order. The interim rule has been reviewed to eliminate drafting errors and ambiguity, was written to minimize litigation, provides a clear legal standard for affected conduct rather than a general standard, and promotes simplification and burden reduction.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. OMB has approved the information collection requirements associated with the required permits and assigned OMB Control No. 1018–0093, which expires May 31, 2017. We 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.

National Environmental Policy Act

We have reviewed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) and our Departmental Manual in 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. Under Department of the Interior agency policy and procedures, this rule is covered by a categorical exclusion and preparation of a detailed statement under NEPA is not required because it adds species to the list of injurious wildlife under 50 CFR subchapter B, part 16, which prohibits the importation into the United States and interstate transport of wildlife found to be injurious. (For further information, see 80 FR 66554; October 29, 2015.) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. This rule involves the importation and interstate movement of salamanders. We are unaware of such movement in these species by tribes.

Effects on Energy

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references used in this rulemaking is available at *http://www.regulations.gov* under Docket No. FWS–HQ–FAC–2015–0005.

Authors

The primary authors of this interim rule are the staff members of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 16

Fish, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons discussed in the preamble, the U.S. Fish and Wildlife Service amends part 16, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 16—[AMENDED]

■ 1. The authority citation for part 16 continues to read as follows:

Authority: 18 U.S.C. 42.

■ 2. Revise § 16.14 to read as follows:

§ 16.14 Importation of live or dead amphibians or their eggs.

(a) The importation, transportation, or acquisition of any live or dead specimen, including parts, but not eggs or gametes, of the genera *Chioglossa, Cynops, Euproctus, Hydromantes, Hynobius, Ichthyosaura, Lissotriton, Neurergus, Notophthalmus, Onychodactylus, Paramesotriton, Plethodon, Pleurodeles, Salamandra, Salamandrella, Salamandrina, Siren, Taricha, Triturus,* and *Tylototriton,* including but not limited to, the species listed in this paragraph, is prohibited except as provided under the terms and conditions set forth at § 16.22 of this part:

(1) *Chioglossa lusitanica* (golden striped salamander).

(2) *Cynops chenggongensis* (Chenggong fire-bellied newt).

(3) *Cynops cyanurus* (blue-tailed fire-bellied newt).

(4) *Cynops ensicauda* (sword-tailed newt).

(5) *Cynops fudingensis* (Fuding fire-bellied newt).

(6) *Cynops glaucus* (bluish grey newt, Huilan Rongyuan).

(7) *Cynops orientalis* (Oriental fire belly newt, Oriental fire-bellied newt).

(8) *Cynops orphicus* (no common name).
(9) *Cynops pyrrhogaster* (Japanese newt, Japanese fire-bellied newt).
(10) *Cynops wolterstorffi* (Kunming Lake newt).
(11) *Euproctus montanus* (Corsican brook salamander).
(12) *Euproctus platycephalus* (Sardinian brook salamander).
(13) *Hydromantes ambrosii* (Ambrosi salamander).
(14) *Hydromantes brunus* (limestone salamander).
(15) *Hydromantes flavus* (Mount Albo cave salamander).
(16) *Hydromantes genei* (Sardinian cave salamander).
(17) *Hydromantes imperialis* (imperial cave salamander).
(18) *Hydromantes italicus* (Italian cave salamander).
(19) *Hydromantes platycephalus* (Mount Lyell salamander).
(20) *Hydromantes sarrabusensis* (no common name).
(21) *Hydromantes shastae* (Shasta salamander).
(22) *Hydromantes strinatii* or *Speleomantes strinatii* (French cave salamander, Strinati's cave salamander).
(23) *Hydromantes supramontis* (Supramonte cave salamander).
(24) *Hynobius abei* (Abe's salamander).
(25) *Hynobius amakusaensis* (Amakusa-sanshouo).
(26) *Hynobius amjiensis* (Anji salamander).
(27) *Hynobius arisanensis* (Arisan hynobid).
(28) *Hynobius boulengeri* (Odaigahara salamander).
(29) *Hynobius chinensis* (Chinese salamander).
(30) *Hynobius dunni* (Oita salamander).
(31) *Hynobius formosanus* (Taiwan salamander).
(32) *Hynobius fucus* or *Hynobius fuca* (Taiwan lesser salamander).
(33) *Hynobius glacialis* (Nanhu salamander).
(34) *Hynobius guabangshanensis* (no common name).
(35) *Hynobius hidamontanus* (Hakuba salamander).
(36) *Hynobius hirosei* (no common name).
(37) *Hynobius katoi* (Akaishi sansho-uo).
(38) *Hynobius kimurae* (Hida salamander).
(39) *Hynobius leechii* (northeastern China hynobiid salamander).
(40) *Hynobius lichenatus* (northeast salamander).
(41) *Hynobius maoershanensis* (no common name).
(42) *Hynobius naevius* (blotched salamander).
(43) *Hynobius nebulosus* (misty salamander).
(44) *Hynobius nigrescens* (black salamander).
(45) *Hynobius okiensis* (Oki salamander).
(46) *Hynobius osumiensis* (Osumi-sanshouo).
(47) *Hynobius quelpaertensis* (no common name).
(48) *Hynobius retardatus* (Hokkaido salamander).
(49) *Hynobius shinichisatoi* (Sobo-sanshouo).
(50) *Hynobius sonani* (Sonan's hynobiid).
(51) *Hynobius stejnegeri* (Bekko Sansho-uo).
(52) *Hynobius takedai* (Hokuriku Sansho-uo).
(53) *Hynobius tokyoensis* (Tokyo salamander).
(54) *Hynobius tsuensis* (Tsushima Sansho-uo).
(55) *Hynobius turkestanicus* (Turkestanian salamander).
(56) *Hynobius yangi* (no common name).
(57) *Hynobius yatsui* (no common name).
(58) *Hynobius yiwuensis* (Yiwu hynobiid).
(59) *Ichthyosaura alpestris* (alpine newt).
(60) *Lissotriton boscai* (Bosca's newt).
(61) *Lissotriton helveticus* (palmate newt).
(62) *Lissotriton italicus* (Italian newt).
(63) *Lissotriton kosswigi* (Triton pontue de Kosswig).
(64) *Lissotriton lantzi* (no common name).
(65) *Lissotriton montandoni* (Carpathian newt).
(66) *Lissotriton vulgaris* (smooth newt).
(67) *Neurergus crocatus* (no common name).
(68) *Neurergus derjugini* or *Neurergus microspilotus* (Kurdistan newt).
(69) *Neurergus kaiseri* (Lorestan newt, Luristan newt, emperor spotted newt, Zagros newt, Iranian harlequin newt, kaiser newt).
(70) *Neurergus strauchii* (no common name).
(71) *Notophthalmus meridionalis* (black-spotted newt).
(72) *Notophthalmus perstriatus* (striped newt).
(73) *Notophthalmus viridescens* (eastern newt).
(74) *Onychodactylus fischeri* (long-tailed clawed salamander).
(75) *Onychodactylus fuscus* (Tadami clawed salamander).
(76) *Onychodactylus intermedius* (Bandai clawed salamander).
(77) *Onychodactylus japonicus* (Japanese clawed salamander).
(78) *Onychodactylus kinneburi* (Shikoku clawed salamander).
(79) *Onychodactylus koreanus* (Korai-Sansyouo).
(80) *Onychodactylus nipponoborealis* (Riben Bei Zhaoni).
(81) *Onychodactylus tsukubaensis* (Tsukuba clawed salamander).
(82) *Onychodactylus zhangyapingi* (Jilin Zhaoni).
(83) *Onychodactylus zhaoermii* (Liaoning).
(84) *Paramesotriton caudopunctatus* (spot-tailed warty newt).
(85) *Paramesotriton chinensis* (Chinese warty newt).
(86) *Paramesotriton deloustali* (no common name).
(87) *Paramesotriton fuzhongensis* (no common name).
(88) *Paramesotriton guanxiensis* (Guangxi warty newt).
(89) *Paramesotriton hongkongensis* (no common name).
(90) *Paramesotriton labiatus* (spotless stout newt).
(91) *Paramesotriton longliensis* (no common name).
(92) *Paramesotriton maolanensis* (no common name).
(93) *Paramesotriton qixilingensis* (no common name).
(94) *Paramesotriton wulingensis* (no common name).
(95) *Paramesotriton yunwuensis* (no common name).
(96) *Paramesotriton zhijinensis* (no common name).
(97) *Plethodon ainsworthi* (Catahoula salamander, bay springs salamander).
(98) *Plethodon albagula* (western slimy salamander).
(99) *Plethodon amplus* (Blue Ridge gray-cheeked salamander).
(100) *Plethodon angusticlavius* (Ozark salamander, Ozark zigzag salamander).
(101) *Plethodon asupak* (Scott Bar salamander).
(102) *Plethodon aureolus* (Tellico salamander).
(103) *Plethodon caddoensis* (Caddo Mountain salamander).
(104) *Plethodon chattahoochee* (Chattahoochee slimy salamander).
(105) *Plethodon cheoah* (Cheoah bald salamander).
(106) *Plethodon chlorobryonis* (Atlantic Coast slimy salamander).
(107) *Plethodon cinereus* (eastern red-backed salamander, redback salamander, salamandre rayée, red-backed salamander).
(108) *Plethodon cylindraceus* (white-spotted slimy salamander).
(109) *Plethodon dorsalis* (zigzag salamander, northern zigzag salamander).

(110) *Plethodon dunni* (Dunn's salamander).
(111) *Plethodon electromorphus* (northern ravine salamander).
(112) *Plethodon elongatus* (Del Norte salamander).
(113) *Plethodon fourchensis* (Fourche Mountain salamander).
(114) *Plethodon glutinosus* (slimy salamander, northern slimy salamander).
(115) *Plethodon grobmani* (southeastern slimy salamander).
(116) *Plethodon hoffmani* (valley and ridge salamander).
(117) *Plethodon hubrichti* (Peaks of Otter salamander).
(118) *Plethodon idahoensis* (Coeur d'Alene salamander).
(119) *Plethodon jordani* (Appalachian salamander, red-cheeked salamander, Jordan's salamander).
(120) *Plethodon kentucki* (Kentucky salamander, Cumberland Plateau salamander).
(121) *Plethodon kiamichi* (Kiamichi slimy salamander).
(122) *Plethodon kisatchie* (Louisiana slimy salamander).
(123) *Plethodon larselli* (Larch Mountain salamander).
(124) *Plethodon meridianus* (South Mountain gray-cheeked salamander, southern gray-cheeked salamander).
(125) *Plethodon metcalfi* (southern gray-cheeked salamander).
(126) *Plethodon mississippi* (Mississippi slimy salamander).
(127) *Plethodon montanus* (northern gray-cheeked salamander).
(128) *Plethodon neomexicanus* (Jemez Mountains salamander).
(129) *Plethodon nettingi* (Cheat Mountain salamander).
(130) *Plethodon ocmulgee* (Ocmulgee slimy salamander).
(131) *Plethodon ouachitae* (Rich Mountain salamander).
(132) *Plethodon petraeus* (Pigeon Mountain salamander).
(133) *Plethodon punctatus* (white-spotted salamander, cow knob salamander).
(134) *Plethodon richmondi* (southern ravine salamander, ravine salamander).
(135) *Plethodon savannah* (Savannah slimy salamander).
(136) *Plethodon sequoyah* (Sequoyah slimy salamander).
(137) *Plethodon serratus* (southern red-backed salamander).
(138) *Plethodon shenandoah* (Shenandoah salamander).
(139) *Plethodon sherando* (Big Levels salamander).
(140) *Plethodon shermani* (red-legged salamander).
(141) *Plethodon stormi* (Siskiyou Mountains salamander).
(142) *Plethodon teyahalee* (Southern Appalachian salamander).
(143) *Plethodon vandykei* (Van Dyke's salamander).
(144) *Plethodon variolatus* (South Carolina slimy salamander).
(145) *Plethodon vehiculum* (western red-backed salamander).
(146) *Plethodon ventralis* (southern zigzag salamander).
(147) *Plethodon virginia* (Shenandoah Mountain salamander).
(148) *Plethodon websteri* (Webster's salamander).
(149) *Plethodon wehrlei* (Wehrle's salamander).
(150) *Plethodon welleri* (Weller's salamander).
(151) *Plethodon yonahlossee* (Yonahlossee salamander).
(152) *Pleurodeles nebulosus* (no common name).
(153) *Pleurodeles poireti* (Algerian newt).
(154) *Pleurodeles waltl* (Spanish newt).
(155) *Salamandra algira* (Algerian salamander).
(156) *Salamandra atra* (alpine salamander).
(157) *Salamandra corsica* (Corsican fire salamander).
(158) *Salamandra infraimmaculata* (no common name).
(159) *Salamandra lanzai* (Lanza's alpine salamander, Salamandra di Lanza).
(160) *Salamandra salamandra* (fire salamander).
(161) *Salamandrella keyserlingii* (Siberian newt).
(162) *Salamandrella tridactyla* (no common name).
(163) *Salamandrina perspicillata* (northern spectacled salamander).
(164) *Salamandrina terdigitata* (southern spectacled salamander).
(165) *Siren intermedia* (lesser siren).
(166) *Siren lacertina* (greater siren).
(167) *Taricha granulosa* (rough-skinned newt).
(168) *Taricha rivularis* (red-bellied newt).
(169) *Taricha sierrae* (Sierra newt).
(170) *Taricha torosa* (California newt).
(171) *Triturus carnifex* (Italian crested newt).
(172) *Triturus cristatus* (great crested newt).
(173) *Triturus dobrogicus* (Danube crested newt).
(174) *Triturus hongkongensis* (no common name)
(175) *Triturus ivanbureschi* (Balkan-Anatolian crested newt, Buresch's crested newt).
(176) *Triturus karelinii* (Southern crested newt).
(177) *Triturus macedonicus* (no common name).
(178) *Triturus marmoratus* (marbled newt).
(179) *Triturus pygmaeus* (pygmy marbled newt).
(180) *Triturus vittatus* (no common name).
(181) *Tylototriton anguliceps* (angular-headed newt).
(182) *Tylototriton asperrimus* (black knobby newt).
(183) *Tylototriton broadoridgus* (no common name).
(184) *Tylototriton dabienicus* (no common name).
(185) *Tylototriton daweishanensis* (no common name).
(186) *Tylototriton hainanensis* (Hainan knobby newt).
(187) *Tylototriton kweichowensis* (red-tailed knobby newt).
(188) *Tylototriton liuyangensis* (no common name).
(189) *Tylototriton lizhenchangi* (Mangshan crocodile newt).
(190) *Tylototriton notialis* (no common name).
(191) *Tylototriton panhai* (no common name).
(192) *Tylototriton pseudoverrucosus* (southern Sichuan crocodile newt).
(193) *Tylototriton shanjing* (Yunnan newt).
(194) *Tylototriton shanorum* (no common name).
(195) *Tylototriton taliangensis* (Thailand newt).
(196) *Tylototriton uyenoi* (no common name).
(197) *Tylototriton verrucosus* (Himalayan newt).
(198) *Tylototriton vietnamensis* (no common name).
(199) *Tylototriton wenxianensis* (Wenxian knobby newt).
(200) *Tylototriton yangi* (Tiannan crocodile newt).
(201) *Tylototriton ziegleri* (Ziegler's crocodile newt).

(b) Upon the filing of a written declaration with the District Director of Customs at the port of entry as required under § 14.61 of this chapter, all other species of amphibians may be imported, transported, and possessed in captivity, without a permit, for scientific, medical, education, exhibition, or propagating purposes, but no such amphibians or any progeny or eggs thereof may be released into the wild except by the State wildlife conservation agency having jurisdiction over the area of release or by persons having prior written permission for release from such agency.

Dated: December 30, 2015.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–00452 Filed 1–12–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 150313268–6008–02]

RIN 0648–BE98

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Program

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 44 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) and a regulatory amendment that modifies regulations governing the Crab Rationalization (CR) Program. This rule revises regulations to reflect that a Right of First Refusal (ROFR) may continue with the current ROFR holder or a new ROFR holder when processor quota share (PQS) is transferred and to require PQS holders to make specific certifications regarding ROFR contracts when annually applying for individual processor quota (IPQ) and when transferring PQS that are subject to a ROFR. In addition, this final rule revises the CR Program regulations to separate the annual individual fishing quota (IFQ)/IPQ application into two separate applications and to require that each crab harvesting cooperative lists the name of each member of the cooperative in its application for IFQ rather than provide NMFS with copies of each member's IFQ application. This final rule is necessary to improve available information concerning transfer and use of PQS and IPQ subject to a ROFR, thereby enhancing the ability of eligible crab communities to retain their historical processing interests in the Bering Sea and Aleutian Islands (BSAI) crab fisheries, and to improve the administration of the CR Program. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective February 12, 2016.

ADDRESSES: Electronic copies of Amendment 44 to the FMP, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Categorical Exclusion prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.* The Environmental Impact Statement (EIS), RIR, and Social Impact Assessment prepared for the CR Program are available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by email to *OIRA_Submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 44 to the FMP and regulatory amendments to the CR Program. NMFS published a notice of availability (NOA) for Amendment 44 on October 9, 2015 (80 FR 61150). The comment period on the NOA for Amendment 44 ended on December 8, 2015. The Secretary approved Amendment 44 on January 4, 2016, after accounting for information from the public, and determining that Amendment 44 is consistent with the FMP, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law. NMFS published a proposed rule to implement Amendment 44 and the regulatory amendments on October 22, 2015 (80 FR 63950). The comment period on the proposed rule ended on November 23, 2015. NMFS received no comments on proposed Amendment 44 or the proposed rule.

Background

CR Program

Below is a brief description of the CR Program and the elements of the CR Program that apply to Amendment 44 and this final rule. Section 3.1 of the RIR/IRFA (see **ADDRESSES**) and the preamble of the proposed rule (80 FR 63950; October 22, 2015) provide a more detailed description of the CR Program and this action.

The CR Program is a catch share program for nine BSAI crab fisheries that allocates those resources among harvesters, processors, and coastal communities. Under the CR Program, NMFS issued quota share (QS) to eligible harvesters based on their historical participation during a set of qualifying years in one or more of the nine CR Program fisheries. Quota share is an exclusive, revocable privilege allowing the holder to harvest a specific percentage of the annual total allowable catch (TAC) in a CR Program fishery.

A QS holder's annual allocation, called individual fishing quota (IFQ), is expressed in pounds and is based on the amount of QS held in relation to the total QS pool for that fishery. NMFS issues IFQ in three classes: Class A IFQ, Class B IFQ, and Class C IFQ. Three percent of IFQ is issued as Class C IFQ for captains and crew. Of the remaining IFQ, 90 percent is issued as Class A IFQ and 10 percent is issued as Class B IFQ.

NMFS issued processor quota share (PQS) to qualified individuals and entities based on processing activities in CR Program fisheries during a period of qualifying years. PQS is an exclusive, revocable privilege to receive deliveries of a fixed percentage of the annual TAC from a CR Program fishery. A PQS holder's annual allocation is known as individual processing quota (IPQ). NMFS issues IPQ at a one-to-one correlation with the amount of Class A IFQ issued for each CR Program fishery. Class A IFQ must be delivered to a processor holding a matching amount of IPQ; Class C IFQ and Class B IFQ may be delivered to any registered crab receiver.

Right of First Refusal

The CR Program includes several provisions intended to protect nine specific communities that had historically been active in the processing of king and Tanner crab from adverse impacts that could result from the CR Program. These communities are referred to as ''eligible crab communities'' for purposes of the CR Program's community protection measures.

With the exception of one eligible crab community (Adak, Alaska) the CR Program provides the other eight eligible crab communities, or ECCs, with a ROFR on certain PQS and IPQ transfers. A ROFR provides an ECC with the right to intervene in the sale (*i.e.,* transfer) of PQS, IPQ, and ''other goods'' (*i.e.,* assets) associated with that community under specific conditions. The regulations at § 680.41(l) require an ECC to identify an entity to represent it for purposes of ROFR. These provisions are described in the final rule implementing the CR Program (March 2, 2005, 70 FR 10174). Section 3.1.3 of the RIR/IRFA describes the specific amounts of PQS that were, and are, subject to ROFR.

Under the ROFR, an ECC entity is provided an opportunity to meet the same terms and conditions being offered

to a proposed buyer of a proposed sale of PQS or IPQ. If an ECC entity can meet the terms and conditions of a proposed sale, then the ECC entity receives by transfer the PQS, IPQ, and any other goods instead of the proposed buyer.

The ROFR is intended to strike a balance between the interest of communities historically reliant on crab processing to retain that processing capacity within their communities, and the interest of PQS or IPQ holders to be able to engage in open market transfers of PQS, IPQ, and other goods. Section 3.1.3 of the RIR/IRFA provides a more detailed summary of the ROFR.

ROFR Contract Terms

The ROFR is administered under the CR Program through contractual arrangements between ECC entities and PQS/IPQ holders. Persons who hold PQS/IPQ that are subject to a ROFR must enter into a contract with the ECC entity eligible to exercise a ROFR for those PQS/IPQ shares. The terms required in a ROFR contract between an ECC entity and a PQS/IPQ holder were established with implementation of the CR Program and are set forth in the FMP. ROFR applies to any proposed sale of PQS and any sale of IPQ if more than 20 percent of the PQS holders' community based IPQ in the fishery was processed outside of the community by another company (intra-company transfers within a region are excluded) in three of the preceding five years. Intra-company transfers within a region and transfers of PQS for continued use in the community are exempt from (*i.e.,* do not trigger) the ROFR. The ROFR contract terms require that in order to complete a transfer under a ROFR, an ECC entity must meet ''the same terms and conditions of the underlying [proposed sale] agreement and will include all processing shares and other goods included in that agreement.''

The ROFR contract terms also state that all terms of any ROFR and contract entered into related to ROFR will be enforced through civil law. Additional details on the rationale for the civil enforcement of the terms in a ROFR contract are provided in the EIS, RIR, and Social Impact Assessment prepared for the CR Program (see **ADDRESSES**), and the final rule implementing the CR Program (March 2, 2005, 70 FR 10174).

An ECC entity must meet two important requirements to complete a ROFR and receive PQS, IPQ, or other goods associated with a proposed sale. The ECC entity must do the following: (1) Exercise its ROFR, that is, provide a clear commitment to complete a purchase agreement within a specific time frame; and (2) perform under the ROFR, that is, meet all of the terms and conditions of the underlying agreement for the proposed sale within a specific time frame.

To exercise the ROFR, an ECC entity must provide the seller of PQS or IPQ subject to a ROFR with notice of its intent to exercise the ROFR and earnest money in the amount of 10 percent of the contract amount or $500,000, whichever is less, within 60 days of notice of a sale and receipt of the contract defining the sale's terms. To perform the ROFR, the ECC entity must meet the terms and conditions of the proposed sale (*i.e.,* complete the sale) within 120 days from receipt of the sales contract, or within the time specified in the proposed sales contract, whichever is longer. If an ECC entity does not exercise its ROFR, or it cannot perform under the ROFR contract, then the open market sale may proceed.

Summary of Amendment 44

Amendment 44 to the FMP revises several of the existing ROFR contract terms and adds two additional contract terms. These ROFR contract terms are described in detail in the NOA for Amendment 44 (80 FR 61150; October 9, 2015). As noted earlier, the terms in a ROFR contract are enforced through civil contract law rather than through regulations implemented by NMFS. Amendment 44 to the FMP and this final rule do not change the civil enforcement of the terms in a ROFR contract. This final rule only revises regulations to implement Amendment 44 and to amend the CR Program. Therefore, the regulations implemented by this final rule are subject to enforcement by NMFS.

The following briefly summarizes the provisions of Amendment 44 that do not require implementing regulations. Amendment 44 increases the time allowed for an ECC entity to exercise a ROFR from 60 days to 90 days from receipt of the sales contract. This modification also increases the time allowed for an ECC entity to perform under the ROFR from 120 days to 150 days. The time period to exercise and the time period to perform under a ROFR begin on the date of receipt of the sales contract by the ECC entity and run concurrently.

Amendment 44 removes the ROFR contract term that allows a ROFR to lapse if the IPQ derived from the PQS subject to ROFR was processed outside the community of origin for a period of three consecutive years. Under this amendment, a ROFR remains in effect for PQS subject to a ROFR regardless of the location in which the IPQ associated with that PQS was processed. Amendment 44 does not reinstate a ROFR that lapsed prior to the date that Amendment 44 was approved, January 4, 2016.

Amendment 44 removes the ROFR contract term stating that a ROFR will lapse if an ECC entity fails to exercise its ROFR after it is triggered by a transfer of PQS and replaces it with a ROFR contract term that requires the recipient of a PQS transfer to enter into a new ROFR contract with an ECC entity of its choosing in the designated region of the PQS.

Prior to Amendment 44, ROFR contract terms required that the ROFR apply to all terms and conditions of the underlying sale agreement, including all processing shares and other goods included in the agreement. Amendment 44 revised this ROFR contract term to specify that, ''Any ROFR contract must be on the same terms and conditions of the underlying agreement and will include all processing shares and other goods included in that agreement, or to any subset of those assets, as otherwise agreed to by the PQS holder and the community entity.''

Amendment 44 establishes two new ROFR contract terms. First, Amendment 44 adds a ROFR contract term that requires a PQS holder to notify the ECC entity of any proposed transfer of IPQ or PQS subject to ROFR, regardless of whether the PQS holder believes the proposed transfer triggers the right. Second, Amendment 44 adds a ROFR contract term that requires a PQS holder to annually notify the ECC entity of the location at which IPQ derived from PQS subject to a ROFR was processed and whether that IPQ was processed by the PQS holder.

With the approval of Amendment 44, all ROFR contracts must contain the newly revised ROFR contract terms. PQS/IPQ holders and ECC entities must establish a new or revised ROFR contract to contain all of these terms.

The Final Rule

This final rule contains three actions. The first action implements those aspects of Amendment 44 that require implementing regulations. The second action implements the regulatory amendment adopted by the Council. The third action implements minor administrative changes to the CR Program regulations to improve the application and reporting practices for participants in the CR Program. The following paragraphs briefly described these actions. Additional detail is provided in the preamble to the proposed rule (80 FR 63950; October 22, 2015) and is not repeated here.

Action 1: Regulatory Revisions Needed To Implement Amendment 44

This final rule modifies regulations governing transfers of PQS subject to ROFR. This final rule modifies regulations at § 680.41(i)(8) to require the seller of PQS to certify that the ECC entity did not exercise its ROFR within the time provided and to require the buyer of PQS to certify that the buyer has entered into a ROFR contract with an ECC entity in the designated region of the PQS. These changes to § 680.41(i)(8) do not alter the current requirement that NMFS wait 10 days before approving a transfer of PQS subject to ROFR when such transfer triggers the ROFR.

Action 2: Regulatory Revisions Needed To Implement the Regulatory Amendment

This final rule modifies two regulations to implement the regulatory amendment. First, this final rule modifies regulations at § 680.4(f)(2) to require an applicant for IPQ, as part of the Application for Annual Crab IPQ Permit, to certify to NMFS that a ROFR contract that includes the required ROFR contract terms specified in the FMP exists between the applicant and the ECC entity that holds the ROFR for that PQS/IPQ. Because Amendment 44 modifies the FMP and the terms required to be included in a ROFR contract, a PQS/IPQ holder and an ECC entity must establish a new or revised ROFR contract to contain all of these terms and the PQS/IPQ holder must certify annually that a ROFR contract is in place. If an applicant for IPQ is unable to establish a revised ROFR contract with an ECC entity and provide that confirmation to NMFS in the Application for Annual Crab IPQ Permit prior to the date that application is due, then NMFS will consider the application to be incomplete. NMFS will withhold issuance of IPQ until this requirement is met.

Second, this final rule modifies regulations at § 680.41(i)(8) and (9) to require specific certifications by the seller or the buyer when transferring PQS subject to ROFR. If a transfer of PQS triggers a ROFR, regulations at § 680.41(i)(8) require the seller to certify, as part of the application to transfer PQS, that the PQS holder notified the ECC entity holding the ROFR for that PQS of the proposed transfer at least 90 days prior to the date of the transfer application, and that the ECC entity did not exercise its ROFR during that period. If a transfer of PQS does not trigger a ROFR, regulations at § 680.41(i)(9) have been modified to require the buyer and the ECC entity to certify, as part of the application to transfer PQS, either that the ECC entity wishes to permanently waive ROFR for the PQS or that the buyer and the ECC entity completed a ROFR contract that includes the ROFR contract terms specified in the FMP. NMFS will not complete a transfer of PQS until these requirements are met. Section 3.2.5 of the RIR/IRFA provides additional detail on these notice requirements.

Action 3: Administrative Changes

This final rule makes two minor administrative changes to CR Program regulations. First, this final rule revises regulations at § 680.4(d) to separate the application for IFQ/IPQ into two separate applications, an application for IFQ and an application for IPQ. This revision allows applicants for IFQ to use an application form specific to IFQ and allows applicants for IPQ to use an application form specific to IPQ. Except for the proposed modification to the annual IPQ application described above in the section *Action 2: Regulatory Revisions Needed to Implement the Regulatory Amendment,* this revision does not modify the specific information currently required of IFQ or IPQ applicants.

Second, this final rule revises reporting requirements for crab harvesting cooperatives at § 680.21(b)(1). Currently, regulations at § 680.4(f) require each member of a crab harvesting cooperative to submit to NMFS an Application for Annual Crab IFQ Permit, and regulations at § 680.21(b) require a crab harvesting cooperative to submit to NMFS a copy of each member's Application for Annual Crab IFQ Permit along with the cooperative's Application for Annual Crab Harvesting Cooperative IFQ Permit. This final rule revises the regulations at § 680.21(b)(1) so that a crab harvesting cooperative will be responsible only for submitting a list of the names of each cooperative member with the cooperative's annual IFQ application. This final rule does not modify the requirements at § 680.4(f). Therefore, each cooperative member continues to be responsible for submitting to NMFS a complete annual IFQ permit application by the deadline of June 15.

Comments and Responses

NMFS received no public comments on proposed Amendment 44 or this proposed rule.

Changes From the Proposed Rule

NMFS did not make any changes from the proposed rule.

Classification

The Administrator, Alaska Region, determined that Amendment 44 and this final rule are necessary for the conservation and management of the BSAI CR Program fisheries and that they are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule (80 FR 63950; October 22, 2015) and the preamble to this final rule serve as the small entity compliance guide. This rule does not require any additional compliance from small entities that is not described in the preamble to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Final Regulatory Flexibility Analysis (FRFA)

Section 604 of the Regulatory Flexibility Act requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

Section 604 describes the required contents of a FRFA: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the

proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

Need for and Objectives of the Rule

A description of the need for, and objectives of, the rule is contained in the preamble to the proposed rule and this final rule and is not repeated here. This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and the summary of the IRFA in the proposed rule (80 FR 63950; October 22, 2015).

Summary of Significant Issues Raised During Public Comment

NMFS published a proposed rule to implement Amendment 44 on October 22, 2015 (80 FR 63950). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. NMFS received no comments on proposed Amendment 44, this proposed rule, the IRFA, or the economic impacts of this action generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

Number and Description of Small Entities Regulated by the Action

This final rule includes three separate actions described in the section The Final Rule. Action 1 makes regulatory revisions needed to implement Amendment 44; Action 2 makes regulatory revisions needed to implement the regulatory amendment; and Action 3 makes other administrative changes.

The small entities directly regulated by Action 1 and Action 2 are persons that hold PQS or IPQ under the CR Program. Currently, 21 entities hold PQS or IPQ subject (now or previously) to ROFR. Estimates of the number of large entities were made, based on available records of revenue, employment information, and known affiliations among these entities. Of these 21 entities, 10 are estimated to be large entities and 11 are deemed to be small entities. It is possible that additional entities could be directly regulated under the proposed rule if an entity that does not already hold PQS receives PQS by transfer. The new PQS holder will be directly regulated because the entity will be required to certify to NMFS that it has entered into a ROFR contract. It is not possible to estimate whether these new PQS holders will be small entities for purposes of this proposed rule.

Action 3 makes minor administrative changes to clarify permit application procedures for IFQ holders and IPQ holders, and reduce reporting requirements for crab cooperatives that are directly regulated under the CR Program. Currently, there are 10 crab harvesting cooperative entities. Based on available records of revenue, and known affiliations among these entities, 4 of the entities are estimated to be large entities and 6 are deemed to be small entities. Because these changes reduce the reporting burden for all crab harvesting cooperatives, Action 3 will not have an adverse impact on directly regulated small entities.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping and reporting requirements increase slightly under this final rule. This final rule includes new reporting requirements for PQS/IPQ holders. The PQS/IPQ holders are required to certify to NMFS that a current ROFR contract is in place when applying for IPQ and notify NMFS of the status of the ROFR when transferring PQS or IPQ. These additional reporting requirements are relatively straightforward and simple, and NMFS will include these certification requirements in the Application for Annual Crab IPQ Permit and the Application for Transfer of Crab PQS that are already required for directly regulated entities to receive IPQ or to transfer PQS or IPQ. To fulfill the certification requirements when completing the applications, PQS/IPQ holders will have to respond by checking ''Yes'' or ''No'' to a maximum of two questions about the status of the ROFR in addition to providing NMFS with the name of the community entity that holds the ROFR. Therefore, the additional recordkeeping and reporting requirements associated with this final rule are minimal.

Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statues, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected. ''Significant alternatives'' are those that achieve the stated objectives for the action, consistent with prevailing law, with potentially lesser adverse economic impacts on small entities as a whole.

The Council and NMFS considered a range of alternatives and options to the preferred alternative that is implemented by this final rule. These alternatives and options are described in Section 2.2 of the RIR/IRFA and are not repeated here. The Council and NMFS did not identify alternatives to the preferred alternative that would minimize the impact on small entities better than the preferred alternative and still meet the objectives for this final rule—to improve available information concerning transfer and use of PQS and IPQ subject to a ROFR and to improve the administration of the CR Program.

The preferred alternative implemented by this final rule makes modifications to existing regulations necessary that are necessary to meet the objectives of this final rule. The preferred alternative is not anticipated to have adverse impacts on small entities. The regulatory modifications made under this final rule are straightforward and simple, and require PQS holders to provide information at the time of application for an annual IPQ permit or application for approval of transfer of PQS. While the new notification requirements add administrative reporting requirements for 11 PQS holders that are small entities, the administrative burden associated with the notification requirements is minimal and does not negatively impact these entities.

The Council and NMFS considered and analyzed additional alternatives that would have required regulatory changes. The Council and NMFS did not select these alternatives because they required specific ROFR contract provisions that could have resulted in adverse economic impacts accruing to directly regulated small entities. One of these alternatives applied the ROFR

only to PQS, or to PQS and specific assets, within an ECC. The Council and NMFS did not select this alternative because it would impose additional costs on directly regulated small entities, would be difficult to administer, and would not provide ECCs and PQS holders with the flexibility to define the assets subject to a ROFR. The Council and NMFS also considered an alternative that would have required a PQS holder to obtain written approval from the ECC entity prior to processing IPQ subject to a ROFR (or formerly subject to a ROFR), at a facility outside the subject community. The Council and NMFS did not select this alternative because it would have imposed additional costs on directly regulated small entities. Section 3.2 of the Analysis provides additional information on these alternatives that were considered but not selected.

Collection-of-Information Requirements

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0514. Public reporting burden is estimated to average per response: 1.5 hours for the Annual Application for Crab IFQ Permit; 1.5 hours for the Annual Application for Crab IPQ Permit; 1 hour for the Application for an Annual Crab Harvesting Cooperative IFQ permit; and 2 hours for Application to Transfer Crab QS or PQS. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirement of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 7, 2016.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 680 as follows:

PART 680—SHELLFISH FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 2. In § 680.4,

■ a. Revise paragraphs (d)(3), (e)(1) introductory text, (e)(3), (f) heading, and (f)(2)(ii);

■ b. Redesignate paragraphs (f)(2)(iv) and (v) as (f)(2)(v) and (vi), respectively; and

■ c. Add a new paragraph (f)(2)(iv).

The revisions and addition read as follows:

§ 680.4 Permits.

* * * * *

(d) * * *

(3) On an annual basis, the Regional Administrator will issue a crab IFQ permit to a person who submits a complete Application for Annual Crab Individual Fishing Quota (IFQ) Permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

* * * * *

(e) * * *

(1) A crab IPQ permit authorizes the person identified on the permit to receive/process the IPQ crab identified on the permit during the crab fishing year for which the permit is issued, subject to conditions of the permit. A crab IPQ permit is valid under the following circumstances:

* * * * *

(3) On an annual basis, the Regional Administrator will issue a crab IPQ permit to a person who submits a complete Application for Annual Crab Individual Processing Quota (IPQ) Permit, described at paragraph (f) of this section, that is subsequently approved by the Regional Administrator.

(f) *Contents of annual applications for crab IFQ and IPQ permits.*

(2) * * *

(ii) *Crab IFQ or IPQ permit identification.* Indicate the type of crab IFQ or IPQ permit for which applicant is applying by QS fishery(ies) and indicate (YES or NO) whether applicant has joined a crab harvesting cooperative. If YES, enter the name of the crab harvesting cooperative(s) the applicant has joined for each crab fishery.

* * * * *

(iv) *Certification of ROFR contract for crab IPQ permit.* Indicate (YES or NO) whether any of the IPQ for which the applicant is applying to receive is subject to right of first refusal (ROFR). If YES certify (YES or NO) whether there is a ROFR contract currently in place between the applicant and the ECC entity holding the ROFR for the IPQ that includes the required ROFR contract terms specified in Chapter 11 section 3.4.4.1.2 of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs.

* * * * *

■ 3. In § 680.21, revise paragraph (b)(1) to read as follows:

§ 680.21 Crab harvesting cooperatives.

* * * * *

(b) * * *

(1) *June 15 application deadline.* A completed Application for Annual Crab Harvesting Cooperative Individual Fishing Quota (IFQ) Permit listing the name of each member of the crab harvesting cooperative must be submitted annually by each crab harvesting cooperative and received by NMFS no later than June 15 (or postmarked by this date, if sent via U.S. mail or a commercial carrier) for the upcoming crab fishing year for which the crab harvesting cooperative is applying to receive IFQ. If a complete application is not received by NMFS by this date, or postmarked by this date, the crab harvesting cooperative will not receive IFQ for the upcoming crab fishing year. In the event that NMFS has not received a complete and timely application by June 15, NMFS will presume that the application was timely filed if the applicant can provide NMFS with proof of timely filing. Each crab harvesting cooperative member is responsible for submitting a completed Application for Annual Crab Individual Fishing Quota Permit to NMFS by June 15 pursuant to § 680.4.

* * * * *

■ 4. In § 680.41, revise paragraphs (i)(8) and (9) to read as follows:

§ 680.41 Transfer of QS, PQS, IFQ and IPQ.

* * * * *

(i) * * *

(8) In the case of an application for transfer of PQS or IPQ for use outside an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l) of this section:

(i) The Regional Administrator will not act upon the application for a period of 10 days. At the end of that time

period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

(ii) The person applying to transfer PQS subject to ROFR must include an affidavit certifying that the ECC entity was provided with notice of the proposed transfer at least 90 days prior to the date of the transfer application and that the ECC entity did not exercise its ROFR during that period.

(iii) The person applying to receive the PQS must include an affidavit certifying that a ROFR contract that includes the ROFR contract terms specified in Chapter 11 section 3.4.4.1.2 of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs has been completed with an ECC entity eligible to hold a ROFR under paragraph (l) of this section and that represents an ECC within the region for which the PQS is designated.

(9) In the case of an application for transfer of PQS for use within an ECC that has designated an entity to represent it in exercise of ROFR under paragraph (l) of this section, the Regional Administrator will not approve the application unless the proposed recipient of the PQS and the ECC entity provide an affidavit to the Regional Administrator certifying that either the ECC wishes to permanently waive ROFR for the PQS or that a ROFR contract that includes the ROFR contract terms specified in Chapter 11 section 3.4.4.1.2 of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs has been completed by the proposed recipient of the PQS and the ECC entity.

* * * * *

[FR Doc. 2016–00387 Filed 1–12–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 8
Wednesday, January 13, 2016

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0703; Directorate Identifier 2013–NM–004–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The NPRM proposed to require repetitive inspections for discrepancies on certain AC generator mounting adapters, and replacing discrepant adapters with serviceable ones. The NPRM also proposed to require revising the maintenance program to incorporate a repetitive task specified in certain temporary revisions. The NPRM was prompted by a report of a pilot commanding an in-flight engine shut down in response to a low oil pressure warning indication. Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate was corroded. This action revises the NPRM by expanding the applicability. We are proposing this supplemental NPRM (SNPRM) to detect and correct corrosion in the AC generator mounting plate, which could result in a gap between the AC generator and the generator mounting plate, and cause loss of engine oil and consequent engine failure. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by February 29, 2016.

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

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

For service information identified in this proposed 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.

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–2013–0703; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0703; Directorate Identifier 2013–NM–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. The NPRM published in the **Federal Register** on August 28, 2013 (78 FR 53080). The NPRM was prompted by a report of a pilot commanding an in-flight engine shut down in response to a low oil pressure warning indication. Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate was corroded. The NPRM proposed to require repetitive inspections for discrepancies on certain AC generator mounting adapters, and replacing discrepant adapters with serviceable ones. The NPRM also proposed to require revising the maintenance program to incorporate a repetitive task specified in certain temporary revisions.

Actions Since Previous NPRM (78 FR 53080, August 28, 2013) Was Issued

Since we issued the NPRM (78 FR 53080, August 28, 2013), we have received a report that additional airplanes are affected by the identified unsafe condition. Transport Canada Civil Aviation (TCCA), which is the

aviation authority for Canada, has issued Canadian Airworthiness Directive, CF–2012–29R1, dated April 28, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The MCAI states:

> An incident has been reported, on the DHC–8 aeroplane, where a pilot commanded in-flight engine shut down in response to an engine low oil pressure warning indication.
>
> Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate corroded. This resulted in a gap between the AC generator and the generator mounting plate, leading to the loss of engine oil and the ensuing illumination of the associated engine low oil pressure warning indication.
>
> To ensure the integrity of the affected units, Part I of this [Canadian] AD mandates an inspection of the affected AC generator mounting adapters part numbers (P/N) 31708–500 or 31708–501, and, as applicable, replacement with new or serviceable mounting plates.
>
> Part II of this [Canadian] AD mandates the incorporation of a repeat Maintenance Review Board (MRB) inspection applicable to the replacement of the AC generator mounting adapters P/Ns 31708–510 or 31708–511 only.
>
> Revision 1 of this [Canadian] AD is issued to include additional aeroplane serial numbers (003 through 018) to the Applicability section, and to clarify the compliance schedules in Part I B. and Part II below.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-07030002*.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Bombardier Service Bulletin 8–24–88, Revision A, dated September 23, 2014. The service information describes repetitive inspections for discrepancies on certain AC generator mounting adapters, and replacing discrepant adapters with serviceable ones.

Bombardier has also issued the following service information, which describes maintenance review board (MRB) task 2420/14 (functional check of the AC generator adapter kit):

- de Havilland Dash 8 Series 100 Temporary Revision MRB–153, dated July 10, 2012, to Part 1 Section 2—Systems, of the de Havilland Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7 MRB Report.
- de Havilland Dash 8 Series 200 Temporary Revision MRB 2–31, dated July 10, 2012, to Part 1 Section 2—Systems of the de Havilland Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7 MRB Report.
- de Havilland Dash 8 Series 300 Temporary Revision MRB 3–162, dated July 10, 2012, to Part 1 Section 2—Systems of the de Havilland Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7 MRB Report.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We received no comments on the NPRM (78 FR 53080, August 28, 2013) or on the determination of the cost to the public.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the NPRM (78 FR 53080, August 28, 2013). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Costs of Compliance

We estimate that this proposed AD affects 88 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $4,000 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $396,880, or $4,510 per product.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2013–0703; Directorate Identifier 2013–NM–004–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by a report of a pilot commanding an in-flight engine shut down in response to a low oil pressure warning indication. Further investigation revealed the mounting studs in the engine mounted alternating current (AC) generator mounting plate were pulled out of position and the threaded interface in the plate corroded. We are issuing this AD to detect and correct corrosion in the AC generator mounting plate, which could result in a gap between the AC generator and the generator mounting plate, and cause loss of engine oil and consequent engine failure.

(f) Compliance

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

(g) Inspection of AC Generator Mounting Adaptor and Corrective Action

Within 6,000 flight hours, or 36 months, or when the AC generator is removed for service, whichever occurs first, after the effective date of this AD: Do a general visual inspection and a mechanical inspection for discrepancies (*i.e.,* damage, corrosion, and failed mechanical inspection) on AC generator mounting adapters having P/N 31708–500 and P/N 31708–501, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–88, Revision A, dated September 23, 2014. If any discrepancy (*i.e.,* damage, corrosion, or failed mechanical inspection) is found, before further flight, replace the AC generator mounting adapter with a serviceable mounting adapter having P/N 31708–510, P/N 31708–511, P/N 31708–500, or 31708–501, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–24–88, Revision A, dated September 23, 2014.

(h) Repetitive Inspections

For in-service mounting adapters that have P/N 31708–500 or P/N 31708–501: Repeat the general visual and mechanical inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 6,000 flight hours, or 36 months after the most recent inspection, or when the AC generator is removed for service, whichever occurs first.

(i) Replacement of Certain AC Generator Mounting Adaptors

For airplanes having AC generator mounting adapters that have P/N 31708–500 or 31708–501: Within the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, replace the AC generator mounting adapter with a new AC generator mounting adapter having P/N 31708–510 or 31708–511.

(1) Before the accumulation of 120 months on the AC generator mounting adapter.

(2) Within 12 months, or 2,000 flight hours, or when the generator is removed from service, whichever occurs first after the effective date of this AD.

(j) Airplane Maintenance Program Revision

For airplanes having AC generator mounting adapters that have P/N 31708–510 or 31708–511: Within 30 days after the effective date of this AD, revise the airplane maintenance or inspection program, as applicable, by incorporating maintenance review board (MRB) Task 2420/14 in the applicable maintenance program manual specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD. The initial compliance time for MRB Task 2420/14 is prior to the accumulation of 10,000 total flight hours or within 60 months since installation of the part, whichever occurs first.

(1) For Model DHC–8–102, –103, and –106 airplanes: de Havilland Dash 8 Series 100 Temporary Revision MRB–153, dated July 10, 2012, Part 1 Section 2—Systems, of the de Havilland Dash 8 Series 100 Maintenance Program Manual PSM 1–8–7 MRB Report.

(2) For Model DHC–8–201 and –202 airplanes: de Havilland Dash 8 Series 200 Temporary Revision MRB 2–31, dated July 10, 2012, Part 1 Section 2—Systems of the de Havilland Dash 8 Series 200 Maintenance Program Manual PSM 1–82–7 MRB Report.

(3) For Model DHC–8–301, –311, and –315 airplanes: de Havilland Dash 8 Series 300 Temporary Revision MRB 3–162, dated July 10, 2012, Part 1 Section 2—Systems of the de Havilland Dash 8 Series 300 Maintenance Program Manual PSM 1–83–7 MRB Report.

(k) No Alternative Actions or Intervals

After the maintenance or inspection program has been revised as required by paragraph (j) 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 (m)(1) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 8–24–88, dated December 13, 2011.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2012–29R1, dated April 28, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2013-0703-0002*.

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

Issued in Renton, Washington, on December 31, 2015.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00167 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8430; Directorate Identifier 2015–NM–093–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by accomplishment of a taxi-out checklist which revealed that the elevator movement was partially obstructed due to rotation of the flight control lock adjuster bracket. This proposed AD would require a one-time inspection of the elevator tension control regulator for discrepancies, and corrective actions if necessary. We are proposing this AD to detect and correct discrepancies of the elevator tension control regulators, which could result in jamming of the elevator mechanism and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone: +31 (0)88–6280–350; fax: +31 (0)88–6280–111; email: *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.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–2015–8430; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8430; Directorate Identifier 2015–NM–093–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2015–0091, dated May 26, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The MCAI states:

> During the accomplishment of the taxi-out checklist on an F28 Mark 0100 aeroplane, the flight crew noticed that the elevator movement was partially obstructed. The subsequent investigation revealed that this was due to rotation of the flight control lock adjuster bracket, which had come loose from the elevator tension control regulator. Two of the three attachment bolts were found broken, and two nuts were missing. Although no root cause could be identified for the absence of these nuts, they are considered as the main contributor to the occurrence.
>
> This condition, if not detected and corrected, could lead to jamming of the elevator mechanism, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, Fokker Services published Service Bulletin (SB) SBF 100–27–095 which provides instructions to detect and correct any discrepancies, and to re-install missing or broken parts (if any).
>
> For the reasons described above, this [EASA] AD requires a one-time inspection of the elevator tension control regulator and, depending on findings, accomplishment of applicable corrective action(s).
>
> More information on this subject can be found in Fokker Services All Operators Message AOF100–198.

Discrepancies include loose control lock adjuster brackets, broken bracket attachment bolts, and missing nuts. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–8430.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–27–095, dated April 22, 2015. The service information describes procedures for a one-time inspection of the elevator tension control regulator for discrepancies, and corrective actions if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 8 airplanes of U.S. registry.

We also estimate that it would take 1 work-hour per product to do the inspection in this proposed AD, and 1 work-hour per product to report inspection findings. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,360, or $170 per product.

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2015–8430; Directorate Identifier 2015–NM–093–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by accomplishment of a taxi-out checklist which revealed that the elevator movement was partially obstructed due to rotation of the flight control lock adjuster bracket. We are issuing this AD to detect and correct discrepancies of the elevator tension control regulators, which could result in jamming of the elevator mechanism and consequent reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection/Corrective Actions

At the next scheduled opening of access panels 346AB or 346BL after the effective date of this AD, but no later than 5,000 flight hours after the effective date of this AD: Do a one-time detailed inspection of the elevator tension control regulator for discrepancies, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–095, dated April 22, 2015. If the flight control lock adjuster bracket is found loose, any bracket attachment bolt is found broken, or any nut is missing, before further flight, do all applicable corrective actions in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–095, dated April 22, 2015.

(h) Reporting Requirement

Submit a report of any positive findings during any inspection required by paragraph (g) of this AD to Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone: +31 (0)88–6280–350; fax: +31 (0)88–6280–111; email: *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.*

(1) For airplanes on which the inspection specified in paragraph (g) of this AD is accomplished on or after the effective date of this AD: Submit the report within 30 days after performing the inspection.

(2) For airplanes on which the inspection specified in paragraph (g) of this AD is accomplished before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone: 425–227–1137; fax: 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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.

(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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for

failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0091, dated May 26, 2015, 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 it in Docket No. FAA–2015–8430.

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone: +31 (0)88–6280–350; fax: +31 (0)88–6280–111; email: *technicalservices@fokker.com;* Internet *http://www.myfokkerfleet.com.* 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.

Issued in Renton, Washington, on December 29, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33283 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8431; Directorate Identifier 2015–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by a determination that the network interface installed between the Information Management System (IMS) 6000 unit and the Cabin Entertainment System (CES) network could affect the Aircraft Control Domain (ACD) and result in the transmission of misleading navigational information to the flightcrew. This proposed AD would require inspecting the network interface installation between the IMS and the CES, and disconnecting the installation, if necessary. We are proposing this AD to prevent the transmission of misleading navigational information, which could adversely affect the ability of the flightcrew to maintain the safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed 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.

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–2015–8431; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7301; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8431; Directorate Identifier 2015–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–19, dated July 20, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

> It was discovered that on certain aeroplanes, the network interface installed between the Information Management System (IMS) 6000 unit and the Cabin Entertainment System (CES) network may affect the Aircraft Control Domain (ACD). This could potentially compromise the operational integrity of the avionics system and result in misleading navigational information to the flight crew. Misleading navigational information could have adverse effects on the safe operation of the aeroplane.
>
> This [Canadian] AD mandates the [general visual] inspection [to determine if pins are present at positions 25, 27, 48, and 50] and disconnection, as required, of the network interface installation between the IMS and the CES.

You may examine the MCAI in the AD docket on the Internet at *http://*

www.regulations.gov by searching for and locating Docket No. FAA–2015–8431.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for an inspection of the network interface installation between the IMS and CES and disconnection of the installation.

- Service Bulletin 700–46–5005, Revision 02, dated June 18, 2015 (for Model BD–700–1A11 airplanes).
- Service Bulletin 700–46–6005, Revision 02, dated June 18, 2015 (for Model BD–700–1A10 airplanes).

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 77 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $6,545, or $85 per product.

In addition, we estimate that any necessary follow-on action would take about 3 work-hours, for a cost of $255 per product. We have no way of determining the number of aircraft that might need this action.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2015–8431; Directorate Identifier 2015–NM–128–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes, certificated in any category, specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model BD–700–1A10 airplanes, serial numbers 9381, 9432 through 9708 inclusive; 9711 through 9718 inclusive; and 9720 through 9730 inclusive.

(2) Model BD–700–1A11 airplanes, serial numbers 9386, 9401, 9445 through 9707 inclusive; 9710 through 9717 inclusive; and 9722, 9732, 9734, and 9737.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by a determination that the network interface installed between the Information Management System (IMS) 6000 unit and the Cabin Entertainment System (CES) network could affect the Aircraft Control Domain (ACD) and result in the transmission of misleading navigational information to the flightcrew. We are issuing this AD to prevent the transmission of misleading navigational information, which could adversely affect the ability of the flightcrew to maintain the safe flight and landing of the airplane.

(f) Compliance

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

(g) Inspection and Disconnection, if Necessary

Within 15 months after the effective date of this AD: Do a general visual inspection of the network interface installation between the IMS and CES to determine if pins are present at positions 25, 27, 48, and 50; and if any pins are present, before further flight, disconnect the installation; in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Bombardier Service Bulletin 700–46–5005, Revision 02, dated June 18, 2015 (for Model BD–700–1A11 airplanes).

(2) Bombardier Service Bulletin 700–46–6005, Revision 02, dated June 18, 2015 (for Model BD–700–1A10 airplanes).

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the

effective date of this AD using the service information specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD, as applicable. This service information is not incorporated by reference in this AD.

(1) Bombardier Service Bulletin 700–46–5005, dated February 23, 2015.

(2) Bombardier Service Bulletin 700–46–5005, Revision 01, dated March 20, 2015.

(3) Bombardier Service Bulletin 700–46–6005, dated February 23, 2015.

(4) Bombardier Service Bulletin 700–46–6005, Revision 01, dated March 20, 2015.

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, 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

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–19, dated July 20, 2015, 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–2015–8431.

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

Issued in Renton, Washington, on December 29, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33281 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8428; Directorate Identifier 2014–NM–032–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–17–09 for all Airbus Model A330–200 series airplanes, –200 Freighter series airplanes, and –300 series airplanes, and AD 2012–25–12, for all Airbus Model A330–200 series airplanes and –300 series airplanes. AD 2011–17–09 currently requires revisions to certain operator maintenance documents to include new inspections. AD 2012–25–12 currently requires replacing certain main landing gear (MLG) bogie beams before reaching new reduced life limits. Since we issued AD 2011–17–09 and AD 2012–25–12, we have determined that more restrictive instructions and/or airworthiness limitations should be incorporated into the maintenance or inspection program, as applicable. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised airworthiness limitation requirements. This AD results from revisions to the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to include new or more restrictive life limits and/or replacements. We are proposing this AD to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by February 29, 2016.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.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–2015–8428; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8428; Directorate Identifier 2014–NM–032–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy

aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On August 2, 2011, we issued AD 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011). AD 2011–17–09 requires actions intended to address an unsafe condition on all Airbus Model A330–200 series airplanes, –200 Freighter series airplanes, and –300 series airplanes. On December 5, 2012, we issued AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012). AD 2012–25–12 requires actions intended to address an unsafe condition for all Airbus Model A330–200 series airplanes and –300 series airplanes.

Since we issued AD 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011), and AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012), we have determined that more restrictive instructions and/or airworthiness limitations should be incorporated into the maintenance or inspection program, as applicable.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive, 2014–0009, dated January 8, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–200 series airplanes, –200 Freighter series airplanes, and –300 series airplanes. The MCAI states:

> The airworthiness limitations for Airbus aeroplanes are currently published in Airworthiness Limitations Section (ALS) documents.
>
> The instructions and airworthiness limitations applicable to the Safe Life Airworthiness Limitation Items (SL ALI) are given in Airbus A330 ALS Part 1 and A340 ALS Part 1, which are approved by EASA.
>
> The revision 07 of Airbus A330 and A340 ALS Part 1 [dated September 23, 2013] introduces more restrictive instructions and/or airworthiness limitations. Failure to comply with this revision could result in an unsafe condition.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0179 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0179_superseded.pdf/AD_2012-0179_1*], which is superseded, and requires accomplishment of the actions specified in Airbus A330 or A340 ALS Part 1 revision 07 [dated September 23, 2013].
>
> In addition, this [EASA] AD also supersedes EASA AD 2011–0122–E [*http://ad.easa.europa.eu/blob/easa_ad_2011_0122_E_superseded.pdf/EAD_2011-0122-E_1*] and EASA AD 2011–0212 [*http://ad.easa.europa.eu/blob/easa_ad_2011_0212_superseded.pdf/AD_2011–0212_1*], whose requirements have been transferred into Airbus A330 and A340 ALS Part 1 revision 07 [dated September 23, 2013].

The unsafe condition is fatigue cracking, damage, and corrosion in certain principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane. This proposed AD would require revising the maintenance or inspection program, as applicable, to incorporate new or revised structural inspection requirements. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8428.

Related Service Information Under 1 CFR Part 51

Airbus has issued Airbus A330 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 07, dated September 23, 2013. The service information describes Safe Life Airworthiness Limitation Items (SL ALI) for the landing gear.

Airbus has also issued the following variations, which describe SL ALIs.

- Airbus A330 Variation to Revision 07 of ALS Part 1, ''Safe Life Airworthiness Limitations Items (SL ALI),'' dated September 24, 2013 (variations reference 0GVLG130005C0S, dated October 29, 2013).
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.6, dated February 24, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.10, dated April 1, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.19, dated June 8, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.20, dated August 28, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.21, dated September 14, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.22, dated June 8, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.23, dated August 31, 2015.
- Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.24, dated September 21, 2015.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m) of this proposed AD. The request should include a description of changes to the required actions that will ensure the continued damage tolerance of the affected structure.

Differences Between This Proposed AD and the MCAI or Service Information

Although the applicability in the MCAI also identifies Airbus Model A340–200, –300, –500, and –600 series airplanes, this AD applies only to Airbus Model A330–200, –200 Freighter series airplanes, and –300 series airplanes. However, we might consider future separate rulemaking to require incorporating Airbus A340 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 07, dated September 23, 2013, into the maintenance program or inspection program, as applicable. There are currently no Airbus Model

A340 series airplanes on the U.S. Registry.

Costs of Compliance

We estimate that this proposed AD affects 82 airplanes of U.S. registry.

The actions that are required by AD 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2011–17–09 is $85 per product.

The actions that are required by AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012), and retained in this proposed AD take about 16 work-hours per product (2 MLG bogie beams per airplane), at an average labor rate of $85 per work-hour. Required parts cost about $255,000 per MLG bogie beam. Based on these figures, the estimated cost of the actions that were required by AD 2012–25–12 is up to $256,360 per MLG bogie beam.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $6,970, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011); and AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012); and adding the following new AD:

Airbus: Docket No. FAA–2015–8428; Directorate Identifier 2014–NM–032–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

This AD replaces AD 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011); and AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012).

(c) Applicability

This AD applies to all the Airbus airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A330–201, –202, –203, –223, and –243 airplanes.

(2) Airbus Model A330–223F and –243F airplanes,

(3) Airbus Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Periodic inspections.

(e) Reason

This AD was prompted by a revision of certain airworthiness limitations items (ALI) documents, which specify more restrictive instructions and/or airworthiness limitations. We are issuing this AD to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements, and possible failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Maintenance Program Revision, With New Terminating Action

This paragraph restates the requirements of paragraph (h) of AD 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011), with new terminating action. Within 3 months after September 30, 2011 (the effective date of AD 2011–17–09): Revise the maintenance program by incorporating Airbus A330 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 05, dated July 29, 2010. Comply with all Airbus A330 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 05, dated July 29, 2010, at the times specified therein. Accomplishing the actions specified in paragraph (k) of this AD terminates the requirements of this paragraph.

(h) Retained Alternative Intervals or Limits, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2011–17–09, Amendment 39–16773 (76 FR 53305, August 26, 2011), with no changes. Except as provided by paragraph (m) of this AD, after accomplishment of the actions specified in paragraph (g) of this AD, no alternatives to the maintenance tasks, intervals, or limitations specified in paragraph (g) of this AD may be used.

(i) Retained Bogie Beam Replacement, With Specific Delegation Approval Language and New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012), with specific delegation approval language and terminating action. For airplanes identified in paragraphs (c)(1) and (c)(3) of this AD, at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD: Replace all main landing gear (MLG) bogie beams having part number (P/N) 201485300, 201485301, 201272302, 201272304, 201272306, or 201272307, except those that have serial number (S/N) S2A, S2B, or S2C, as identified in Messier-Dowty Service Letter A33–34 A20, Revision 5, including Appendices A through F, dated July 31, 2009, with a new or serviceable part, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European

Aviation Safety Agency (EASA) or Airbus's EASA Design Organization Approval (DOA). After the effective date of this AD, replace all the applicable MLG bogie beams with a new or serviceable part using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. Accomplishing the actions specified in paragraph (k) of this AD terminates the requirements of this paragraph.

(1) At the applicable time specified in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this AD.

(i) For Model A330–201, –202, –203, –223, –243 series airplanes, weight variant (WV)02x, WV05x (except WV058), and WV06x series: Before the accumulation of a life limit of 50,000 landings or 72,300 total flight hours, whichever occurs first from the first installation of a MLG bogie beam on the airplane.

(ii) For Model A330–201, –202, –203, –223, –243 WV058 series airplanes: Before the accumulation of a life limit of 50,000 landings or 57,900 total flight hours, whichever occurs first from the first installation of a MLG bogie beam on the airplane.

(iii) For Model A330–301, –302, –303, –321, –322, –323, –341, –342, –343 series airplanes, WV00x, WV01x, WV02x, and WV05x series: Before the accumulation of a life limit of 46,000 landings or 75,000 total flight hours, whichever occurs first from the first installation of a MLG bogie beam on the airplane.

(2) Within 6 months after January 30, 2013 (the effective date of AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012).

(j) Retained Parts Installation Limitation, With New Terminating Action

This paragraph restates the requirements of paragraph (h) of AD 2012–25–12, Amendment 39–17293 (77 FR 75825, December 26, 2012), with new terminating action. For airplanes identified in paragraphs (c)(1) and (c)(3) of this AD, As of January 30, 2013 (the effective date of AD 2012–25–12), a MLG bogie beam having any part number identified in paragraph (i) of this AD, may be installed on an airplane, provided its life has not exceeded the life limit specified in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this AD, and is replaced with a new or serviceable part before reaching the life limit specified in paragraphs (i)(1)(i), (i)(1)(ii), and (i)(1)(iii) of this AD. Accomplishing the actions specified in paragraph (k) of this AD terminates the requirements of this paragraph.

(k) New Maintenance or Inspection Program Revision

(1) Within 3 months after the effective date of this AD: Revise the maintenance or inspection program, as applicable, by incorporating the information in Airbus A330 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 07, dated September 23, 2013; and variations to it listed in paragraphs (k)(1)(i) through (k)(1)(x), as applicable.

(i) Airbus A330 Variation to Revision 07 of ALS Part 1, ''Safe Life Airworthiness Limitations Items (SL ALI),'' dated September 24, 2013 (variations reference 0GVLG130005C0S, dated October 29, 2013).

(ii) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.6, dated February 24, 2015.

(iii) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.10, dated April 1, 2015.

(iv) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.18, dated April 1, 2015.

(v) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.19, dated June 8, 2015.

(vi) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.20, dated August 28, 2015.

(vii) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.21, dated September 14, 2015.

(viii) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.22, dated June 8, 2015.

(ix) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.23, dated August 31, 2015.

(x) Airbus A330, ''Safe Life Airworthiness Limitations Items (SL ALI),'' Variation 7.24, dated September 21, 2015.

(2) The initial compliance times for the actions specified Airbus A330 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 07, dated September 23, 2013; and A330 Airbus Variations listed in paragraphs (k)(1)(i) through (k)(1)(x) as applicable, are at the times specified in Airbus A330 ALS Part 1, ''Safe Life Airworthiness Limitation Items,'' Revision 07, dated September 23, 2013; and Airbus A330 Variations listed in paragraphs (k)(1)(i) through (k)(1)(x) as applicable, or within 90 days after the effective date of this AD, whichever occurs later. Accomplishing the actions specified in this paragraph terminates the requirements specified in paragraphs (g) through (j) of this AD.

(l) New No Alternative Actions or Intervals

After the maintenance or inspection program, as applicable, has been revised, as required by paragraph (k) 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 (m) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0009, dated January 8, 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–2015–8428.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.* 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.

Issued in Renton, Washington, on December 23, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33173 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8427; Directorate Identifier 2014–NM–212–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2007–10–10 R1, for all Airbus Model A300 B4–600, B4–600R, and F4–600R series

airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). AD 2007–10–10 R1 currently requires revising the airworthiness limitations section (ALS) of the instructions for continued airworthiness (ICA) to incorporate new limitations for fuel tank systems. Since we issued AD 2007–10–10 R1, the manufacturer has issued more restrictive maintenance requirements and/or airworthiness limitations. This proposed AD would require revising the maintenance program or inspection program to incorporate revised fuel maintenance and inspection tasks. We are proposing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by February 29, 2016.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.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–2015–8427; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8427; Directorate Identifier 2014–NM–212–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On December 2, 2009, we issued AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2009). AD 2007–10–10 R1 requires actions intended to address an unsafe condition on all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes).

Since we issued AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2009), we have determined more restrictive maintenance requirements and airworthiness limitations are necessary.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0194, dated October 15, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). The MCAI states:

> Prompted by an accident * * *, the Federal Aviation Administration (FAA) published Special Federal Aviation Regulation (SFAR) 88, [*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgFAR.nsf/0/EEFB3F94451DC06286256C93004F5E07?OpenDocument&Highlight=sfar* 88], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. In response to these regulations, Airbus conducted a design review to develop Fuel Airworthiness Limitations (FAL) for Airbus on A300–600 and A300–600ST aeroplanes.
>
> The FAL were specified in Airbus A300–600 FAL document ref. 95A.1929/05 at issue 02 and in the A300–600 [Airworthiness Limitation Section] ALS variation to FAL document issue 02 ref. 0CVLG110007/C0S issue 01, for A300–600 and A300–600ST aeroplanes.
>
> EASA issued [EASA] AD 2006–0201 to require compliance with the FAL documents (comprising maintenance/inspection tasks and Critical Design Configuration Control Limitations (CDCCL)).
>
> EASA AD 2006–0201 was superseded by EASA AD 2007–0095 (later revised) [which corresponds to FAA AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2009)], which retained the original requirements and corrected and updated the compliance paragraphs concerning task ref. 28–18–00–03–1 and CDCCL's.
>
> Since EASA AD 2007–0095R1 was published, Airbus issued A300–600 ALS Part 5, prompted by EASA policy statement (EASA D2005/CPRO) which requests design approval holders to integrate Fuel Tank Safety items into an ALS document. The A300–600 ALS Part 5 is approved by EASA.
>
> Failure to comply with the items as identified in Airbus A300–600 ALS Part 5 could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2007–0095R1, which is superseded, and requires implementation of the new and more restrictive maintenance instructions and/or airworthiness limitations as specified in Airbus A300–600 ALS Part 5.

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8427.

Related Service Information Under 1 CFR Part 51

Airbus has issued A300–600 Airworthiness Limitations Section), Part

5—Fuel Airworthiness Limitations, Revision 00, dated May 27, 2014. The airworthiness limitations introduce mandatory instructions and more restrictive maintenance requirements. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections and/or critical design configuration Control Limitations (CDCCLs). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (k) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before accomplishment of the revision of the airplane maintenance or inspection program specified in this AD, do not need to be reworked in accordance with the CDCCLs. However, once the airplane maintenance or inspection program has been revised as required by this AD, future maintenance actions on these components must be done in accordance with the CDCCLs.

Differences Between This Proposed AD and the MCAI or Service Information

The MCAI specifies that if there are findings from the ALS inspection tasks, corrective actions must be accomplished in accordance with Airbus maintenance documentation. However, this AD does not include that requirement. Operators of U.S.-registered airplanes are required by general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this AD.

This proposed AD would require operators to revise the maintenance or inspection program within 3 months after the effective date of this AD to incorporate revised fuel maintenance and inspection tasks. The MCAI specifies compliance with the tasks as of the effective date of the MCAI. In developing the compliance time for this action, we considered the degree of urgency associated with addressing the unsafe condition. We find 3 months an appropriate compliance time to complete these actions. This difference has been coordinated with the EASA.

Costs of Compliance

We estimate that this proposed AD affects 122 airplanes of U.S. registry.

The actions required by AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2009), and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2007–10–10 R1 is $170 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $10,370, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2009), and adding the following new AD:

Airbus: Docket No. FAA–2015–8427; Directorate Identifier 2014–NM–212–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

This AD replaces AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2009).

(c) Applicability

This AD applies to Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes), certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by Airbus issuing more restrictive instructions and/or fuel airworthiness limitations. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors caused by latent failures, alterations, repairs, or maintenance actions, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of the Airworthiness Limitations Section To Incorporate Fuel Maintenance and Inspection Tasks, With No Changes

This paragraph restates the requirements of paragraph (f) of AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2007). Within 3 months after June 27, 2007 (the effective date of AD 2007–10–10, Amendment 39–15051 (72 FR 28827, May 23, 2007)), revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006, as defined in Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 1, dated December 19, 2005 (approved by EASA on March 13, 2006), Section 1, ''Maintenance/Inspection Tasks'' (hereafter referred to as Section 1 of Issue 1 of Document 95A.1929/05); or Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 2, dated May 16, 2007, Section 1, ''Maintenance/Inspection Tasks'' (hereafter referred to as ''Section 1 of Issue 2 Document 95A.1929/05''). For all tasks identified in Section 1 of Issue 1 or Issue 2 of Document 95A.1929/05, the initial compliance times start from the later of the times specified in paragraphs (f)(1) and (f)(2) of this AD, and the repetitive inspections must be accomplished thereafter at the intervals specified in Section 1 of Issue 1 or Issue 2 of Document 95A.1929/05, except as provided by paragraph (g) of this AD.

(1) June 27, 2007 (the effective date of AD 2007–10–10, Amendment 39–15051 (72 FR 28827, May 23, 2007).

(2) The date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French export certificate of airworthiness.

Note 1 to paragraph (h) of this AD: Airbus Operator Information Telex (OIT) SE 999.0076/06, dated June 20, 2006, identifies the applicable sections of the Airbus A300–600 airplane maintenance manual necessary for accomplishing the tasks specified in Section 1 of Document 95A.1929/05.

(h) Retained Revision of Initial Compliance Time for Task 28–18–00–03–1

This paragraph restates the requirements of paragraph (g) of AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2007) with no changes. For Task 28–18–00–03–1, ''Operational check of lo-level/underfull/calibration sensors,'' identified in Section 1 of Document 95A.1929/05: The initial compliance time is the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD. Thereafter, Task 28–18–00–03–1 must be accomplished at the repetitive interval specified in Section 1 of Document 95A.1929/05.

(1) Prior to the accumulation of 40,000 total flight hours.

(2) Within 72 months or 20,000 flight hours after June 27, 2007 (the effective date of AD 2007–10–10, Amendment 39–15051 (72 FR 28827, May 23, 2007), whichever occurs first.

(i) Retained Revision of the ALS to Incorporate CDCCLs

This paragraph restates the requirements of paragraph (h) of AD 2007–10–10 R1, Amendment 39–16134 (74 FR 65398, December 10, 2007) with no changes. Within 12 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 ALS Part 5—Fuel Airworthiness Limitations, dated May 31, 2006, as defined in Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 1, dated December 19, 2005 (approved by the EASA on March 13, 2006), Section 2, ''Critical Design Configuration Control Limitations''; or Airbus A300–600 Fuel Airworthiness Limitations, Document 95A.1929/05, Issue 2, dated May 16, 2007, Section 2, ''Critical Design Configuration Control Limitations.''

(j) New Requirement of This AD: Revise the Maintenance or Inspection Program

Within 3 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating the airworthiness limitations as specified in Airbus A300–600 Airworthiness Limitations Section Part 5—Fuel Airworthiness Limitations, Revision 00, dated May 27, 2014. The initial compliance times for the actions specified Airbus A300–600 Airworthiness Limitations Section Part 5—Fuel Airworthiness Limitations, Revision 00, dated May 27, 2014, are at the later of the times specified in Airbus A300–600 Airworthiness Limitations Section Part 5—Fuel Airworthiness Limitations, Revision 00, dated May 27, 2014, or within 3 months after the effective date of this AD, whichever occurs later. Accomplishing the revision required by this paragraph terminates the actions required by paragraphs (g) through (i) of this AD.

(k) New Requirement of This AD: No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, 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 International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2014–0194, dated October 15, 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–2015–8427.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* 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.

Issued in Renton, Washington, on December 23, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33175 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8429; Directorate Identifier 2015–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This proposed AD was prompted by reports of fatigue cracks in the station 320 crown frame and in window post number 3. This proposed AD would require repetitive inspections for cracks and missing fasteners of the station 320 crown frame, cracks in the web and flange surfaces of the forward segment of window post number 3, and missing fasteners and cracks of the window upper sill; post-modification inspections for cracks of the window upper sill; one-time fastener rework; and related investigative and corrective actions if necessary. We are proposing this AD to detect and correct fatigue cracking and missing fasteners of the station 320 crown frame, cracking of the window post number 3, and cracking of the window upper sill, which could result in an in-flight decompression and a loss of structural integrity of the fuselage.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8429.

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–2015–8429; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8429; Directorate Identifier 2015–NM–122–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received reports of fatigue cracks in the station 320 crown frame on Model 747–400 series airplanes. Other Model 747 airplanes, except Model 747–8F and 747–8 airplanes, are of a similar station 320 crown frame configuration. Inner chord cracks of 0.03- to 0.22-inch in length have been found on 15 airplanes with total flight cycles ranging from 11,498 to 31,315. Also, a 1.8-inch crack was found in the outboard web of the frame on one airplane with 14,749 total flight cycles.

Cracks have also been found in window post number 3, which connects to the lower end of the inner chord of the station 320 crown frame. Cracks of 0.03- to 0.11-inch in length have been found in window post number 3 on five airplanes with total flight cycles ranging from 12,329 to 15,772.

Additionally, fatigue cracks that had extended to fully sever the inner chord and outboard web of the frame were found on the Model 747–400 fatigue test airplane at 38,333 total pressure cycles, and significant cracks were found in both the frame inner chord and outboard web at 30,500 total pressure cycles on the Model 747–100SR fatigue test airplane.

Fatigue cracking and missing fasteners of the station 320 crown frame, cracking of the window post number 3, and cracking of the window upper sill could result in in-flight decompression and a loss of structural integrity of the fuselage.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015. The service information describes procedures for inspections and corrective actions for cracks and missing fasteners in the inner chord and outboard webs of the station 320 crown frame, in the left and right side window post number 3, and in the upper sill structure. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or

develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions identified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the Service Information.'' For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8429.

The phrase ''related investigative actions'' is used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

The phrase ''corrective actions'' is used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between This Proposed AD and the Service Information

Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Explanation of ''RC'' Steps in Service Information

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (ARC), to enhance the AD system. One enhancement was a new process for annotating which steps in the service information are required for compliance with an AD. Differentiating these steps from other tasks in the service information is expected to improve an owner's/operator's understanding of crucial AD requirements and help provide consistent judgment in AD compliance. The steps identified as Required for Compliance (RC) in any service information identified previously have a direct effect on detecting, preventing, resolving, or eliminating an identified unsafe condition.

For service information that contains steps that are labeled as RC, the following provisions apply: (1) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD, and an alternative method of compliance (AMOC) is required for any deviations to RC steps, including substeps and identified figures; and (2) steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

Costs of Compliance

We estimate that this proposed AD affects 165 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections	Up to 193 work-hours × $85 per hour = $16,405 per inspection cycle.	$0	Up to $16,405 per inspection cycle.	Up to $2,706,825 per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2015–8429; Directorate Identifier 2015–NM–122–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracks in the station 320 crown frame in window post number 3. We are issuing this AD to detect and correct fatigue cracking and missing fasteners of the station 320 crown frame, cracking of the window post number 3, and cracking of the window upper sill, which could result in an in-flight decompression and a loss of structural integrity of the fuselage.

(f) Compliance

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

(g) Initial Inspections, Related Investigative Actions, and Corrective Actions

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015, except as provided by paragraphs (j)(1) and (j)(2) of this AD: Do the actions specified in paragraphs (g)(1) through (g)(5) of this AD; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015, except as required by paragraph (j)(3) of this AD. Do all applicable related investigative and corrective actions before further flight.

(1) Do a detailed inspection for cracks and missing fasteners of the station 320 crown frame.

(2) Do a surface high frequency eddy current (HFEC) inspection for cracks of the station 320 crown frame.

(3) Do a surface HFEC inspection for cracks in the web and flange surfaces of the forward segment of window post number 3.

(4) Do a detailed inspection for missing fasteners of the window upper sill.

(5) Do a surface HFEC inspection for cracks of the window upper sill.

(h) Repetitive Inspections and Post-Repair Inspections, Related Investigative Actions, and Corrective Actions

Do applicable repetitive post-repair inspections and repeat the inspections specified in paragraphs (g)(1) through (g)(5) of this AD for cracking in the window upper sill thereafter at the applicable compliance time and intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015, except as required by paragraph (j)(3) of this AD. Do all applicable related investigative and corrective actions before further flight.

(i) Fastener Rework, Related Investigative Actions, and Corrective Actions

At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015: Do the applicable actions (including fastener rework and a detailed inspection of the condition of the fastener hole) specified in Part 11 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015. Do all applicable related investigative and corrective actions before further flight.

(j) Exceptions to Service Information Specifications

(1) Where Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015, specifies a compliance time ''after the original 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 747–53A2862, Revision 1, dated July 24, 2015, specifies a compliance time ''after the Revision 1 date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Where Boeing Alert Service Bulletin 747–53A2862, Revision 1, dated July 24, 2015, specifies to contact Boeing for repairs: Before further flight, repair, using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) 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 (l)(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, modification, or alteration required by this AD if it is approved the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraphs (g), (h), and (j)(3) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov*.

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

Issued in Renton, Washington, on December 23, 2015.

John P. Piccola, Jr.,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33172 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8426; Directorate Identifier 2015–NM–006–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Dassault Aviation Model MYSTERE–FALCON 900 airplanes, FALCON 900EX airplanes, and FALCON 2000EX airplanes. This proposed AD was prompted by a report that during a test flight, it was found that the yaw damper on the takeoff roll can increase the Minimum Control Speed on Ground (Vmcg). This proposed AD would require revising the airplane flight manual to incorporate procedures for the flightcrew to check that the yaw damper is set to off before takeoff. We are proposing this AD to ensure that the flightcrew has procedures to set the yaw damper to ''off'' before takeoff, which, if activated, could result in reduced control of the airplane if one engine were to fail during takeoff.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.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–2015–8426; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8426; Directorate Identifier 2015–NM–006–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0005, dated January 14, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Dassault Aviation Model MYSTERE–FALCON 900 airplanes, FALCON 900EX airplanes, and FALCON 2000EX airplanes. The MCAI states:

> During a flight test on a development aeroplane, it was found that the yaw damper (YD) working on the take-off roll can increase the Minimum Control Speed on Ground (Vmcg). A review of the certification data of the affected aeroplanes shows that Vmcg values published in the Airplane Flight Manuals (AFM) have been determined without YD.
>
> This condition, if not corrected, could result, in case of an engine failure occurring during the roll acceleration [during takeoff], in reduced lateral control of the aeroplane.
>
> To address this condition, Dassault Aviation developed Change Proposals (CP) and Temporary Changes (TC) to the applicable AFMs, which instruct flight crews to check that yaw damper is set to ''off'' before take-off.
>
> For the reasons described above, this [EASA] AD requires an amendment of the applicable AFM.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8426.

Related Service Information Under 1 CFR Part 51

We reviewed the following service information:

- Change Proposal 17 (CP017), ''AFM: Yaw Damper Off in Line Up Procedure,'' dated January 23, 2015, to the Dassault Falcon 2000EX Airplane Flight Manual, DGT84278.
- Change Proposal 46 (CP046), ''AFM: Yaw Damper Off In Line Up Procedure,'' dated December 15, 2014, to the Dassault Falcon 2000EX EASy Version, Airplane Flight Manual, DGT88898.
- Change Proposal 118 (TC118), ''AFM: Yaw Damper Off In Line Up Procedure,'' dated December 18, 2014, to the Dassault Mystère Falcon 900 Airplane Flight Manual, DTM20103.
- Change Proposal 48 (TC048), ''AFM: Yaw Damper Off In Line Up Procedure,'' dated December 16, 2014, to the Dassault Mystère Falcon 900, F900C Version, Airplane Flight Manual (FM900C), TC048.
- Change Proposal 12 (CP012), ''AFM: Yaw Damper Off In Line Up Procedure,'' Dassault Falcon 900EX Airplane Flight Manual DTM561.
- Change Proposal 31 (CP031), ''AFM: Yaw Damper Off In Line Up Procedure,'' Dassault Falcon 900EX EASy, Airplane Flight Manual DGT84972).

The service information describes procedures for the flightcrew to check that the yaw damper is set to off before takeoff. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this NPRM.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 284 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $24,140, 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2015–8426; Directorate Identifier 2015–NM–006–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to airplanes specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Dassault Aviation Model MYSTERE–FALCON 900 airplanes, all serial numbers.

(2) Dassault Aviation Model FALCON 900EX airplanes, all serial numbers, except airplanes with ''EASy II'' ''2nd certification'' avionics, which are defined as: Airplanes modified in production with Dassault Aviation modification M5595; or airplanes modified in service with Dassault Aviation Service Bulletin F900EX–400 or with Dassault Aviation Service Bulletin F900EX–414, except for airplanes modified in service with any of the service information in paragraphs (c)(2)(i) through (c)(2)(vii) of this AD.

(i) Dassault Aviation Service Bulletin F900EX–400, dated July 1, 2011.

(ii) Dassault Aviation Service Bulletin F900EX–400, Revision 1, dated July 5, 2012.

(iii) Dassault Aviation Service Bulletin F900EX–400, Revision 2, dated November 30, 2012.

(iv) Dassault Aviation Service Bulletin F900EX–414, dated July 20, 2011.

(v) Dassault Aviation Service Bulletin F900EX–414, Revision 1, dated July 5, 2012.

(vi) Dassault Aviation Service Bulletin F900EX–414, Revision 2, dated July 27, 2012.

(vii) Dassault Aviation Service Bulletin F900EX–414, Revision 3, dated November 30, 2012.

(3) Dassault Aviation Model FALCON 2000EX airplanes, all serial numbers, except airplanes with Dassault Aviation production modification M3254, or modified in service by Dassault Aviation Service Bulletin F2000EX–300 (''EASy II'' avionics).

(d) Subject

Air Transport Association (ATA) of America Code 01, Operations Information.

(e) Reason

This AD was prompted by a report that during a test flight, it was found that the yaw damper on the take-off roll can increase the Minimum Control Speed on Ground (Vmcg). We are issuing this AD to ensure that the ensure that the flightcrew has procedures to set the yaw damper to ''off'' before takeoff, which, if activated, could result in reduced control of the airplane if one engine were to fail during takeoff.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD, revise the normal procedures and limitations sections of the airplane flight manual, as applicable, to include the information in the applicable AFM change specified in table 1 to paragraph (g) of this AD. This may be done by inserting copies of the applicable AFM change specified in table 1 to paragraph (g) of this AD in the AFM. When the applicable AFM change specified in table 1 to paragraph (g) of this AD have been included in general revisions of the AFM, the general revisions may be inserted into the AFM, provided the relevant information in the general revision is identical to that in the applicable AFM change specified in table 1 to paragraph (g) of this AD, and the applicable AFM change specified in table 1 to paragraph (g) of this AD may be removed.

TABLE 1 TO PARAGRAPH (g) OF THIS AD—NORMAL PROCEDURES AND LIMITATIONS

Affected airplane/configuration	Applicable AFM change
Model Mystère Falcon 900 airplanes	Change Proposal 118 (TC118), ''AFM: Yaw Damper Off In Line Up Procedure,'' dated December 18, 2014, to the Dassault Mystère Falcon 900 Airplane Flight Manual, DTM20103.
Model Mystère Falcon 900 airplanes with Dassault Aviation production modification M1975, or production modification M2695 embodied, or modified in service by Dassault Aviation Service Bulletin F900–250 (''Falcon 900 C'' version).	Change Proposal 48 (TC048), ''AFM: Yaw Damper Off In Line Up Procedure,'' dated December 16, 2014, to the Dassault Mystère Falcon 900, F900C Version, Airplane Flight Manual (FM900C), TC048.
Model Falcon 900EX airplanes	Change Proposal 12 (CP012), ''AFM: Yaw Damper Off In Line Up Procedure,'' Dassault Falcon 900EX Airplane Flight Manual DTM561.
Model Falcon 900EX airplanes with Dassault Aviation production modification M3083 embodied (Falcon 900EX ''EASy'' version).	Change Proposal 31 (CP031), ''AFM: Yaw Damper Off In Line Up Procedure,'' Dassault Falcon 900EX EASy, Airplane Flight Manual DGT84972).
Model Falcon 2000EX airplanes	Change Proposal 17 (CP017), ''AFM: Yaw Damper Off in Line Up Procedure,'' dated January 23, 2015, to the Dassault Falcon 2000EX Airplane Flight Manual, DGT84278.
Model Falcon 2000EX airplanes with Dassault Aviation production modification M1691 embodied (Falcon 2000EX ''EASy'' version).	Change Proposal 46 (CP046), ''AFM: Yaw Damper Off In Line Up Procedure,'' dated December 15, 2014, to the Dassault Falcon 2000EX EASy Version, Airplane Flight Manual, DGT88898.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0005, dated January 14, 2015, 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–2015–8426.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* 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.

Issued in Renton, Washington, on December 23, 2015.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–33178 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–7491; Directorate Identifier 2015–NE–39–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) GE90–76B, GE90–77B, GE90–85B, GE90–90B, and GE90–94B turbofan engines. This proposed AD was prompted by an uncontained failure of the high-pressure compressor (HPC) stage 8–10 spool, leading to an airplane fire. This proposed AD would require eddy current inspections (ECIs) or ultrasonic inspections (USIs) of the HPC stage 8–10 spool and removing from service those parts that fail inspection. We are proposing this AD to prevent failure of the HPC stage 8–10 spool, uncontained rotor release, damage to the engine, and damage to the airplane.

DATES: We must receive comments on this proposed AD by March 14, 2016.

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

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

For service information identified in this proposed AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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–2015–7491; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this NPRM. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–7491; Directorate Identifier 2015–NE–39–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We received a report of an HPC stage 8–10 spool uncontained failure resulting in an airplane fire. Ongoing investigations have determined that a crack initiated in the stage 8 aft web upper face of the HPC 8–10 spool and propagated until spool rupture. The root cause of the crack initiation is not yet known. This condition, if not corrected, could result in failure of the HPC stage 8–10 spool, uncontained rotor release, damage to the engine, and damage to the airplane. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information

We reviewed the following chapters of GE GE90 Engine Manual, GEK100700, Revision 66, dated September 1, 2015:

- Chapter 72–31–08, Special Procedure 003, piece-part level ECI,
- Chapter 72–00–31, Special Procedure 006, rotor assembly and module level ECI and,
- Chapter 72–00–31, Special Procedure 007, rotor assembly level USI.

FAA's Determination

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

Proposed AD Requirements

This NPRM would require accomplishing an ECI or USI of the stage 8 aft web upper face of the HPC stage 8–10 spool and removing from service those parts that fail inspection.

Interim Action

We consider this proposed AD interim action. GE is determining the root cause for the unsafe condition identified in this proposed AD. Once a root cause is identified, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD affects 54 engines installed on airplanes of U.S. registry. We also estimate that it will take about 7 hours per engine to comply with this AD. The average labor rate is $85 per hour. We estimate one part will fail inspection at a cost of $780,000. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $812,130.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2015–7491; Directorate Identifier 2015–NE–39–AD.

(a) Comments Due Date

We must receive comments by March 14, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to General Electric Company (GE) GE90–76B, GE90–77B, GE90–85B, GE90–90B, and GE90–94B turbofan engines with a high-pressure compressor (HPC) 8–10 stage spool, part numbers (P/Ns) 1694M80G04, 1844M90G01, or 1844M90G02, installed.

(d) Unsafe Condition

This AD was prompted by an uncontained failure of the HPC stage 8–10 spool. We are issuing this AD to prevent failure of the HPC stage 8–10 spool, uncontained rotor release, damage to the engine, and damage to the airplane.

(e) Compliance

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

(1) Perform an eddy current inspection (ECI) or ultrasonic inspection (USI) of the stage 8 aft web upper face of the HPC stage 8–10 spool, before exceeding 10,500 cycles since new or within 500 cycles in service, after the effective date of this AD, whichever occurs later.

(2) At each shop visit, perform an ECI or USI of the stage 8 aft web upper face of the HPC stage 8–10 spool.

(3) Remove from service any HPC stage 8–10 spool that fails the inspection required by paragraphs (e)(1) and (e)(2) of this AD and replace the spool with a spool eligible for installation.

(f) Installation Prohibition

After the effective date of this AD, an HPC stage 8–10 spool, P/Ns 1694M80G04, 1844M90G01, and 1844M90G02, is not eligible for installation into any engine, unless the spool has passed an ECI or USI required by paragraphs (e)(1) and (e)(2) of this AD.

(g) Definition

For the purpose of this AD, an engine shop visit is the induction of an engine into the shop for maintenance during which the compressor discharge pressure seal face is exposed.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(i) Related Information

(1) For more information about this AD, contact John Frost, Aerospace Engineer, Engine Certification Office, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7756; fax: 781–238–7199; email: *john.frost@faa.gov.*

(2) GE GE90 Engine Manual, GEK100700, Revision 66, dated September 1, 2015, Chapter 72–31–08, Special Procedure 003, Chapter 72–00–31, Special Procedure 006, and Chapter 72–00–31, Special Procedure 007, rotor assembly level USI can be obtained from General Electric Company, using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in this proposed AD, contact General Electric Company, GE-Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215, phone: 513–552–3272; fax: 513–552–3329; email: *geae.aoc@ge.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on December 22, 2015.

Colleen M. D'Alessandro,

Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–33097 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8435; Directorate Identifier 2015–NM–049–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. This proposed AD would require the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the airplane operating temperatures. We are proposing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door and impede evacuation in the event of an emergency.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* 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–2015–8435; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar A. Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8435; Directorate Identifier 2015–NM–049–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–03, dated March 13, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier Inc. Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states:

There have been reports where operators experienced an inability to open the main passenger door following severe hot soak conditions.

Investigation determined that the nylon slider in the plunger assembly of the door handle is susceptible to thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider.

This condition, if not corrected, could result in an inability to open the main passenger door and could impede evacuation in the event of an emergency.

This [Canadian] AD mandates the incorporation of a new configuration to the passenger door external handle detent to enhance the performance across the full range of the aeroplanes operating temperatures.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8435.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued the following service information:

- Bombardier Service Bulletin 700–1A11–52–021, Revision 01, dated February 3, 2015.
- Bombardier Service Bulletin 700–52–044, Revision 01, dated February 3, 2015.
- Bombardier Service Bulletin 700–52–5008, Revision 01, dated February 3, 2015.
- Bombardier Service Bulletin 700–52–6008, Revision 01, dated February 3, 2015.

The service information describes procedures to incorporate a new configuration to the passenger door external handle detent. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 60 airplanes of U.S. registry.

We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $20,400, or $340 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2015–8435; Directorate Identifier 2015–NM–049–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier Inc. Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers (S/N) 9002 through 9515 inclusive and S/N 9998.

(d) Subject

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

(e) Reason

This AD was prompted by reports of operator inability to open the main passenger door following severe hot soak conditions. We are issuing this AD to prevent thermal expansion and permanent deformation at severe hot soak conditions, creating high friction between the spring pot housing and the slider that could result in inability to open the main passenger door that could impede evacuation in the event of an emergency.

(f) Compliance

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

(g) Modification

Within 15 months after the effective date of this AD, incorporate the new configuration to the passenger door external handle detent, in accordance with the Accomplishment Instructions of the applicable service information identified in paragraphs (g)(1) through (g)(4) of this AD:

(1) Bombardier Service Bulletin 700–1A11–52–021, Revision 01, dated February 3, 2015 (for Model BD–700–1A11 airplanes).

(2) Bombardier Service Bulletin 700–52–044, Revision 01, dated February 3, 2015 (for Model BD–700–1A10 airplanes).

(3) Bombardier Service Bulletin 700–52–5008, Revision 01, dated February 3, 2015 (for Model BD–700–1A11 airplanes).

(4) Bombardier Service Bulletin 700–52–6008, Revision 01, dated February 3, 2015 (for Model BD–700–1A10 airplanes).

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the following service information, as applicable. This service information is not incorporated by reference in this AD.

(1) Bombardier Service Bulletin 700–1A11–52–021, dated November 9, 2012.

(2) Bombardier Service Bulletin 700–52–044, dated November 9, 2012.

(3) Bombardier Service Bulletin 700–52–5008, dated November 9, 2012.

(4) Bombardier Service Bulletin 700–52–6008, dated November 9, 2012.

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

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, 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

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–03, dated March 25, 2015, 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–2015–8435.

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

Issued in Renton, Washington, on December 30, 2015.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00169 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8434; Directorate Identifier 2015–NM–082–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–401 and –402 airplanes. This proposed AD was prompted by a discovery of cracking on two test spoiler power control unit (PCU) manifolds during testing by the manufacturer. This proposed AD would require replacement of affected spoiler PCUs. We are proposing this AD to prevent cracking of the spoiler PCUs that could lead to the loss of multiple flight controls and landing gear systems.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed 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.

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–2015–8434; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7318; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8434; Directorate Identifier 2015–NM–082–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–07, dated April 28, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model

DHC–8–401 and -402 airplanes. The MCAI states:

During endurance and impulse testing of the spoiler PCU, cracks were discovered on two test spoiler PCU manifolds. Investigation determined that the crack initiation was due to the heat treat process. A cracked spoiler PCU manifold could cause the loss of one of the two hydraulic systems, resulting in the loss of multiple flight controls and landing gear systems. This condition, if not corrected, could adversely affect the continued safe operation and landing of the aeroplane.

This [Canadian] AD mandates the replacement of the affected spoiler PCUs.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8434.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Bombardier Service Bulletin 84–27–64, dated July 15, 2014. The service information describes procedures for identification and replacement of affected spoiler PCU manifolds. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 82 airplanes of U.S. registry.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $10,000 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $833,940, or $10,170 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2015–8434; Directorate Identifier 2015–NM–082–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–401 and -402 airplanes, certificated in any category, serial numbers (S/Ns) 4001, and 4003 through 4453 inclusive, equipped with spoiler power control unit (PCU) part numbers (P/Ns) 390700–1007 and 1009, S/Ns 0474 through 1321 and 1394 through 1876 without suffix ''A.''

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Control System.

(e) Reason

This AD was prompted by the discovery of cracking on two test spoiler power control unit (PCU) manifolds during testing by the manufacturer. We are issuing this AD to prevent cracking of the spoiler PCUs that could lead to the loss of multiple flight controls and landing gear systems.

(f) Compliance

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

(g) Inspection/Replacement

Within 12,000 flight hours or 72 months after the effective date of this AD, whichever occurs first: Remove and replace the affected spoiler PCUs in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–64, dated July 15, 2014.

(h) Parts Installation Prohibition

After paragraph (g) of this AD has been done, no person may install, on any airplane, a spoiler PCU, part number 390700–1007 or –1009, serial numbers 0474 through 1321 and 1394 through 1876, without suffix ''A.''

(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 ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC

approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, 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

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–07, dated April 28, 2015, 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–2015–8434.

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

Issued in Renton, Washington, on December 31, 2015.

Phil Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00171 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8432; Directorate Identifier 2015–NM–100–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aeronautics (Formerly Known as Saab AB, Saab Aerosystems) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) and SAAB 340B airplanes. This proposed AD was prompted by reports of ruptured horizontal stabilizer de-icing boots. This proposed AD would require a revision of the applicable airplane flight manual (AFM), repetitive inspections of the horizontal stabilizer de-icing boots, and applicable corrective actions. We are proposing this AD to detect and correct damage of the de-icing boot; such damage could lead to a ruptured boot, severe vibrations, and possible reduced control of the airplane.

DATES: We must receive comments on this proposed AD by February 29, 2016.

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

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

For service information identified in this proposed AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.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–2015–8432; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1112; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–8432; Directorate Identifier 2015–NM–100–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0129, dated July 6, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) and SAAB 340B airplanes. The MCAI states:

> There have been some reported events of ruptured horizontal stabilizer de-icing boots. In-flight rupture of a de-icing boot will result in complete loss of the de-icing function within its associated zone. In addition, in some of these events, the de-icing boot had formed a large open scoop.
>
> This condition, if not detected and corrected, could lead to severe vibrations, possibly resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, SAAB issued Alert Operations Bulletin (AOB) No.12 and AOB No. 23 as a temporary measure, recommending performing a flap 0 landing in the event of a suspected rupture of the de-icing boot on the horizontal stabilizer.
>
> In addition, SAAB issued SB 340–30–094 to provide instructions to inspect the affected de-icing boots.
>
> For the reasons described above, this [EASA] AD requires an amendment of the applicable Airplane Flight Manual (AFM) and, pending the development of a modification by SAAB, repetitive inspections of the horizontal stabilizer de-icing boots and, depending on findings, accomplishment of applicable corrective action(s).
>
> This [EASA] AD is considered to be an interim action and further AD action may follow.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for

and locating Docket No. FAA–2015–8432.

Related Service Information Under 1 CFR Part 51

Saab AB, Saab Aeronautics has issued Saab Service Bulletin 340–30–094, dated March 27, 2015. The service information describes procedures for repetitive detailed inspections of the de-icing boots installed on the horizontal stabilizers, and repair and replacement of damaged de-icing boots.

Saab AB, Saab Aeronautics has issued the following AFMs, which describe performance limitations and general data:

- Saab AFM 340A 001, Revision 57, dated March 27, 2015.
- Saab AFM 340B 001, Revision 35, dated March 27, 2015.
- Saab AFM 340B 010, Revision 28, dated March 27, 2015.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 92 airplanes of U.S. registry.

We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $46,920, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $9,500, for a cost of $10,010 per product. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab AB, Saab Aeronautics (Formerly Known as Saab Aerosystems): Docket No. FAA–2015–8432; Directorate Identifier 2015–NM–100–AD.

(a) Comments Due Date

We must receive comments by February 29, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Saab AB, Saab Aeronautics (formerly known as Saab Aerosystems) airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 340A (SAAB/SF340A) airplanes, serial numbers (S/N) 004 through 138 inclusive, on which Saab Modification 1462 has been embodied in production, or Saab Service Bulletin 340–55–008 has been embodied in service, except those on which Saab Modification 1793 has also been embodied in production, or Saab Service Bulletin 340–55–010 has been embodied in service; and Model 340A (SAAB/SF340A) airplanes, S/Ns 139 through 159 inclusive. Applicable Model 340A (SAAB/SF340A) airplanes S/N 004–138, Post Modification No. 1462 but Pre Modification No. 1793, have a maximum flap setting of 35 degrees instead of 20 degrees, and horizontal stabilizer boots with spanwise tubes instead of chordwise tubes.

(2) Model SAAB 340B airplanes, S/Ns 160 through 459 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by reports of ruptured horizontal stabilizer de-icing boots. We are issuing this AD to detect and correct damage of the de-icing boot; such damage could lead to a ruptured boot, severe vibrations, and possible reduced control of the airplane.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD, revise the ''Abnormal Procedures'' section of the applicable Saab 340 AFM to incorporate the revision specified in paragraphs (g)(1) through (g)(3) of this AD.

(1) For Saab AB, Saab Aeronautics Model 340A (SAAB/SF340A) airplanes, revise AFM 340A 001 by incorporating Revision 57, dated March 27, 2015.

(2) For Saab AB, Saab Aeronautics Model SAAB 340B airplanes, revise AFM 340B 001 by incorporating Revision 35, dated March 27, 2015.

(3) For Saab AB, Saab Aeronautics Model SAAB 340B airplanes with extended wing tips, revise AFM 340B 010 by incorporating Revision 28, dated March 27, 2015.

(h) Inspection/Replacement

Within 400 flight hours or 6 months, whichever occurs first after the effective date of this AD, do a detailed inspection for damage of the horizontal stabilizer de-icing boots, in accordance with Saab Service Bulletin 340–30–094, dated March 27, 2015. Repeat the inspection thereafter at intervals not to exceed 400 flight hours. If, during any inspection required by this paragraph, any damage outside the limits specified in Saab Service Bulletin 340–30–094, dated March 27, 2015, is found, before further flight, repair or replace the horizontal stabilizer de-icing boots, in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–30–094, dated March 27, 2015. Repair or replacement on an airplane of the horizontal stabilizer de-icing boots, as required by this paragraph, does not constitute terminating action for the repetitive inspections required by this paragraph for that airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1112; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* 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, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0129, dated July 6, 2015, 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–2015–8432.

(2) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab340techsupport@saabgroup.com;* Internet *http://www.saabgroup.com.* 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.

Issued in Renton, Washington, on December 29, 2015.

Philip Forde,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–00003 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–4010; Airspace Docket No. 15–ASO–11]

Proposed Establishment of Class D and Class E Airspace, and Proposed Amendment of Class E Airspace; Lake City, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace and Class E surface area airspace at Lake City, FL, providing the controlled airspace required for the Air Traffic Control Tower at Lake City Gateway Airport. This action also would amend existing Class E airspace by recognizing the airport's name change. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 29, 2016.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm. W12–140, Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2015–4010; Airspace Docket No. 15–ASO–11, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/.* For further information, you can contact the Airspace Policy and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class D and Class E airspace, and amend Class E airspace at Lake City Gateway Airport, Lake City, FL.

Comments Invited

Interested persons are invited to comment on this rule 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–2015–4010; Airspace Docket No. 15–ASO–11) 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.*

Persons 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 Docket No. FAA–2015–4010; Airspace Docket No. 15–ASO–11.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *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 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 between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, Georgia 30337.

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

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class D airspace and Class E surface area airspace, and amend Class E airspace extending upward from 700 feet above the surface at Lake City Gateway Airport, Lake City, FL, providing the controlled airspace required to support the Air Traffic Control Tower. Class D airspace extending upward from the surface up to and including 2,500 feet would be established within a 4.2 mile radius of the airport. Class E surface area airspace would be established within a 4.2 mile radius of the airport. Controlled airspace is necessary for IFR operations. The airport name under existing Class E airspace would be changed from Lake City Municipal Airport to Lake City Gateway Airport.

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, and 6005, respectively of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designation listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

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

Environmental Review

This proposal would be subject to an environmental analysis in accordance with FAA Order 1050.1F, paragraph 5.6.5a, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 106(f), 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 Federal Aviation Administration Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, effective September 15, 2015, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Lake City, FL [New]

Lake City Gateway Airport, FL
(Lat. 30°10′56″ N., long. 82°34′37″ W.)

That airspace extending upward from the surface to and including 2,500 feet within a 4.2-mile radius of Lake City Gateway Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Surface Area Airspace.

* * * * *

ASO FL E2 Lake City, FL [New]

Lake City Gateway Airport, FL
(Lat. 30°10′56″ N., long. 82°34′37″ W.)

Within a 4.2-mile radius of Lake City Gateway Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ASO FL E5 Lake City, FL [Amended]

Lake City Gateway Airport, FL
(Lat. 30°10′56″ N., long. 82°34′37″ W.)
That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lake City Gateway Airport.

Issued in College Park, Georgia, on December 18, 2015.

Ryan W. Almasy,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2016–00166 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–134219–08]

RIN 1545–BI82

Relief From Joint and Several Liability; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–134219–08) that was published in the **Federal Register** on Friday, November 20, 2015 (80 FR 72649). The proposed regulations are relating to relief from joint and several liability under section 6015 of the Internal Revenue Code.

DATES: Written or electronic comments and requests for a public hearing for the notice of proposed rulemaking at 80 FR 72649, November 20, 2015, are still being accepted and must be received by February 18, 2016.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–134219–08), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–134219–08), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–134219–08).

FOR FURTHER INFORMATION CONTACT: Nancy Rose, at (202) 317–68444 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 6051 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–134219–08) contains errors that are misleading and are in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking, that is the subject of FR Doc. 2015–29609, is corrected as follows:

1. On page 72650, in the third column, seventh through ninth lines of the first full paragraph, the language ''participated in a prior proceeding. in which relief under section 6015 could have been raised Current § 1.6015–(e)'' is corrected to read ''participated in a prior proceeding in which relief under section 6015 could have been raised. Current § 1.6015–(e)''.

2. On page 72651, in the second column, third line from the bottom of the first full paragraph, the language ''whether taxpayer's ability to contest the'' is corrected to read ''whether the taxpayer's ability to contest the''.

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2016–00430 Filed 1–12–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS–AKRO–19165; PPAKAKROZ5, PPMPRLE1Y.L00000]

RIN 1024–AE28

Alaska; Subsistence Collections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to allow qualified subsistence users to collect and use nonedible fish and wildlife parts and plant materials for the creation and subsequent disposition (use, barter, or sale) of handicrafts. The rule would also (1) clarify that collecting or possessing living wildlife is generally prohibited and (2) limit the types of bait that may be used to take bears for subsistence uses.

DATES: Comments must be received by 11:59 p.m. EST on April 12, 2016.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024–AE28, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand deliver to:* National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. For additional information see ''Public Participation'' under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644–3410. Email: *AKR_Regulations@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Subsistence Uses Authorized by ANILCA

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-410hh-5; 3101–3233) to preserve various nationally significant areas in Alaska. One of the purposes of ANILCA is ''to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.'' 16 U.S.C. 3101(c). Title II of ANILCA established new National Park System units, added to existing units, and determined where subsistence uses would be allowed in those units. Subsistence uses by local rural residents are authorized in all national preserves and in the Alagnak Wild River (managed as a national preserve), Aniakchak National Monument, Cape Krusenstern National Monument, Gates of the Arctic National Park, Kobuk Valley National Park, Lake Clark National Park, Wrangell-Saint Elias National Park, and the additions to Denali National Park. 16 U.S.C. 3113 defines ''subsistence uses'' as follows:

[T]he customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or

transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

This definition reflects that the creation of hand-made crafts from nonedible natural materials has long been a part of the cultural, social, and economic practices of those living a subsistence way of life in Alaska. While ANILCA does not expressly address making and selling of handicraft articles out of plant materials, the NPS believes it falls within this definition, and that it is not otherwise prohibited. Making and selling handicraft articles out of plant materials is clearly use of a wild renewable resource for barter or customary trade. The omission of plant materials from the statute's specific provision on handicraft articles does not indicate any intent to prohibit their use. That definition provides that fish and wildlife-based handicraft articles for subsistence purposes are only made from ''nonedible byproducts'' to avoid the take of fish and wildlife solely for the purpose of making handicrafts out of them. Plant materials fall within the definition's more general provision of wild, renewable resources. Subsistence users requested NPS regulations be changed to allow this customary and traditional practice.

Consistency With NPS Regulations

NPS regulations managing subsistence uses are found in 36 CFR part 13, subpart F—Subsistence. NPS regulations regarding the subsistence use of timber and plant materials allow the noncommercial gathering of plant materials for subsistence uses without a permit. 36 CFR 13.485(b). NPS regulations at 36 CFR 13.420 define the terms ''barter'' and ''customary trade'' that are used in the statutory definition of ''subsistence uses.'' Barter means the exchange of fish or wildlife or their parts for other fish or game or their parts; or for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition recognizes the traditional cultural, social, and economic practices of non-cash exchange of subsistence resources among those living a ''genuine subsistence lifestyle'' (46 FR 31824, June 17, 1981). Customary trade is limited to the exchange of furs for cash, and other activities designated for a particular NPS unit by special regulation. This allowance for the exchange of furs for cash acknowledged that trapping was an ''integral and longstanding part of the subsistence lifestyle in many regions in Alaska'' (46 FR 31824, June 17, 1981). Since the June 1981 rulemaking, two NPS units in Alaska where such customary trade was known to have occurred, Gates of the Arctic National Preserve and Kobuk Valley National Park, have had special regulations that expand the definition of ''customary trade'' in those units to include the sale of handicraft articles made from plant material taken by local rural residents of the park area and which do not require any written authorization from the superintendent. 36 CFR 13.1006 and 13.1504, respectively. The proposed rule would not change or remove these special regulations which would control over the proposed rule for these units. The NPS specifically seeks comment on whether these special regulations should continue to apply to Gates of the Arctic National Preserve and Kobuk Valley National Park, or whether they should be removed which would make those units subject to the provisions in the proposed rule.

Except for these specific and limited authorizations for barter and customary trade of handicraft articles in Alaska, National Park System-wide regulations at 36 CFR 5.3 generally prohibit engaging in any business in park areas without authorization. This means that other forms of sale, barter, and trade that are customary and traditional uses of wild, renewable resources by rural Alaska residents are not allowed under current NPS regulations. In addition, National Park System-wide regulations at 36 CFR 2.1(a)(1) prohibit the collection of wildlife, plants, or parts thereof. There is a limited authorization for the hand-collection of fruits, berries, nuts, or unoccupied seashells for personal use or consumption, but the sale or commercial use of these products is prohibited. 36 CFR 2.1(c).

Environmental Impact Analysis

The NPS prepared an Environmental Assessment (EA) to analyze the impacts of various alternatives that would address the collection and use of plant materials and nonedible animal parts to make handicrafts that may subsequently be bartered or sold. The NPS received substantial public input during scoping for the EA, including input following presentations to all affected Subsistence Resource Commissions and Regional Advisory Councils. All tribes affiliated with park areas in Alaska were invited to consult on the alternatives in the EA. On April 14, 2014, the Regional Director for the Alaska Region signed a Finding of No Significant Impact (FONSI) that selected the preferred alternative (Alternative D) in the EA as the selected action.

The Proposed Rule

Subsistence Uses of Plants and Nonedible Animal Parts

This part of the proposed rule would implement the selected action identified in the FONSI and would apply to all NPS units in Alaska where subsistence uses by local rural residents are authorized by ANILCA. The rule would allow NPS-qualified local rural residents to collect and use the following items to make and sell handicrafts:

- Plant materials; and
- nonedible animal parts (*e.g.,* antlers, horns, bones, teeth, claws, hooves, skins, hides, fur, hair, feathers, or quills) that are naturally shed or discarded, lawfully taken, or that remain on the landscape due to the natural mortality of an animal.

While this proposed rule would authorize the collection and use of feathers of birds not covered by the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act (which will generally mean grouse and ptarmigan), collection and use of other bird feathers remains subject to any applicable federal and state laws.

In order to properly manage the collection of nonedible animal parts, subsistence users would be required to have a Federal Subsistence Board customary and traditional use determination for animal species whose nonedible parts would be used to make handicrafts. The determination must be specific to the area where the collection would occur. Eligible persons would also be required to have written authorization from the superintendent to collect plant materials or nonedible animal parts with appropriate terms and conditions to protect area resources and values. The sale of raw, unworked materials or parts would be prohibited. The proposed rule would provide superintendents with authority to set conditions, limits, and other restrictions on collection activities to protect resources and values. Eligibility to collect plants or nonedible animal parts would follow the same criteria for other subsistence uses in national parks, monuments and preserves.

The proposed rule would allow handicrafts to be sold or exchanged through barter or customary trade. The regulatory definition of ''barter'' would be amended to allow the exchange of handicraft articles for fish or game or their parts; or for other food or nonedible items other than money if the exchange is of a limited noncommercial

nature. The regulatory definition of ''customary trade'' would be amended to allow the exchange of handicraft articles for cash to support personal and family needs, so long as these exchanges do not constitute a significant commercial enterprise. The NPS specifically seeks comment on how the term ''significant commercial enterprise'' could be further explained to provide more clarity to the public about what exchanges would be prohibited by this rule.

The rule would add a definition of ''handicraft article'' that is taken from the current Federal Subsistence Regulations at 50 CFR 100.25(a). This definition would clarify that a handicraft must result from the alteration or manipulation of the shape and appearance of natural materials to create something of greater monetary or aesthetic value. The NPS specifically seeks comment on how the term ''substantially greater monetary and aesthetic value'' could be further explained to provide more clarity to the public about what qualifies as a handicraft article under this rule.

Collection of Live Wildlife

This part of the proposed rule would clarify that collecting living wildlife (including eggs and offspring) is not authorized in NPS units located in Alaska unless specifically authorized by federal statute or pursuant to (1) an NPS research specimen collection permit issued under 36 CFR 2.5; (2) Federal Subsistence Regulations; or (3) special regulations for Glacier Bay National Park and Preserve. This clarification results from public inquiries about the collection of live raptor chicks in national preserves. The take of wildlife is generally prohibited in NPS units. Although hunting and trapping are allowed in national preserves in accordance with applicable federal and non-conflicting state law and regulations, the NPS does not consider the collection of live raptors or eggs to be hunting or trapping. Moreover, this activity is in any event prohibited by 36 CFR 2.2(a)(2), which prohibits ''intentional disturbing of wildlife nesting, breeding, or other activities.'' This prohibition applies to activities that might be authorized by the State of Alaska under a falconry permit. In 2009, the U.S. Fish and Wildlife Service and NPS issued memoranda expressly clarifying that collection of raptors is prohibited in units of the National Park System. Because the State of Alaska has authorized some of these practices as ''hunting'' under state law, the NPS is proposing to eliminate any potential confusion that these activities could be allowed in national preserves as state-authorized ''hunting.'' The rule would expressly state that the collection or possession of living wildlife, which includes raptors or eggs, is not allowed as a hunting or trapping activity in national preserves in Alaska. This regulation does not prohibit the use of trained raptors for hunting activities where authorized by applicable federal and state law.

This proposed clarification would not restrict other collection of wildlife for subsistence uses authorized under Title VIII of ANILCA, collection of migratory bird eggs authorized pursuant to U.S. Fish & Wildlife Service regulations, or collection of gull eggs in Glacier Bay by the Huna Tlingit pursuant to the statutory authorization for that activity.

Use of Bait for Taking Bears Under Federal Subsistence Regulations

The NPS is proposing to limit the types of bait that may be used to take bears for subsistence uses under Federal Subsistence Regulations in units of the National Park System in Alaska. Under the proposed rule, bait would be limited to (1) parts of legally taken native fish or wildlife that are not required to be salvaged; or (2) remains of native fish or wildlife that died of natural causes. The proposed rule would prohibit items such as dog food, grease, bread, and marshmallows, which are currently allowed and commonly used to bait bears. These practices are inconsistent with NPS regulations that prohibit feeding wildlife (36 CFR 2.2(a)(2)) and the NPS legal and policy framework which calls for managing wildlife for natural processes. It also furthers NPS efforts to avoid habituating wildlife to unnatural food sources, such as human foods.

Compliance With Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the reports entitled ''Regulatory Flexibility Threshold Analysis: Special Regulations for National Park Areas in Alaska'' and ''Preliminary Cost/Benefit Analysis: Special Regulations for National Park Service Areas in Alaska'' which can be viewed online at *http://parkplanning.nps.gov/akro* by clicking the link ''Subsistence Uses of Horns, Antlers, Bones and Plants'' and then clicking ''Document List.''

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does 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. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The proposed rule is limited in effect to federal lands managed by the NPS in Alaska and would not have a substantial direct effect on state and local government in Alaska. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 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.

Consultation With Indian Tribes (E.O. 13175 and Department Policy) and ANCSA Corporations

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and Alaska Native Claims Settlement Act (ANCSA) Corporations policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources. The NPS is seeking input from Alaska Native tribes and Alaska Native Corporations regarding these potential changes.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

This final rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information collection requirements associated with the requirement for the superintendent's written authorization to collect plant materials or nonedible animal parts under this final rule are covered under OMB Control Number 1024–0026, which expires on 08/31/2016. Information collection requirements associated with Federal Subsistence Board customary and traditional use determinations have been approved under OMB Control Number 1018–0075 which expires on 02/29/2016. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because we reached a Finding of No Significant Impact. The EA and FONSI are available online at *http://parkplanning.nps.gov/akro* by clicking the link ''Subsistence Uses of Horns, Antlers, Bones and Plants'' and then clicking ''Document List.'' The other parts of this rule (collection of live wildlife, bear baiting under Federal Subsistence Regulations) are excluded from the requirement to prepare a detailed statement because they fall within the categorical exclusion covering modifications to existing regulations for NPS-administered areas that do not (a) increase public use to the extent of compromising the nature and character of the area or cause physical damage to it; (b) introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it; (c) conflict with adjacent ownerships or land uses; or (d) cause a nuisance to adjacent owners or occupants. (For further information see Section 3.3 of Director's Order #12 Handbook). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

The NPS is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section above. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information

The primary authors of this regulation are Jenna Giddens, Bud Rice, and Andee Sears of the Alaska Regional Office, National Park Service; and Jay Calhoun and Russel Wilson of the Division of Regulations, Washington Support Office, National Park Service.

Public Participation

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section above.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 13 as set forth below:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240.

■ 2. Add paragraphs (j) and (k) to § 13.42 as follows:

* * * * *

(j) Collecting or possessing living wildlife (including eggs and offspring) is prohibited unless expressly authorized by federal statute or pursuant to § 2.5 of this chapter, 50 CFR part 100, or special regulations in subpart N of this chapter. A falconry permit or other permit issued by the State of Alaska for the take of wildlife does not provide the required authorization. These collecting activities are not allowed as hunting or trapping activities in national preserves under paragraph (a) of this section 13.42. This regulation does not prohibit the use of trained raptors for hunting activities where authorized by applicable federal and state law.

(k)(1) The following types of bait may be used to take bears for subsistence uses:

(i) Parts of legally taken native fish or wildlife that are not required to be salvaged; or

(ii) Remains of native fish or wildlife that died of natural causes.

(2) The use of any other type of bait to take bears for subsistence uses is prohibited.

■ 3. Amend § 13.420 by:

■ A. Adding the terms ''Animal parts'' and ''Handicraft article''

■ B. Revising the term ''Subsistence uses''

The additions and revisions to read as follows:

§ 13.420 Definitions.

Animal parts means nonedible antlers, horns, bones, teeth, claws, hooves, skins, hides, fur, hair, feathers, or quills that:

(1) Are obtained from a lawfully hunted or trapped animal;

(2) Have been shed or discarded as a result of natural life-cycle events; or

(3) Remain on the landscape as a result of the natural mortality of the animal.

Handicraft article is a finished product made by a rural Alaskan resident in which the shape and appearance of the natural material has been substantially changed by the skillful use of hands, such as sewing, weaving, lacing, beading, drilling, carving, etching, scrimshawing, painting, or other means, which has substantially greater monetary and aesthetic value than the unaltered natural material. The term includes products made from plant materials and from nonedible byproducts of fish and wildlife resources taken for personal or family consumption. This term does not include a trophy or European mount of horns or antlers.

* * * * *

Subsistence uses. As used in this part, this term means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this subpart, the terms—

(1) ''Family'' shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) ''Barter'' shall mean the exchange of handicraft articles or fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) ''Customary trade'' shall be limited to the exchange of handicraft articles or furs for cash to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

■ 4. Add § 13.482 to read as follows:

§ 13.482 Subsistence collection and use of animal parts.

(a) Local rural residents may collect animal parts (excluding migratory birds, marine mammals, and threatened or endangered species) for subsistence uses in park areas where subsistence uses are allowed, provided that:

(1) The resident has a federal customary and traditional use determination for the species collected in the game management unit where the collecting occurs (50 CFR part 100); and

(2) The resident has written authorization from the superintendent issued under § 1.6 of this chapter that identifies specific areas where this activity is allowed.

(b) The superintendent may establish conditions, limits, and other restrictions on collection activities. Areas open to collections will be identified on a map posted on the park Web site and available at the park visitor center or park headquarters. Violating a condition, limit, or restriction is prohibited.

(c) Non-conflicting State regulations regarding the use of bear claws that are now or may later be in effect are adopted as a part of these regulations.

■ 5. Amend § 13.485 by:

■ a. Revising paragraph (b)

■ b. Redesignating paragraph (c) as paragraph (d)

■ c. Adding new paragraph (c)

The revisions and additions to read as follows:

§ 13.485 Subsistence use of timber and plant material.

* * * * *

(b) The gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the gathering of dead or downed timber for firewood for noncommercial subsistence uses, shall be allowed without a permit in park areas where subsistence uses are allowed, provided that local rural residents may not gather plant materials to make handicraft articles for customary trade or barter unless they have written authorization from the superintendent issued under § 1.6 of this chapter that identifies specific areas where this activity is allowed.

(c) The superintendent may establish conditions, limits, and other restrictions on gathering activities. Violating a condition, limit, or restriction is prohibited.

* * * * *

Dated: December 11, 2015.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2015–33144 Filed 1–12–16; 8:45 am]

BILLING CODE 4310–EJ–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 216, 225, and 252

[Docket DARS–2015–0045]

RIN 0750–AI69

Defense Federal Acquisition Regulation Supplement: Defense Contractors Performing Private Security Functions (DFARS Case 2015–D021)

Correction

In notice document 2015–32874, appearing on pages 81496–81499 in the Issue of Wednesday, December 30, 2015, make the following correction:

On page 81496, in the first column, under the heading **DATES:** the entry

''January 29, 2016'' is corrected to read ''February 29, 2016''.

[FR Doc. C1–2015–32874 Filed 1–12–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2015–0178; FXES11130900000C2–156–FF009E32000]

RIN 1018–AY84

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Downlist the West Indian Manatee, and Proposed Rule To Reclassify the West Indian Manatee as Threatened

Correction

In Proposed Rule document 2015–32645, appearing on pages 1000–1026, in the Issue of Friday, January 8, 2016, make the following correction:

On page 1000, in the first column, under the heading **''DATES:''** the entry ''April 8, 2015'' is corrected to read ''April 7, 2016''.

[FR Doc. C1–2015–32645 Filed 1–12–16; 8:45 am]

BILLING CODE 1505–01–D

Notices

Federal Register
Vol. 81, No. 8
Wednesday, January 13, 2016

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

Food Safety and Inspection Service

[Docket No. FSIS–2015–0044]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: Office of the Deputy Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Deputy Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services are sponsoring a public meeting on February 16, 2016. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 48th Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), taking place in Xi'an, China March 14–18, 2016. The Deputy Under Secretary for Food Safety and the FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 48th Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, February 16, 2016, from 9:00 a.m.–12:00 p.m.

ADDRESSES: The public meeting will take place at the Food and Drug Administration (FDA), Harvey Wiley Federal Building, 5100 Paint Branch Parkway, Rooms 1A–001 and 1A–002, College Park, MD 20740.

Documents related to the 48th Session of the CCFA will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

Susan Carberry, Ph.D., U.S. Delegate to the 48th Session of the CCFA and the FDA invite interested U.S. parties to submit their comments electronically to the following email address: *ccfa@fda.hhs.gov.*

Registration: Attendees may register to attend the public meeting by emailing *ccfa@fda.hhs.gov* by February 12, 2016. Early registration is encouraged because it will expedite entry into the building and parking area. If you require parking, please include your vehicle make and tag number when you register. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in person, but wish to participate, may do so by phone. Those wishing to participate by phone should request the *call-in-number* and the conference code when they register for the meeting.

For Further Information About The 48th Session of the CCFA Contact: Susan Carberry, Ph.D., Supervisory Chemist, Division of Petition Review, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, HFS–205, College Park, MD 20740, Telephone: (240) 402–1269, Fax: (301) 436–2972, Email: *susan.carberry@fda.hhs.gov.*

For Further Information About The Public Meeting Contact: Daniel E. Folmer, Ph.D., Review Chemist, Division of Petition Review, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, HFS–265, College Park, MD 20740, Telephone: (240) 402–1269, Fax: (301) 436–2972, Email: *daniel.folmer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA establishes or endorses permitted maximum levels for individual food additives; prepares priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes and International Numbering System (INS) numbers to individual food additives; recommends specifications of identity and purity for food additives for adoption by Codex; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects, such as labeling of food additives when sold as such. The CCFA is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 48th Session of the CCFA will be discussed during the public meeting:

- Matters referred by the Codex Alimentarius Commission and other subsidiary bodies
- Matters of Interest arising from FAO/WHO and from the 80th Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Proposed draft Specifications for Identity and Purity of Food Additives arising from the 80th JECFA Meeting
- Endorsement or Revision of Maximum Levels for Food Additives and Processing Aids and Codex Standards
- Alignment of the food-additive provisions of commodity standards and relevant provisions of the General Standard for Food Additives
- Food additive provisions in Table 1 and 2 in food categories 01.2 through 08.4, with the exclusion of food categories 04.1.2.4, 04.2.2.4, 04.2.2.5, 04.2.2.6, 05.1.1, 05.1.3, and 05.1.4 (outstanding from CCFA47)
- Use of nisin (INS 234) in food category 08.3.2 in general, and specifically in products conforming to the corresponding commodity standards
- Proposed draft provision for quillaia extracts (INS 999 (i), (ii)) in food category 14.1.4
- Uses and use levels of paprika extract (INS 160c(ii)) (replies to CL 2015/9–FA Part C, point 8)

- Proposals for new and/or revision of food additive provisions (replies to CL 2015/12–FA)
- Proposed draft revision of food category 01.1 ''Milk and dairy-based drinks'' and its sub-categories
- Discussion paper on the use of specific food additives in the production of wine
- Proposed draft revision to the International Numbering System (INS) for Food Additives (CAC/GL 36–1989)
- Proposals for additions and changes to the Priority List of Substances proposed for evaluation by JECFA (replies to CL 2015/11–FA)
- Information on commercial use of: Potassium hydrogen sulfate (INS 515(ii)), sodium sorbates (INS 201) and calcium hydrogen sulfite (INS 227) (replies to CL 2015/9–FA Part C, point 9)
- Discussion paper on secondary additives
- Proposed draft revision of Section 4.1c and 5.1c of the General Standard for the Labelling of Food Additives When Sold As Such (CODEX STAN 107–1981)
- Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the meeting. Members of the public may access these documents at *http://www.codexalimentarius.org/meetings-reports/detail/en/?meeting=CCFA&session=48.*

Public Meeting

At the February 16, 2016, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 48th Session of the CCFA, Dr. Susan Carberry at the following address: *ccfa@fda.hhs.gov.* Written comments should state they relate to activities of the 48th Session of the CCFA.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register* .

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or Email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2016–00482 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Software Vendors of State and Local Management Information Systems (MIS) and Other Technology Solutions for the National School Lunch and School Breakfast Programs

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice; Request for information.

SUMMARY: This is a request for information from Management Information Systems (MIS) software and hardware vendors and developers (''vendors'') to learn about the functionality of State and School Food Authority National School Lunch and School Breakfast Program (NSLP/SBP) data management information systems. It is not a request for proposal and does not commit the Government to issue a solicitation, make an award, or pay any costs associated with responding to this announcement. All submitted information shall remain with the Government and will not be returned. All responses will become part of the public record and will not be held confidential.

The United States Department of Agriculture (USDA) is seeking information that will inform future data reporting requirements for the Department's oversight and management of NSLP/SBP. The Department is aware that all States and many school districts have installed and implemented MIS or other technology solutions to improve State and local program management. To better understand the availability and implementation of these solutions, USDA is requesting information from vendors about NSLP/SBP data systems they offer and have deployed at the State and local levels.

The objectives of this request for information (RFI) are to:

1. Obtain background data to inform later research on State and School Food Authority (SFA) NSLP/SBP data management information systems.

2. Describe the functionality and capabilities of systems currently in use by State agencies and SFAs, or available to States and SFA for purchase.

3. Describe the typical costs of system development, installation, maintenance, and upgrades.

4. Identify which States and SFAs are using particular systems.

DATES: To be assured of consideration, written comments must be submitted or postmarked on or before March 14, 2016.

ADDRESSES: The Food and Nutrition Service, USDA, invites the submission of the requested information through one of the following methods:

- *Preferred method*: Submit information through the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submissions.
- *Mail*: Submissions should be addressed to Dennis Ranalli, Social Science Policy Analyst, Office of Policy Support, FNS, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302.
- Comments may also be emailed to *dennis.ranalli@fns.usda.gov*.

All information properly and timely submitted, using one of the three methods described above, in response to this request for information will be included in the record and will be made available to the public on the Internet at *http://www.regulations.gov*. Please be advised that the substance of the information provided and the identity of the individuals or entities submitting it will be subject to public disclosure.

All written comments will be open for public inspection at the FNS office located at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 1014, during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday). All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this request for information should be directed to Dennis Ranalli at *dennis.ranalli@fns.usda.gov*.

SUPPLEMENTARY INFORMATION: The current Food and Nutrition Service (FNS) routine data collection requirements for the National School Lunch Program and School Breakfast Program (NSLP/SBP) have their roots in the paper and early computer eras and reflect concerns with paperwork and reporting burden. Thus, data collected to administer and monitor these programs is typically reported at the State level, with detailed data collected at the service delivery point (*e.g.,* individual meal transactions, school) often aggregated at one or more levels (*e.g.,* school to SFA to State-level) before being submitted to FNS. Data aggregation results in a significant loss of potentially valuable information that could support administration, monitoring, and policy development.

FNS recognizes that, in fact, managing a school food service program is a complex and data intensive operation, and that SFAs collect, generate, and maintain far more data than they report to their State child nutrition agencies. This includes data on costs, revenues, inventories, vendor management, and other business, administrative and regulatory activity. The same is true of State agencies that are responsible for monitoring the work of many SFAs. Some States and SFAs have developed more sophisticated data management systems to manage program data, however there is no comprehensive inventory of NSLP/SBP management information systems (MIS) in use, the number of States and SFAs that use MIS, or the data elements collected to support FNS reporting and general program management.

The *Review of Child Nutrition Data and Analysis for Program Management* project will fill this knowledge gap by fully documenting SFA and State NSLP/SBP management information systems. This baseline ''as is'' review will document overall NSLP/SBP information system design, capabilities, functions, development/replacement and maintenance costs, and typical lifespan. The ''as is'' review is focusing particular attention on NSLP/SBP program management data that are collected or generated at the SFA or State agency levels, but are not required to be reported to FNS on any FNS program report forms. Findings from the RFI and additional review activities will provide a baseline for potential improvements to data collection practices and help support future MIS modernization and paperwork reduction efforts. They will also help identify promising and emerging practices and define models for MIS at both the state and local SFA levels.

FNS requests that vendors respond in detail to the items below. Vendors are encouraged to provide any material that addresses the information requested or any other information that may be pertinent. Additional references or links to materials are welcome.

I. Vendor Information

a. Name of Company
b. Address and Telephone Number
c. Vendor Representative, contact number and email address

II. Vendor Overview & Experience

Briefly describe your company, your products and services, history, and ownership; for example:

a. Web site address
b. Main product/services
c. Main market/customers
d. Company location(s)
e. Product deployment sites/school systems
1. Number of School District/schools currently deployed
2. Average/typical size of the school system
3. Year of first deployment
4. Years serving schools

III. Product Information

a. List and describe the core modules provided by your product. For example:

1. Point of Sale/Service (POS)
2. Prepayment system(s) for parents
3. Nutrient Analysis and Menu Planning
4. Inventory Management
5. Purchasing/Vendor Management
6. Production Records
7. Financial Management
8. Free and Reduced-Price Meals Applications
   - Scanning paper applications
   - Processing On-line applications
   - Making eligibility determinations
   - Creating benefit issuance documents
   - Conducting verification
9. Direct Certification
   - SNAP recipients
   - Extended SNAP household members
   - Other direct certification—homeless, migrant, foster
10. Meal counting and claiming
11. Administrative Review
12. Reporting
13. Any other not listed above

b. Describe the capabilities and reporting functionalities of your product.

c. Describe your platform—site-based, central office w/satellite, cloud-based, etc.

d. For SFAs, are POS terminals proprietary or third-party?

e. Is your system a commercial off the shelf (COTS) product with application in multiple industry segments or school nutrition specific?

f. Does your firm rely on any 'third party software products/systems' for implementation and/or operation?

g. Are any additional licenses required from 'third party sources' to utilize your product?

h. What is your product's ability to interface with other vendor systems? What level of customization is available?

i. List the minimum and recommended hardware requirements to implement and utilize your product at each level of installation.

j. Describe the interface capabilities between your product and various within-district student data base systems.

k. Describe the interface capabilities between your product and State agency systems.

l. Does your system adhere to Schools Interoperability Framework (SIF) standards?

m. Please provide a list of data elements captured/stored by your product. For example:

1. Name of the data element
2. Description of the data element
3. Possible values

n. Describe the processes/procedures/steps associated with planning, installation, setup, data import and conversion, data migration, quality assurance, deployment, and roll-out for your product.

IV. Customer Support, Maintenance and Security

a. Describe your model for providing customer support, including charge/cost structure (*e.g.,* hours of support, levels of support).

b. Describe your incident reporting and tracking systems, and the ability for customer staff to access those systems directly.

c. List the types of support access that are available (web, email, chat, telephone etc.).

d. Describe the communication and escalation processes/protocols in the event of failure, network outages, degraded service, and/or exceeded planned utilization.

e. Describe your replication, archival and retrieval processes, including your disaster recovery model.

f. Describe the warranty and maintenance plan(s) for your product. Have there been recent upgrades or updates to your product? How often do you typically develop and release upgrades?

g. Is your support agreement integrated into the license agreement?

h. Describe your understanding and system approach to privacy rules, specifically those related to children and students (Children's Online Privacy Protection Act, Family Educational Rights and Privacy Act, etc.).

i. Describe your process for upgrading your product to meet federal and state regulations.

j. Does your product support access through smartphones, tablets, laptops etc.?

V. Pricing

a. Describe your pricing models relevant to each component of your product.

b. Is your pricing model based on purchasing the entire product or individual module(s), or is it based on usage/users?

c. Describe the upgrade process and cost to upgrade.

d. List any additional pricing/cost information that would be useful to evaluate the affordability of the product.

VI. Training

a. What type of technical training do you provide?

b. Describe your product's documentation and in-program help?

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–00504 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Food and Nutrition Service (FNS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to comment on the ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This collection is being developed as part of a Federal Government-wide effort to streamline the process for seeking feedback from the public on service delivery. This notice announces our intent to submit this ''fast track'' collection to the Office of Management and Budget (OMB) for approval and to solicit comments on specific aspects for the proposed information collection.

DATES: Written comments must be received on or before March 14, 2016.

ADDRESSES: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Lynnette Thomas, Planning & Regulatory Affairs Office, Office of Policy Support, 3101 Park Center Drive, Alexandria, VA 22302. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Lynnette Thomas, Planning & Regulatory Affairs Office, Office of Policy Support, 3101 Park Center Drive, Alexandria, VA 22302.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (Fast Track).

OMB Number: 0584–NEW.

Expiration Date: Not Yet Determined.

Type of Request: New collection.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient and timely manner. By qualitative feedback we mean, information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population. This feedback will, (1) provide insights into customer or stakeholder perceptions, experiences and expectations, (2) provide an early warning of issues with service and, (3) focus attention on areas where communication, training or changes in operations might improve delivery of products or services. This collection will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data usage require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Below we provide projected average estimates for the next 3-years:

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 30,000.

Estimated Number of Responses per Respondent: 1.

Estimated Annual responses: 30,000.

Estimated time per response: 60 minutes.

Burden hours: 30,000.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–00505 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Determining Eligibility for Free and Reduced Price Meals and Free Milk

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this information collection. This is a revision of a currently approved collection for determining eligibility for free and reduced price meals and free milk as stated in 7 CFR part 245. These federal requirements affect eligibility under the National School Lunch Program, School Breakfast Program, and the Special Milk Program and are also applicable to the Child and Adult Care Food Program and the Summer Food Service Program when individual eligibility must be established. The current approval for the information collection burden associated with 7 CFR part 245 expires on April 30, 2016. The revisions being requested are primarily adjustments due to updating the number of respondents.

DATES: Written comments must be submitted by March 14, 2016.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Sarah Smith-Holmes, Director of Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Sarah Smith-Holmes, Director of Program Monitoring and Operational Support Division; *Sarah.Smith-Holmes@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 245—Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0026.

Expiration Date: April 30, 2016.

Type of Request: Revision of a currently approved collection.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). Per 7 CFR part 245, schools participating in these meal and milk programs must make free and reduced price meals and free milk available to eligible children. This information collection obtains eligibility information for free and reduced price meals and free milk and also incorporates verification procedures as required to confirm eligibility. The Programs are administered at the State and local educational agency levels and

operations include direct certification, the submission of household size and income applications for school meal/milk benefits, record maintenance, and public notification. The information collection burden associated with this revision is summarized in the chart below. The difference in burden is mainly due to updating the number of participating school food authorities and local educational agencies and the number of households having to submit an application. All of the reporting and recordkeeping requirements associated with this information collection are currently approved by the Office of Management and Budget and are in force. This is a revision of the currently approved information collection.

Affected Public: State Agencies, School Food Authorities, Schools, and Individuals/Households.

Estimated Number of Respondents: 5,449,186 (56 SAs, 19,822 SFAs, 5,390,000 households).

Estimated Number of Responses per Respondent: 3.035.

Estimated Total Annual Responses: 16,540,513.

Estimated Hours per Response: 0.0580889.

Estimated Total Annual Reporting Burden: 947,920.

Estimated Total Annual Recordkeeping Burden: 5,958.

Estimated Total Annual Public Disclosure Burden: 6,943.

Estimated Total Annual Burden: 960,821.

Current OMB Inventory for Part 245: 966,023.

Difference (Burden Revisions Requested with this renewal): −5,202.

Refer to the following table for estimated annual burden per each type of respondent:

(a) Affected public	(b) Estimated number respondents	(c) Estimated number responses per respondent	(d) Estimated total annual responses (b × c)	(e) Estimated hours per response	(f) Estimated total annual burden hours (d × e)
Reporting					
State Agencies	56	5.018	281	0.637	179
School Food Authorities	19,600	557.247	10,922,050	0.025	274,741
Individuals/Households	5,390,000	1.03	5,551,000	0.121	673,000
Total Reporting Burden	5,409,656	3.045	16,473,331	0.058	947,920
Recordkeeping					
State Agencies	54	125.772	6,792	0.249	1,691
School Food Authorities	19,600	1.056	20,692	0.206	4,267
Total Recordkeeping Burden	19,654	1.398	27,484	0.217	5,958
Public Notification					
State Agencies	54	1	54	0.100	5
School Food Authorities	19,822	2	39,644	0.175	6,938
Total Recordkeeping Burden	19,876	2	39,698	0.17	6,943
Total Reporting, Recordkeeping and Public Disclosure					
Reporting	5,409,656	3.045	16,473,331	0.058	947,920
Recordkeeping	19,654	1.398	27,484	0.217	5,958
Public Disclosure	19,876	2	39,698	0.17	6,943
Total Reporting, Recordkeeping, and Public Disclosure Burden	5,449,186	.....	16,540,513	.....	960,821

Dated: December 29, 2015.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–00514 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program 2016 Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments address changes in the Consumer Price Index, as required under the Richard B. Russell National School Lunch Act. The 2016 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. The 2016 rates are also presented individually, as separate operating and administrative rates of reimbursement, to show the effect of the Consumer Price Index adjustment on each rate.

DATES: *Effective Date:* January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Steve Hortin, Program Monitoring and Operational Support Division, Child Nutrition Programs, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Suite 628, Alexandria, Virginia 22302; 703–305–4375.

SUPPLEMENTARY INFORMATION: The Summer Food Service Program (SFSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See, 2 CFR part 415 and final rule-related notice published at 48 FR 29114, June 24, 1983.)

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3518, no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from formal review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this notice have the meaning ascribed to them under 7 CFR part 225 of the SFSP regulations.

Background

This notice informs the public of the annual adjustments to the reimbursement rates for meals served in SFSP. In accordance with sections 12(f) and 13, 42 U.S.C. 1760(f) and 1761, of the Richard B. Russell National School Lunch Act (NSLA) and SFSP regulations under 7 CFR part 225, the United States Department of Agriculture announces the adjustments in SFSP payments for meals served to participating children during calendar year 2016.

The 2016 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. Reimbursement is based solely on a ''meals times rate'' calculation, without comparison to actual or budgeted costs.

Sponsors receive reimbursement that is determined by the number of reimbursable meals served, multiplied by the combined rates for food service operations and administration. However, the combined rate is based on separate operating and administrative rates of reimbursement, each of which is adjusted differently for inflation.

Calculation of Rates

The combined rates are constructed from individually authorized operating and administrative reimbursements. Simplified procedures provide flexibility, enabling sponsors to manage their reimbursements to pay for any allowable cost, regardless of the cost category. Sponsors remain responsible, however, for ensuring proper administration of the Program, while providing the best possible nutrition benefit to children.

The operating and administrative rates are calculated separately. However, the calculations of adjustments for both cost categories are based on the same set of changes in the *Food Away From Home* series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. They represent a 2.7 percent increase in this series for the 12-month period, from November 2014 through November 2015 (from 251.987 in November 2014 to 258.805 in November 2015).

Table of 2016 Reimbursement Rates

Presentation of the 2016 maximum per meal rates for meals served to children in SFSP combines the results from the calculations of operational and administrative payments, which are further explained in this notice. The total amount of payments to State agencies for disbursement to SFSP sponsors will be based upon these adjusted combined rates and the number of meals of each type served. These adjusted rates will be in effect from January 1, 2016 through December 31, 2016.

SUMMER FOOD SERVICE PROGRAM
2016 REIMBURSEMENT RATES (COMBINED)

Per meal rates in whole or fractions of U.S. dollars	All states except Alaska and Hawaii		Alaska		Hawaii	
	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	2.1325	2.0925	3.4625	3.3975	2.4950	2.4475
Lunch or Supper	3.7450	3.6850	6.0650	5.9675	4.3850	4.3150
Snack	0.8875	0.8650	1.4350	1.4025	1.0325	1.0100

Operating Rates

The portion of the SFSP rates for operating costs is based on payment amounts set in section 13(b)(1) of the NSLA, 42 U.S.C. 1761(b)(1). They are rounded down to the nearest whole cent, as required by section 11(a)(3)(B)(iii) of the NSLA, 42 U.S.C. 1759a(a)(3)(B)(iii).

SUMMER FOOD SERVICE PROGRAM
OPERATING COMPONENT OF 2016 REIMBURSEMENT RATES

Operating rates in U.S. dollars, rounded down to the nearest whole cent	All states except Alaska and Hawaii	Alaska	Hawaii
Breakfast	1.94	3.15	2.27
Lunch or Supper	3.39	5.49	3.97
Snack	0.79	1.28	0.92

Administrative Rates

The administrative cost component of the reimbursement is authorized under section 13(b)(3) of the NSLA, 42 U.S.C. 1761(b)(3). Rates are higher for sponsors of sites located in rural areas and for ''self-prep'' sponsors that prepare their own meals at the SFSP site or at a central facility instead of purchasing them from vendors. The administrative portion of SFSP rates are adjusted, either up or down, to the nearest quarter-cent.

SUMMER FOOD SERVICE PROGRAM
ADMINISTRATIVE COMPONENT OF 2016 REIMBURSEMENT RATES

Administrative rates in U.S. dollars, adjusted, up or down, to the nearest quarter-cent	All states except Alaska and Hawaii		Alaska		Hawaii	
	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	0.1925	0.1525	0.3125	0.2475	0.2250	0.1775
Lunch or Supper	0.3550	0.2950	0.5750	0.4775	0.4150	0.3450
Snack	0.0975	0.0750	0.1550	0.1225	0.1125	0.0900

Authority: Sections 9, 13, and 14, Richard B. Russell National School Lunch Act, 42 U.S.C. 1758, 1761, and 1762a, respectively.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2016–00506 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Grand Mesa, Uncompahgre and Gunnison National Forests; Grand Valley Ranger District; Mesa County, Colorado; Enlargement of Monument No. 1 and Hunter Reservoirs

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental draft environmental impact statement.

SUMMARY: The Grand Mesa, Uncompahgre and Gunnison National Forests (GMUG) intends to prepare a Supplement to the June 2007 Draft Environmental Impact Statement (DEIS) for the Hunter Reservoir Enlargement to also include enlargement of the Monument No. 1 Reservoir in the Proposed Action. The original notice of intent (NOI) for the Hunter Reservoir Enlargement was published in 70 FR 61781 on October 26, 2005; and the notice of availability (NOA) was published in 72 FR 39808 on July 20, 2007. Both reservoirs are owned by the Ute Water Conservancy District (Ute Water) and are located on National Forest System (NFS) lands in the Leon Creek watershed in the eastern portion of Mesa County, Colorado.

DATES: Comments concerning the expanded scope of the analysis must be received by February 12, 2016. The supplemental DEIS is expected to be released in April 2016 for comment and the final environmental impact statement is expected in October 2016.

ADDRESSES: Send written comments to Ute Water Reservoir Enlargement Projects, Grand Valley Ranger District, 2777 Crossroads Boulevard, Unit 1, Grand Junction, CO 81506. Comments may also be sent via email to *comments-rocky-mountain-gmug-grande-valley@fs.fed.us,* or via facsimile to 970–263–5819.

FOR FURTHER INFORMATION CONTACT: Linda Bledsoe, Project Manager, at 970–263–5802 or via email at *lbledsoe@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: A DEIS analyzing effects from the enlargement of Hunter Reservoir was issued in 2007. In 2009, Ute Water acquired the rights to Monument No. 1 Reservoir and subsequently commissioned a raw water study to be completed to analyze all of its water rights (storage and flow), how those rights are currently used and what additional rights or facilities might be needed in order for Ute Water to have sufficient water to meet increased municipal water demands for the next several decades. That study identified the need for additional high mountain storage, especially during times of drought. In February 2012, Ute Water submitted a proposal for the enlargement of Monument No. 1 Reservoir to be considered along with the enlargement of Hunter Reservoir.

With new alternatives and additional information brought forward, as well as the length of time that has passed since issuance of the DEIS in 2007, the Forest Service has determined that a supplemental draft environmental impact statement (SDEIS) that included both reservoir enlargement proposals was appropriate (FSH 1905.18.2, Chapter 10).

Purpose and Need for Action

The purpose and need for the Forest Service action on the Monument No. 1 and Hunter Reservoirs enlargement project is to respond to a request by the Ute Water Conservancy District for special use permits to expand the dams for these two reservoirs, which were submitted under the Forest Service's special use regulations (36 CFR 251.54).

Ute Water has proposed these expansions to meet the need for projected municipal water demand. Over the next 30 years, demand is expected to increase by about two and a half times the current amount of 14,300 acre-feet (AF). The Proposed Action is one of several actions that Ute Water has indicated it will need to meet its future demand for municipal water in its service area. Those actions include, but are not limited to, acquiring new water rights, perfecting existing water rights, and upgrading Ute's Colorado River pumping capacity and water treatment plant.

Proposed Action

Under the Proposed Action, the Forest Service would authorize the use of NFS lands by Ute Water to enlarge the existing Monument No. 1 and Hunter Reservoirs by increasing the size and height of the dams and spillways, along with the activities associated with those enlargements.

The reservoirs are located in Mesa County, Colorado, about 15 miles southeast of Collbran, Colorado. Hunter Reservoir is located in Section 27, T. 11 S., R. 93 W., 6th P.M. Monument No. 1 Reservoir is located in Sections 11 and 12, T. 11 S., R. 93 W., 6th P.M.

Construction associated with the Proposed Action would likely begin with the roads and trails, including necessary relocations, in advance of dam construction activities.

Both reservoirs hold irrigation water rights and are operated as irrigation reservoirs, meaning that the reservoirs fill each year and are typically drained in the summer after runoff has ended in order to irrigate the ranches below the forest boundary that have historically used the water. Depending on the amount of snowpack, the reservoirs fill during spring and early summer; and the water is stored in the reservoirs until later in the summer when the water is needed to irrigate the ranches or when a senior water rights holder places a call on the stream. The reservoirs are

typically empty by late fall, and then the outlets are closed in order to capture water over the winter and the next spring.

For the enlargement of the two reservoirs, Ute Water applied for and received water rights decrees for primarily municipal uses, which would change how the reservoirs are operated. Because the reservoirs are located high in the watershed and existing senior water rights downstream are required to be satisfied first, it could take two to three years to fill each of the reservoirs. Once filled, Ute Water does not anticipate releasing the water stored in the reservoirs until it needs the water for municipal purposes or when there is a call on the stream by senior water rights holders downstream. Ute Water has identified the need for these reservoirs for periods of drought. The irrigation water rights would still be available for irrigation of the ranches, and that water would still be released. As the reservoirs would not be fully drained each year, the spring runoff would replace whatever irrigation water was released during the previous summer and the majority of runoff would generally pass through the reservoirs and spill downstream. Some municipal water could be released in late fall and/or winter in order to increase water quality in Plateau Creek prior to it being stored in the Jerry Creek Reservoirs and subsequent treatment as drinking water.

Access to both reservoir sites is primarily on the Park Creek Road (National Forest System Road (NFSR)) 262, which begins at Vega Reservoir below the forest boundary. The Forest Service holds an easement for the portion of the road crossing private lands from Vega Reservoir to the forest boundary.

Current Forest Service road management objectives (RMOs) classify NFSR 262 as a high clearance, four-wheel drive road; though most travel is presently done on all-terrain vehicles (ATVs). During spring runoff, NFSR 262, as well as other roads and trails in the area, are usually impassable because of high water at the stream crossings.

Substantial temporary and permanent improvements to the road would be required in order to accommodate all the traffic associated with the reservoir enlargements and to protect resources. Prior to dam construction, NFSR 262 would be narrowed back to its original width of 14 feet with 12-foot ditches and would have inter-visible (in sight of one another) pullouts. Drainage would be reestablished along the road, creek crossings would be hardened and surface rock added in order for the road to accommodate the increased traffic associated with the larger, heavier vehicles needed for construction of the reservoir enlargements. The intent of the road upgrades would be to improve the road structure and stability and not to allow for increased vehicle speeds.

Approximately three miles south of the forest boundary along NFSR 262, a ''transfer area'' would be established in an area that has historically been used as an ATV unloading area and livestock gathering site. The area is prone to holding water onsite and prevents proper drainage, which results in rutting and other resource damage. The area would be graded, sloped and hardened to allow for use of the site, while protecting or improving the condition of resources. This transfer area would be used for construction activities including unloading and storing material associated with both reservoir sites and would remain as a parking area for the Forest Service, permittees and the public following construction. The road would be upgraded to the transfer point to allow passage by street-worthy vehicles. From the transfer point to the reservoir sites, NFSR 262 would be used by off-road equipment and trucks, which would require less work on the road.

It is anticipated that road and trail work for both reservoirs would be done prior to the major construction work commencing on the reservoirs. The Park Creek Road (NFSR 262) to the Monument Trail (National Forest System Trail (NFST) 518) segment would need to be completed prior to the numerous construction vehicles accessing the construction site, although some breaching of the current reservoir could be done at the same time.

While construction work is ongoing at Monument Reservoir No. 1, improvements would be done on NFSR 262 to its intersection with the Hunter Reservoir Road (NFSR 280). Construction associated with the enlargement of the two reservoirs could last as long as 6 or 7 years; however, construction work on NFSR 262 should be complete within 3 or 4 years.

There would likely be delays for the public on the access routes to the reservoirs, but none of the routes would be closed to the public during construction activities.

Monument No. 1 Reservoir

Under the Proposed Action, Ute Water would enlarge the existing Monument No. 1 Reservoir by increasing the size and height of the dam and spillway. The existing earthen dam impounding Monument No. 1 Reservoir would be rebuilt and increased in size, expanding the water storage capacity of the facility from the current 570 acre-feet (AF) to 5,281 acre-feet. The current inundated area covers approximately 37 surface acres, which would be increased to about 160 acres following construction.

In order to accommodate construction vehicles and equipment, an administrative-use only road would be constructed over the existing Monument Trail (NFST 518) and would be widened, relocated and realigned, where needed, from its intersection with NFSR 262 to the new Monument No. 1 Reservoir dam site. About one-half mile of the road/trail at its start would be relocated to the north in order to avoid a cultural resource site. Relocating that portion of the route would result in road construction occurring in the Flattops/Elk Park Colorado Roadless Area.

The Forest Service would manage the realigned access route as a ''coincidental road,'' which would allow the designation of the route as both an administrative road and trail. As an administrative road, it would be gated and used for (1) operation and maintenance purposes necessary for the water right identified by Ute Water; (2) administrative purposes by the Forest Service; (3) fire; (4) emergency; or (5) law enforcement personnel. As NFST 518, it would remain open to the public as an ATV trail, open to vehicles less than 50 inches in width.

About 1½ miles of the Monument Trail starting at the current dam would need to be relocated because the existing trail would be inundated by the water stored in the enlarged reservoir. The relocation would move the trail to higher ground along the northern shoreline of the newly-enlarged reservoir.

Approximately four miles of the Sunlight-Powderhorn (S–P) Snowmobile Trail would be relocated in order to avoid newly-inundated areas from the enlarged Monument No. 1 Reservoir. Instead of the trail following NFST 518 from NFSR 262, the trail would instead follow the East Leon Creek Trail (NFST 730) for about 1½ miles and then go in an easterly direction to intersect the S–P Trail upstream of Monument No. 1 Reservoir. This trail is part of a popular 40-mile-long groomed trail system, and the new alignment would need to be about 22 feet wide in order to accommodate the groomer.

The existing dam is a homogeneous, gravelly clay embankment founded on glacial drift soils placed across Monument Creek, a tributary to East Leon Creek. It has a vertical height of 32 feet with a dam crest elevation at 10,206

feet, a crest width of 10 feet and crest length of about 500 feet. The proposed enlarged dam would increase the vertical height by 52 feet to a total of 85 feet with a dam crest elevation at 10,255 feet. The new crest width would be 25 feet and the crest length would be 1,850 feet.

The preliminary embankment design concept assumes a zoned earthen embankment with a 3:1 downstream slope and a 3.5:1 upstream slope. Six internal materials are associated with this type of dam construction. These materials include the upstream and downstream shells, a central clay core, sand chimney filter, gravel blanket drain, riprap and riprap bedding. A vertical tower positioned near the upstream toe would connect into a low level outlet works for use during normal operations and as a service spillway designed for storm events up to the 100-year interval. An emergency spillway would be located on the right abutment to convey storm events within the basin tributary to the reservoir greater than the 100-year storm event interval.

The soils beneath the enlarged embankment dam consist of deposits of glacial till overlying Uinta Formation siltstone, sandstone, and claystone. The proposed enlarged embankment would be constructed using material drawn from on-site borrow areas that would be ultimately inundated. The upstream slope of the dam would be surfaced with a layer of granular riprap bedding and riprap materials to protect against wave erosion. Riprap material, sourced from basaltic talus located throughout the reservoir, would be processed on-site.

A compacted clay core centrally located within the embankment would act as a barrier to seepage. The clay core would extend from the limits of foundation improvements (grout curtain) to the proposed normal water surface elevation of 10,250 feet above sea level (ASL). It is intended to minimize seepage, reduce pressure on the dam itself, and eliminate the soft soil conditions identified on the downstream toe of the embankment. The material necessary to construct the clay core exists within the reservoir footprint as identified during the Geotechnical Evaluation (URS, October 2011). A cutoff trench located beneath the clay core of the dam and consolidation grouting of this zone may be required.

The enlarged dam would have an internal drainage system to reduce pore pressures and to prevent internal erosion of embankment and foundation materials. The principal elements of the drainage system would include the filter and chimney drain immediately downstream of the clay core and the blanket drain constructed horizontally downstream of the central clay core along the footprint below the embankment shell. Toe drain collection piping would be constructed along the toe within the blanket drain to convey seepage safely through the embankment for monitoring and measurement. Materials necessary for construction of the internal drainage system are commercially available locally from the Grand Valley area and would need to be transported to the site.

The outlet works/service spillway tower would be constructed mainly of concrete, positioned near the upstream toe of embankment, and founded in strong, competent materials to prevent settlement. An access bridge would connect the tower to the dam crest for operation and maintenance equipment and personnel. The outlet works pipe would be sized as necessary to accommodate dam safety requirements for emergency drawdown or as necessary for the safe diversion of storm inflows during construction. The service spillway crest would establish the normal water surface elevation of the reservoir at 10,250 feet ASL and would pass excess water up to the 100-year storm event recurrence interval down the outlet works conduit into an energy-dissipating basin below the downstream toe of the dam.

The emergency spillway would be a new feature, located in a topographic saddle approximately 850 feet north of the right abutment. Releases from the emergency spillway in excess of the 100-year storm event would enter Monument Creek through an adjacent drainage approximately 500 feet downstream of the enlarged dam. Locating the uncontrolled releases from the emergency spillway away from the embankment is an important dam safety upgrade. The emergency spillway crest length and control sill elevation would be constructed based on the determination of the inflow design flood hydrology performed in accordance with the Colorado State Engineer's Dam Safety requirements.

Most of the materials for the construction would be derived, wherever possible, from the borrow areas and the nearby basaltic talus within the reservoir footprint to minimize haul distance, create additional reservoir storage, and minimize disturbed area. In addition, imported material necessary to construct the drainage collection system (crushed rock and sand), concrete materials including: aggregate, cement, and admixtures would be delivered for on-site batching from commercial locations. An estimated 40,000 cubic yards of sand, gravel, stone and other construction material would need to be imported for the dam enlargement, requiring an estimated 3,000 round trips using 25-ton end-dump haul trucks for an average of about eight round trips per day during the period of construction.

Because of the high site elevation and short construction season, construction of the dam enlargement and associated features could continue over three to four years. The first season would be used to improve access roads, develop borrow areas, stockpile embankment materials, import drainage materials, remove the existing dam, begin foundation grouting (if required), and establish the coffer dam, outlet works, and flood bypass structures. During the second year, construction of the outlet works/service spillway tower could be completed and embankment fill would begin. The third season would see the completion of the embankment, riprap placement, emergency spillway construction, and the access bridge to the tower.

All trees below 10,255 feet elevation surrounding the reservoir would need to be cleared prior to construction completion and reservoir filling. This work is necessary to reduce debris in the reservoir which could block spillway channels and impact reservoir operations.

About 40 acres of timber (predominantly spruce-fir) would be removed in order to accommodate the relocation of the Monument Trail (NFST 518), the S–P Snowmobile Trail and the enlarged inundated area for the reservoir.

Following construction of the new dam at Monument No. 1 Reservoir, the dam at Monument No. 2 Reservoir, which is located just northeast of Monument No. 1 Reservoir, would be breached, water control structures (outlet, concrete walls, etc.) would be removed and the area would be reseeded with native species. Additionally, willows would be transplanted from the impacted area of Monument No. 1 Reservoir.

The existing access route used for operation and maintenance of Monument No. 2 Reservoir would be rehabilitated to the extent necessary and closed to all uses. The water currently stored in that reservoir would be transferred to the newly-enlarged Monument No. 1 Reservoir. A wetlands mitigation plan to offset effects to wetlands caused by the enlargement of the Monument No. 1 Reservoir would be developed and would include the restoration of wetlands at Monument

No. 2 Reservoir. Additional mitigation could be required by the Forest Service and/or U.S. Army Corps of Engineers.

A temporary workers' camp would be located near the construction site to reduce construction traffic and improve construction efficiency. The site would need to be large enough to accommodate six to ten camp trailers for the 15 to 20 workers and five to six trucks that would remain on-site. The camp could be located either at the reservoir site or on an old well pad near the intersection of NFSR 262 and NFST 518. Heavy equipment, including bulldozers, track hoes, road graders, and compactors would be stored near the construction site as work progresses. Temporary sanitary facilities and trash service would be maintained. A temporary special use permit would be required for the workers' camp.

As mitigation for effects to wetlands at Monument No. 1 Reservoir caused by the enlargement, Ute Water proposes to:

- Permanently drain Monument No. 2 Reservoir, remove the functioning dam, and transfer the water to Monument No. 1 Reservoir;
- Rehabilitate and permanently close the administrative access route to Monument No. 2 Reservoir;
- Reestablish or establish 19.37 acres of wetlands, including 3.18 acres of fen wetlands, within the drained basin of Monument No. 2 Reservoir. Work would include grading with excavators, roughening, and using seedling planting, transplants or seed plugs;
- Rehabilitate about 0.05-acre of wetlands just west of Monument No. 2 Reservoir degraded by the administrative access route; and
- Relinquish the Agriculture Irrigation and Livestock Watering System Easement issued by the Forest Service for Monument No. 2 Reservoir. Relinquishment of the easement removes a permanent encumbrance upon NFS lands.

Additional mitigation could be required by the Forest Service and/or U.S. Army Corps of Engineers.

Hunter Reservoir

The Hunter Reservoir Road (NFSR 280) intersects NFSR 262 and heads south along East Leon Creek to Hunter Reservoir and crosses streams in numerous locations. The current Forest Service RMO for NFSR 280 classifies the road as a high clearance, four-wheel drive road. Road improvements would include improving cross drainage by constructing rolling dips and lead-out ditches within and adjacent to the current road prism, removing extreme dips and bumps, adding rocks to perpetual soft areas of the road, and defining and hardening small stream crossings.

Approximately the last mile of the Hunter Reservoir Road (NFSR 280) would be relocated to eliminate current wetlands impacts in the creek bottom. This portion of the current road would be obliterated to the extent possible, as well as rehabilitating the wetlands in which the road currently lays. Signing by the Forest Service would be installed to direct the public and other users to the newly-relocated road.

The new road would leave the creek bottom and approach Hunter Reservoir in an upland location just west of East Leon Creek and go about 5,560 feet to the Hunter Reservoir dam. The road standard for this new route would be a Forest Service Traffic Service Level D, which includes a running surface ranging from 14 to 16 feet wide and an average corridor width, including the road, of 22 feet. The road would have native material surfaces with drainage structures and roadbed stabilization as shown on a plan and profile drawing. The design would show grades, structures, cross sections and alignments for the route, as well as estimated quantities of timber clearing acreage, seeding acreage, volumes of excavation, log deck locations, slash disposal areas, etc. Proposed road improvements and maintenance for the entire access route would be the responsibility of Ute Water during reservoir enlargement construction.

The new road would not be removed upon completion of the project but would remain in place and allowed to return to the specified high-clearance, four-wheel-drive condition and would be open to the public for use with full-sized vehicles, in accordance with the Grand Mesa Travel Plan. The final alignment of the relocated road would be approved in the field by the Forest Service prior to construction.

Because of the anticipated increase in traffic to Hunter Reservoir, commercial cattle guards would be installed and approximately one mile of fence relocated to the north at the junction of Leon Lake Road (NFSR 127), Hunter Reservoir Road (NFSR 280), and West Leon Trail (NFST 730). This would eliminate the need for two gates currently in place that need to be opened and closed by the public.

About a mile of the existing Leroux Creek Snowmobile Trail would be rerouted to avoid newly-inundated areas from the enlarged Hunter Reservoir. This trail is part of a groomed trail system, and the new alignment would need to be about 22 feet wide to accommodate the groomer.

The existing earthen dam impounding Hunter Reservoir would be rebuilt and increased in size, expanding the water storage capacity of the facility from the current 110 acre-feet to 1,340 acre-feet. The current inundated area covers approximately 19 surface acres, which would be increased to about 80 acres following construction.

The existing dam is a homogeneous, gravelly clay embankment founded on glacial drift soils placed across East Leon Creek. It has a vertical height of 11 feet with a crest elevation at 10,367 feet, a crest width of eight feet and crest length of 412 feet. The proposed enlarged dam would increase the vertical height by 26 feet to a total of 37 feet with a crest elevation at 10,393 feet. The new crest width would be 18 feet and the crest length would be 1,098 feet.

The new reservoir would require two saddle dams: The west saddle dam, an embankment located immediately west of the main dam, and the east saddle dam, located in a topographic saddle 600–700 feet east of the main dam. The saddle dams would have vertical heights less than 20 feet and crest lengths less than 570 feet (see Figure 2 below).

The soils beneath the enlarged embankment and the two saddle dams consist of glacial till overlying Uinta formation sandstone and claystone. The proposed saddle dams and enlarged embankments would be constructed using material drawn from on-site borrow areas that would ultimately be inundated. The upstream slope of the dam would be surfaced with a layer of riprap comprised of basalt boulders. The riprap would be taken from basaltic talus located just south of the reservoir and processed on-site. New outlet works would include replacement of the existing 18-inch outlet conduit with a 24-inch conduit.

A clay blanket cutoff, consisting of a 3-foot-deep layer of extremely clayey soil that acts as a barrier to seepage, would be located on the face of the dam upstream of the existing embankment. The cutoff would extend into the bedrock or to an elevation of 10,314 feet, whichever is reached first. It is intended to minimize seepage, reduce pressure on the dam itself, and eliminate the soft soil conditions identified on the downstream toe of the embankment.

The new dam would have two spillways, a replacement service spillway and a new emergency spillway. The new service spillway would control normal pool and pass routine floods downstream. Set in the west saddle dam, the spillway would establish normal pool at 10,388 feet elevation and would pass excess water down a

conduit into an impact basin below the face of the dam. The emergency spillway would be a new feature, located in a topographic saddle about 1,600 feet southeast of the dam, with a concrete control beam at 10,389.5 feet elevation, 1.5 feet above normal pool. The emergency spillway is set away from the main embankment to discharge floodwater into a drainage basin just east of East Leon Creek, preventing erosion of the dam because of overtopping.

The enlarged dam embankment would have an internal drainage system to reduce pore pressures and to prevent internal erosion of embankment and foundation materials. The principal element of the drainage system would be toe drains in the embankment and the saddle dams to collect and convey seepage flows to the downstream side of the embankments. The toe drains would be 4-inch drainpipes surrounded by filter material.

Most materials for the construction would be derived from the borrow areas and the nearby basaltic talus described above. However, approximately 14,415 cubic yards (26,363 tons) of sand, gravel, stone and other construction material would need to be imported, requiring an estimated 1,056 round trips using 25-ton end-dump haul trucks for an average of about 8 round trips per day during the period of construction. Because of Hunter Reservoir's elevation and snow cover, the season during which construction activities could take place is short, extending from July until late September. The short construction season means that dam enlargement and construction of associated features would require three summers for completion.

A minimum conservation pool of 27 acre-feet at a maximum depth of 40 feet would be retained in the reservoir to maintain a viable fishery and to avoid winter kill, as proposed by Ute Water.

A conservation flow of 0.5 cfs or the amount of inflow into the reservoir would be released from October through May to preserve hydrologic function of the stream below the Hunter Reservoir dam. The exact dates in which the conservation flow would be required would fluctuate with the release schedule of the reservoir. At no time would the channel be allowed to be de-watered.

An on-site workers' camp would be established at Hunter Reservoir because of the time-consuming commute and the need to maximize working time at the site. The camp would be large enough to accommodate four to five camp trailers (approximately 500–600 square feet) for the ten to 15 workers and three to four trucks that would remain on site. Heavy equipment, including bulldozers, track hoes, road graders and a sheep's foot compactor, would be stored near the construction site as work progresses. Temporary sanitary facilities would be maintained on a weekly basis and trash would be contained in a metal bear-proof container. A temporary special use permit for the camp would be required.

Some of the proposed reservoir area to be inundated is forested. All trees below 10,393 feet elevation in areas that would be inundated would be cleared and the slash disposed of, per Forest Service instructions, prior to filling of the reservoir in order to reduce debris in the reservoir and the potential for blocking spillways. Construction of the new access road would also require the removal of trees. These activities would result in about nine acres of trees, mostly spruce-fir, being removed.

As mitigation for effects to wetlands at Hunter Reservoir caused by the enlargement, Ute Water proposes following actions:

- Relocation of the existing Hunter Reservoir Road out of the drainage bottom where it currently impacts wetlands and rehabilitating those wetlands following road relocation;
- Removal of existing embankment dams and water control structure at Jensen (aka Cold Sore) Reservoir, located in Sections 27 and 34, T. 11 S., R. 95 W., 6th P.M.;
- Transfer of Jensen Reservoir water rights held by Ute Water to another area, likely within the Cottonwood Creek watershed;
- Protection of approximately 8.3 acres of existing fen and rehabilitation of about 8.5 acres of degraded fen with the reservoir basin using techniques such as check dams, seed plugs, etc.;
- Removal of the existing two-track administrative route to the reservoir that crosses several wetland areas and serves access to perform operation and maintenance activities for Jensen Reservoir; and
- Relinquishment by Ute Water of the easement issued by the General Land Office pursuant to the Act of March 3, 1891, for Jensen Reservoir. This action eliminates a permanent encumbrance on National Forest System lands.

Additional mitigation could be required by the Forest Service and/or U.S. Army Corps of Engineers.

Possible Alternatives

Over 20 alternatives were initially considered (Scoping—DEIS, 2007), including some that would not involve use of NFS lands. Of those, the following alternatives have been identified for further analysis:

Alternative 1—Proposed Action: See Proposed Action description above.

Alternative 2—Big Park Reservoir: A new dam and reservoir would be constructed at a site located on Leon Creek in Section 5, T. 11 S., R. 93 W., 6th P.M., approximately 5.4 miles south of Vega Reservoir and 5 miles downstream from Hunter Reservoir at an elevation of about 9,400 ASL. A conditional water right for 5,650 acre-feet of water would be used to fill the new reservoir. The new earthen dam would have a height of 180 feet and a crest length of 2,100 feet, and surface area of the reservoir impounded behind the dam would be 123 acres at normal pool elevation.

A concrete diversion structure in Park Creek and a canal about 1.5 miles long would be constructed that would carry water south to the reservoir from the NE¼ Section 32, R. 93 W., T. 10 S., 6th P.M. The canal would have an estimated capacity of 30 cfs. This would also require construction of new access road.

A service and emergency spillway, consisting of a 240-feet long concrete side channel and chute on the right abutment of the dam, would be constructed. A concrete hydraulic jump-type stilling basin would be used at the end of the spillway channel to dissipate the energy of the water and reduce the velocity of the water prior to it re-entering Leon Creek.

Approximately one-third mile of the NFSR 262 would be relocated to avoid inundated areas created by the new reservoir.

Approximately 85 acres of aspen and 46 acres of spruce-fir timber would be removed to allow for construction of the new dam, canal and relocated NFSR 262.

Some construction and fill material would be available onsite; however, approximately 526,600 cubic yards of clay core material, sand, and gravel would be imported. The availability of source rock for riprap is extremely limited at Big Park and, therefore, riprap would also need to be imported. With the use of 25-ton dump trucks, a total of about 21,000 round trips would be required to transport the necessary materials to the site.

The improvements for the rest of NFSR 262, including the transfer site, to the reservoir site would be the same as those described in the Proposed Action. A workers' camp would also be required.

Alternative 3—Reduced-Capacity Big Park Reservoir: A new dam and reservoir would be constructed at the same site as the Big Park Reservoir

Alternative but of smaller scale and of greatly reduced capacity. The dam for this alternative would be 135-ft high with a 1,300-ft crest length, inundating approximately 52 acres, and providing 1,385 acre-feet of storage at normal pool elevation. Water rights from Park Creek would not be utilized under this alternative and, therefore, a feeder canal from Park Creek would not be required.

Construction access to the Reduced-Capacity Big Park dam site would be along NFSR 262, and the same road improvements described in the Proposed Action, including the transfer area, would be required to accommodate the heavy-truck traffic hauling fill material. Unlike the Big Park Reservoir, no relocation of NFSR 262 would be needed because the dam for the Reduced-Capacity Big Park Reservoir would be constructed farther west of NFSR 262 than the Big Park Reservoir. But that also means a longer access road would be needed to accommodate construction of the dam. It is anticipated that up to a mile of new road would be needed. After construction is completed, an access route to allow for operation and maintenance of the dam and stilling pond would remain. The permanent access route needed for operation and maintenance of the dam and reservoir would be narrowed to the minimum width necessary for this purpose and would be gated to prohibit public motorized access.

Some construction and fill material would be available onsite; however, about 167,000 cubic-yards of sand and gravel would be imported. Using 25-ton end-dump haul trucks, a total of over 15,000 round trips would be needed to transport the necessary embankment, riprap, and concrete raw materials to the site.

Approximately 56 acres of aspen and 23 acres of spruce-fir timber would be removed to allow for construction of the new dam and access route.

A workers' camp would also be necessary near the reservoir site during construction activities.

Alternative 4—No Action: Analysis of the No Action Alternative is required by 40 CFR part 1502.14(d). In the event the action alternatives were found to be unacceptable, this alternative could be selected. Under the No Action Alternative, the Forest Service would not permit the enlargement of Monument No. 1 or Hunter Reservoirs or the construction of any of the action alternatives that would occur on NFS lands. With no dam construction or enlargement occurring on NFS lands, there would be no need for new access road construction and road improvements associated with dam enlargement or construction; and no timber would be removed. The existing water developments and water resource conditions would continue. Under this alternative, Ute Water would still need to address dam safety concerns identified by the State Engineer's Office for the existing Hunter Reservoir. Ute Water's water rights, for which conditional decrees were issued, would not be developed. Ute Water may submit additional special use authorization applications for water improvements or developments on the GMUG for any of their water rights.

Lead and Cooperating Agencies

The Forest Service is the lead agency for preparation of the SDEIS. The U.S. Army Corps of Engineers (ACOE) and the Colorado Department of Natural Resources (DNR) are cooperating agencies.

Responsible Official

The responsible official for the Forest Service is the Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests. The responsible official for the ACOE is the Chief, Colorado West Regulatory Branch. The responsible official for the DNR is the Chief, Dam Safety Branch.

Nature of Decision To Be Made

Given the purpose and need, the Responsible Official for the Forest Service would review the Proposed Action, other alternatives and mitigation measures in order to make the following decisions:

- Whether or not to authorize the Proposed Action, road reconstruction and other support activities on National Forest System lands to meet the stated purpose by issuing:

(1) Special use permits pursuant to the Federal Land Policy and Management Act of October 21, 1976, as amended (FLPMA), for each of the reservoir enlargements;

(2) Temporary special use permits pursuant to the Act of June 4, 1897, for on-site workers' camps;

(3) Mineral materials contracts for borrow material and riprap (The Materials Act of July 31, 1947);

(4) Road use permits for the necessary road reconstruction and relocation (National Forest Roads and Trails Act of October 13, 1964 (FRTA)); and

(5) Timber contracts for the removal of timber that would otherwise be inundated following enlargement of the reservoirs (Timber Settlement Authority (36 CFR 223.12)).

- If an alternative is selected on National Forest System lands, under what conditions and by which methods implementation of the alternative and associated activities would be conducted.
- Whether or not the proposed mitigation is appropriate to offset impacts to resources as a result of implementation of alternatives.

The Responsible Official for the Army Corps of Engineers will determine whether or not to issue a permit in accordance with Section 404(b)(1) of the Clean Water Act and whether or not the mitigation proposed for wetlands impacts at Monument No. 1 and Hunter Reservoirs, as outlined in a wetlands mitigation plan, is adequate.

The Responsible Office for the Colorado Department of Natural Resources will review and approve the conceptual dam designs prior to construction. As-built plans must be approved by the DNR following construction but prior to water being stored in the reservoirs.

Preliminary Issues

Soils: Dam reconstruction could directly impact areas of soil within the landscape where construction activities would be occurring. The soil in those areas could be altered by heavy equipment, affecting densities, infiltration rates, natural horizonation and overall productivity. These disturbed areas could experience erosion until they are stabilized.

Water Resources: The change in water storage and water management could affect the base flow and peak flow conditions below Monument No. 1 Reservoir and Hunter Reservoir. Dam reconstruction, road grading and leveling and placement of stream crossings by access roads could produce temporary increases in sedimentation and erosion downstream in Leon and Monument Creeks.

Wetlands: Year-round or seasonal inundation of wetlands, including fens, located at Monument No. 1 and Hunter Reservoirs, could diminish or disrupt the wetland function.

Wildlife (including Aquatic Wildlife): Sedimentation resulting from dam reconstruction and road construction, use and maintenance could reduce water quality and affect fish populations and aquatic habitat. Operation and maintenance of the reconstructed dams and enlarged reservoirs could affect fisheries downstream and the aquatic environment by altering stream flow patterns and by changing the water temperature.

Special Status Species (Threatened/Endangered/Sensitive/MIS): Reconstruction and operation and maintenance of the dams and enlarged reservoirs could affect fish and wildlife

habitat of special status species, such as federally listed and Forest Service sensitive species.

Recreation and Transportation: Project activities could remove dispersed campsites during and after dam reconstruction.

Project construction activities could make NFSRs 262 and 280 and NFST 518 temporarily inaccessible. Temporary improved access could temporarily change the recreational opportunity spectrum classification in the area of Monument No. 1 and Hunter Reservoirs. Temporary improved access to the reservoirs could cause the expectation and desire on the part of the public for continued improved access.

Colorado Roadless Areas: Enlargement of the Monument No. 1 and Hunter Reservoirs would add municipal water supply storage within the Flattops/Elk Park Colorado Roadless Area (CRA) consistent with valid exisiting rights. Although the access routes to Hunter Reservoir and the majority of the access route to Monument No. 1 Reservoir are outside the CRA boundary, the current NFST 518 starts in the CRA. Under the Proposed Action, the access route would be widened, upgraded and relocated in order to avoid a cultural site; and that construction would be done within the CRA.

Permits or Licenses Required

Forest Service: Includes, but is not limited to, FLPMA special use permits, temporary special use permits (workers' camp, etc.), road use permits, mineral material permits, and timber removal contracts.

U.S. Army Corps of Engineers: Department of the Army permit pursuant to Section 404(b)(1) of the Clean Water Act.

Colorado Water Quality Control Division: Water quality certification under Section 401 of the Clean Water Act.

Scoping Process

This notice of intent continues the scoping process, which guides the development of the SDEIS. Comments received in response to the DEIS will also be addressed in the SDEIS.

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 related to the expanded scope of the analysis.

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: January 7, 2016.

Scott G. Armentrout,

Forest Supervisor.

[FR Doc. 2016–00508 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Solicitation of Applications (NOSA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year (FY) 2016

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS) announces the timeframe to submit pre-applications for Section 514 Farm Labor Housing (FLH) loans and Section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers and for the purchase and substantial rehabilitation of an existing non-FLH property. The intended purpose of these loans and grants is to increase the number of available housing units for domestic farm laborers. This Notice describes the method used to distribute funds, the application process, and submission requirements.

RHS will publish on its Web site, *http://www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants,* the amount of funding available in FY 2016 based on current appropriations.

The Agency will assign additional points to pre-applications for projects based in or serving census tracts with poverty rates greater than or equal to 20 percent over the last 30 years. This emphasis will support Rural Development's mission of improving the quality of life for rural Americans and commitment to directing resources to those who most need them.

DATES: The deadline for receipt of all applications in response to this Notice is 5:00 p.m., local time to the appropriate Rural Development State Office on April 12, 2016. Rural Development will not consider any application that is received after the deadline unless the date and time is extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to submit an application in response to this Notice must contact the Rural Development State Office serving the State of the proposed off-FLH project in order to receive further information and copies of the application package. You may find the addresses and contact information for each State Office following this web link, *http://www.rd.usda.gov/contact-us/state-offices.* Rural Development will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgment of receipt.

FOR FURTHER INFORMATION CONTACT: Mirna Reyes-Bible, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0781 (Room 1263–S), USDA Rural Development, 1400 Independence Avenue SW., Washington, DC 20250–0781, telephone: (202) 720–1753 (this is not a toll free number), or via email: *mirna.reyesbible@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Housing Service.

Funding Opportunity Title: NOSA for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2016.

Announcement Type: Solicitation of pre-applications from qualified applicants for FY 2016.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.405 and 10.427.

Due Date for Applications: April 12, 2016.

A. Federal Award Description

Pre-applications will only be accepted through the date and time listed in this Notice. All awards are subject to availability of funding. Individual requests may not exceed $3 million (total loan and grant).

No State may receive more than 30 percent of available FLH funding available in FY 2016. If there are insufficient applications from around the country to exhaust Sections 514/516 funds available, the Agency may then exceed the 30 percent cap per State. Section 516 off-farm FLH grants may not

exceed 90 percent of the total development cost (TDC) of the housing as defined in 7 CFR 3560.11.

If leveraged funds are going to be used and are in the form of tax credits, the applicant must include in its pre-application written evidence that a tax credit application has been submitted and accepted by the Housing Finance Agency (HFA). All applications that will receive any leveraged funds must have firm commitments in place within 12 months of the issuance of a ''Notice of Pre-application Review Action,'' Handbook Letter 103 (3560). Applicants without written evidence that a tax credit application has been submitted and accepted by the HFA must certify in writing they will apply for tax credits to the HFA and obtain a firm commitment within 12 months of the issuance of a ''Notice of Pre-application Review Action.''

Rental Assistance (RA) and operating assistance will be available for new construction in FY 2016. Operating assistance is explained at 7 CFR 3560.574 and may be used in lieu of tenant-specific RA in off-FLH projects that serve migrant farm workers as defined in 7 CFR 3560.11, that are financed under Section 514 or Section 516 (h) of the Housing Act of 1949, as amended (42 U.S.C. 1484 and 1486(h) respectively), and otherwise meet the requirements of 7 CFR 3560.574.

B. Eligibility Information

1. Eligibility

Housing Eligibility—Housing that is constructed with FLH loans and/or grants must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, off-farm FLH must be managed in accordance with 7 CFR part 3560. In addition, off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless at which farm they work. Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)) defines domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his or her income from the primary production of agricultural or aqua cultural commodities in the unprocessed or processed stage, and also includes the person's family.

Tenant Eligibility—Tenant eligibility is limited to persons who meet the definition of a ''disabled domestic farm laborer,'' or a ''domestic farm laborer,'' or ''retired domestic farm laborer,'' as defined in 7 CFR 3560.11. Farm workers who are admitted to this country on a temporary basis under the Temporary Agricultural Workers (H–2A Visa) program are not eligible to occupy Sections 514/516 off-farm FLH.

Applicant Eligibility—

(a) To be eligible to receive a Section 516 grant for off-farm FLH, the applicant must be a broad-based non-profit organization, including community and faith-based organizations, a non-profit organization of farm workers, a Federally recognized Indian tribe, an agency or political subdivision of a State or local Government, or a public agency (such as a housing authority). The applicant must be able to contribute at least one-tenth of the TDC from non-Rural Development resources which can include leveraged funds.

(b) To be eligible to receive a Section 514 loan for off-farm FLH, the applicant must be a broad-based non-profit organization, including community and faith-based organizations, a non-profit organization of farm workers, a Federally recognized Indian tribe, an agency or political subdivision of a State or local Government, a public agency (such as a housing authority), or a limited partnership which has a non-profit entity as its general partner, and

(i) Be unable to provide the necessary housing from its own resources;

(ii) Except for State or local public agencies and Indian tribes, be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents.

(iii) Broad-based non-profit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

2. Cost Sharing or Matching—Section 516 grants for off-farm FLH may not exceed 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

3. Other Requirements—The following requirements apply to loans and grants made in response to this Notice:

(a) 7 CFR part 1901, subpart E, regarding equal opportunity requirements;

(b) For grants only, 2 CFR parts 200 and 400, which establishes the uniform administrative and audit requirements for grants and cooperative agreements to State and local Governments and to non-profit organizations;

(c) 7 CFR part 1901, subpart F, regarding historical and archaeological properties;

(d) 7 CFR part 1940, subpart G, regarding environmental assessments;

(e) 7 CFR part 3560, subpart L, regarding the loan and grant authorities of the off-farm FLH program;

(f) 7 CFR part 1924, subpart A, regarding planning and performing construction and other development;

(g) 7 CFR part 1924, subpart C, regarding the planning and performing of site development work;

(h) For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)–5) and implementing regulations published at 29 CFR parts 1, 3, and 5;

(i) All other requirements contained in 7 CFR part 3560, regarding the Sections 514/516 off-farm FLH programs; and

(j) Please note that grant applicants must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and maintain registration in the Central Contractor Registration (CCR) prior to submitting a pre-application pursuant to 2 CFR 25.200(b). In addition, an entity applicant must maintain registration in the CCR database at all times during which it has an active Federal award or an application or plan under construction by the Agency. Similarly, all recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

C. Application and Submission Information

1. Pre-Application Submission

The application process will be in two phases: The initial pre-application (or proposal) and the submission of a final application. Only those pre-applications or proposals that are selected for further processing will be invited to submit final applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded pre-application may be selected for further processing. All pre-applications for Sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice. Incomplete pre-applications will not be reviewed and will be returned to the applicant. No pre-application will be accepted after the deadline unless date and time are extended by another Notice published in the **Federal Register**.

Pre-applications can be submitted either electronically using the FLH Pre-Application form found at *http://*

www.rd.usda.gov/programs-services/farm-labor-housing-direct-loans-grants or in hard copy *to the appropriate Rural Development Office where the project will be located. Follow the link for the RD Office address for requesting and submitting pre-application* at: *http://www.rurdev.usda.gov/StateofficeAddresses.html.* Applicants are strongly encouraged, but not required, to submit the pre-application electronically. The electronic form contains a button labeled ''Send Form.'' By clicking on the button, the applicant will see an email message window with an attachment that includes the electronic form the applicant filled out as a data file with a .pdf extension. In addition, an auto-reply acknowledgement will be sent to the applicant when the electronic Loan Proposal form is received by the Agency unless the sender has software that will block the receipt of the auto-reply email. The State Office will record pre-applications received electronically by the actual date and time when all attachments are received at the State Office.

Submission of the electronic Section 514 Loan Proposal form *does not* constitute submission of the entire proposal package which requires additional forms and supporting documentation as listed within this Notice. You may use one of the following three options for submitting the entire proposal package comprising of all required forms and documents. On the Loan Proposal form you can indicate the option you will be using to submit each required form and document.

(a) Electronic Media Option. Submit all forms and documents as read-only Adobe Acrobat files on electronic media such as CDs, DVDs or USB drives. For each electronic device submitted, the applicant should include a Table of Contents of all documents and forms on that device. The electronic media should be submitted to the Rural Development State Office listed in this Notice where the property is located. Any forms and documents that are not sent electronically, including the check for credit reports, must be mailed to the Rural Development State Office.

(b) Email Option. On the Loan Proposal form you will be asked for a submission email address. This email address will be used to establish a folder on the U.S. Department of Agriculture (USDA) server with your unique email address. Once the Loan Proposal form is processed, you will receive an additional email notifying you of the email address that you can use to email your forms and documents. *Please Note:* All forms and documents must be emailed from the same submission email address. This will ensure that all forms and documents that you send will be stored in the folder assigned to that email address. Any forms and documents that are not sent in via the email option must be submitted on an electronic media or in hard copy form to the Rural Development State Office.

(c) Hard Copy Submission to the Rural Development State Office. If you are unable to send the proposal package electronically using either of the options listed above, you may send a hard copy of all forms and documents to the Rural Development State Office where the property is located. Hard copy pre-applications received on or before the deadline date will receive the close of business time of the day received as the receipt time. Hard copy pre-applications must be received by the submission deadline and no later than 5:00 p.m., local time, April 12, 2016. Assistance for filing electronic and hard copy pre-applications can be obtained from any Rural Development State Office.

For electronic submissions, there is a time delay between the time it is sent and the time it is received depending on network traffic. As a result, last-minute submissions sent before the deadline date and time could well be received after the deadline date and time because of the increased network traffic. Applicants are reminded that all submissions received after the deadline date and time will be rejected, regardless of when they were sent.

If a pre-application is accepted for further processing, the applicant must submit a complete, final application, acceptable to Rural Development prior to the obligation of Rural Development funds. If the pre-application is not accepted for further processing the applicant will be notified of appeal rights under 7 CFR part 11.

2. Pre-Application Requirements

(a) The pre-application must contain the following:

(1) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

(i) Applicant's name.

(ii) Applicant's Taxpayer Identification Number.

(iii) Applicant's address.

(iv) Applicant's telephone number.

(v) Name of applicant's contact person, telephone number, and address.

(vi) Amount of loan and/or grant requested.

(vii) For grants of Federal financial assistance (including loans and grants, cooperative agreements, etc.), the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number and registration in the CCR database in accordance with 2 CFR part 25. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at (866) 705–5711 or via the Internet at: *http://www.dnb.com/.* Additional information concerning this requirement can be obtained on the Grants.gov Web site at *www.grants.gov.* Similarly, applicants may register for the CCR at: *https://www.uscontractorregistration.com/* or by calling (877) 252–2700.

(2) Awards made under this Notice are subject to the provisions contained in an appropriation in FY 2016 that funds FLH.

(3) A narrative verifying the applicant's ability to meet the eligibility requirements stated earlier in this Notice. If an applicant is selected for further processing, Rural Development will require additional documentation as set forth in a Conditional Commitment in order to verify the entity has the legal and financial capability to carry out the obligation of the loan.

(4) Standard Form 424, ''Application for Federal Assistance,'' can be obtained at: *http://www.grants.gov* or from any Rural Development State Office listed in Section VII of this Notice.

(5) For loan pre-applications, current (within 6 months of pre-application date) financial statements with the following paragraph certified by the applicant's designated and legally authorized signer:

''I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.''

(6) For loan pre-applications, a check for $24 from applicants made out to the U.S. Department of Agriculture. This will be used to pay for credit reports obtained by Rural Development.

(7) Evidence that the applicant is unable to obtain credit from other sources. Letters from credit institutions which normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided. (**Note:** Not required from State

or local public agencies or Indian tribes.)

(8) If a FLH grant is desired, a statement concerning the need for a FLH grant. The statement should include preliminary estimates of the rents required with and without a grant.

(9) A statement of the applicant's experience in operating labor housing or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (*i.e.,* obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

(10) A brief statement explaining the applicant's proposed method of operation and management (*i.e.,* on-site manager, contract for management services, etc.). As stated earlier in this Notice, the housing must be managed in accordance with the program's management regulation, 7 CFR part 3560 and tenancy is limited to ''disabled domestic farm laborers,'' ''domestic farm laborers,'' and ''retired domestic farm laborers,'' as defined in 7 CFR 3560.11.

(11) Applicants must also provide:

(i) A copy of, or an accurate citation to, the special provisions of State law under which they are organized, a copy of the applicant's charter, Articles of Incorporation, and by-laws;

(ii) The names, occupations, and addresses of the applicant's members, directors, and officers; and

(iii) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(12) A preliminary market survey or market study to identify the supply and demand for farm labor housing in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. Documentation must be provided to justify a need within the intended market area for the housing of ''domestic farm laborers,'' as defined in 7 CFR 3560.11. The documentation must take into account disabled and retired farm workers. The preliminary survey should address or include the following items:

(i) The annual income level of farmworker families in the area and the probable income of the farm workers who will likely occupy the proposed housing;

(ii) A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants (*i.e.,* single individuals as opposed to families);

(iii) General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers;

(iv) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (*i.e.,* will they rent to large families, do they require annual leases, etc.);

(v) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(vi) A description of the units proposed, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility, estimated development timeline, estimated TDC, and applicant contribution; and

(vii) The applicant must also identify all other sources of funds, including the dollar amount, source, and commitment status. (Note: A Section 516 grant may not exceed 90 percent of the TDC of the housing.)

(13) The applicant must submit a checklist, certification, and signed affidavit by the project architect or engineer, as applicable, for any energy programs listed in Section IV the applicant intends to participate in.

(14) The following forms are required:

(i) A completed Form RD 1940–20, ''*Request for Environmental Information,''* and a description of anticipated environmental issues or concerns. The form can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1940-20.PDF.*

(ii) A prepared HUD Form 935.2A, ''Affirmative Fair Housing Marketing Plan (AFHM) Multi-Family Housing,'' in accordance with 7 CFR 1901.203(c). The plan will reflect that occupancy is open to all qualified ''domestic farm laborers,'' regardless of which farming operation they work and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The form can be found at: *http://portal.hud.gov/hudportal/documents/huddoc?id=935-2a.PDF.*

(iii) A proposed operating budget utilizing Form RD 3560–7, ''*Multiple Family Housing Project Budget/Utility Allowanc*e,'' can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-7.PDF.*

(iv) An estimate of development cost utilizing Form RD 1924–13, ''*Estimate and Certificate of Actual Cost,''* can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924-13.PDF.*

(v) Form RD 3560–30, ''*Certification of no Identity of Interest (IOI),''* can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-30.PDF* and Form RD 3560–31, ''*Identity of Interest Disclosure/Qualification Certification,''* can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-31.PDF.*

(vi) Form HUD 2530, ''*Previous Participation Certification,''* can be found at: *http://portal.hud.gov/hudportal/documents/huddoc?id=2530.pdf.*

(vii) If requesting RA or Operating Assistance, Form RD 3560–25, ''*Initial Request for Rental Assistance or Operating Assistance,''* can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560-25.PDF.*

(viii) Form RD 400–4, ''*Assurance Agreement,''* can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400-4.PDF.* Applicants for revitalization, repair, and rehabilitation funding are to apply through the Multifamily Housing Preservation and Revitalization (MPR) Demonstration Program.

(ix) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF–424, ''Application for Federal Assistance'', to the applicant's State clearinghouse for intergovernmental review. If the applicant is located in a State that does not have a clearinghouse, the applicant is not required to submit the form. Applications from Federally recognized Indian tribes are not subject to this requirement.

(15) Evidence of site control, such as an option contract or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

(16) Preliminary plans and specifications, including plot plans, building layouts, and type of

construction and materials. The housing must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards.

(17) A supportive services plan, which describes services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. Letters of intent from service providers are acceptable documentation at the pre-application stage.

(18) A sources and uses statement which shows all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the sources and uses statement.

(19) A separate one-page information sheet listing each of the ''Pre-Application Scoring Criteria,'' contained in this Notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria.

(20) Applicants are encouraged, but not required, to include a checklist of all of the pre-application requirements and to have their pre-application indexed and tabbed to facilitate the review process;

(21) Evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO), and/or Tribal Historic Preservation Officer (THPO). A letter from the SHPO and/or THPO where the off-farm labor housing project is located, signed by their designee will serve as evidence of compliance.

D. Pre-Application Review Information

1. *Selection Criteria.* Section 514 FLH loan funds and Section 516 FLH grant funds will be distributed to States based on a national competition, as follows:

(a) Rural Development State Office will accept, review, and score pre-applications in accordance with this Notice. The scoring factors are:

(1) The presence of construction cost savings, including donated land and construction leverage assistance, for the units that will serve program-eligible tenants. The savings will be calculated as a percentage of the Rural Development TDC. The percentage calculation excludes any costs prohibited by Rural Development as loan expenses, such as a developer's fee. Construction cost savings includes, but is not limited to, funds for hard construction costs, and State or Federal funds which are applicable to construction costs. A minimum of 10 percent cost savings is required to earn points; however, if the total percentage of cost savings is less than 10 percent and the proposal includes donated land, two points will be awarded for the donated land. To count as cost savings for purposes of the selection criteria, the applicant must submit written evidence from the third-party funder that an application for those funds has been submitted and accepted points will be awarded in accordance with the following table using rounding to the nearest whole number.

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0

(2) The presence of operational cost savings, such as tax abatements, non-Rural Development tenant subsidies or donated services are calculated on a per-unit cost savings for the sum of the savings. Savings must be available for at least 5 years and documentation must be provided with the application demonstrating the availability of savings for 5 years. To calculate the savings, take the total amount of savings and divide it by the number of units in the project that will benefit from the savings to obtain the per unit cost savings. For non-Rural Development tenant subsidy, if the value changes during the 5 year calculation, the applicant must use the lower of the non-Rural Development tenant subsidy to calculate per unit cost savings. For example, a 10-unit property with 100 percent designated farm labor housing units receiving $20,000 per year non-Rural Development subsidy yields a cost savings of $100,000 ($20,000 × 5 years); resulting to a $10,000 per-unit cost savings ($100,000/10 units).

Use the following table to apply points:

Per-unit cost savings	Points
Above $15,000	50
$10,001–$15,000	35
$7,501–$10,000	20
$5,001–$7,500	15
$3,501–$5,000	10
$2,001–$3,500	5
$1,000–$2,000	2

(3) Percent of units for seasonal, temporary, migrant housing. (10 points for up to and including 50 percent of the units; 20 points for 51 percent or more units used for seasonal, temporary, or migrant housing.)

(4) Additional 10 points will be awarded to projects in persistent poverty counties. A county is considered persistently poor if 20 percent or more of its population was living in poverty over the last 30 years (measured by the 1980, 1990 and 2000 decennial censuses and 2007–2011 American Community Survey 5-year estimates).

(5) Presence of tenant services.

(i) Up to 25 points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include, but are not limited to, transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers.

(ii) Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant.

(6) Energy Initiative Scoring Points (maximum 70 points)

Properties may receive points for energy initiatives in the categories of energy conservation, energy generation, water conservation and green property management. Depending on the scope of work (SOW), properties may earn ''energy initiative'' points (up to a maximum of 70 points) in either one of two categories: 1) New Construction or 2) Purchase and Rehabilitation of an Existing Non-Farm Labor Housing Building. Projects will be eligible for one category of the two, but not both.

Energy programs including LEED for Homes, Green Communities, etc., will each have an initial checklist indicating prerequisites for participation in its energy program. The applicable energy program checklist will establish whether prerequisites for the energy program's participation will be met. All checklists must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable and the project has been enrolled in these programs if enrollment

is applicable to that program. In addition, projects that apply for points under the energy generation category must include calculations of savings of energy. Compare property energy usage of three scenarios: (1) Property built to required code of State with no renewables, to (2) property as-designed with commitments to stated energy conservation programs without the use of renewables and (3) property as-designed with commitments to stated energy conservation programs and the use of proposed renewables. Use local average metrics for weather and utility costs and detail savings in kWh and dollars. Provide payback calculations. These calculations must be done by a licensed engineer or credentialed renewable energy provider. Include with application, the provider/engineer's credentials including qualifications, recommendations, and proof of previous work. The checklist, affidavit, calculations and qualifications of engineer/energy provider must be submitted together with the loan application.

Enrollment in EPA Portfolio Manager Program. All projects awarded scoring points for energy initiatives must enroll the project in the EPA Portfolio Manager program to track post-construction energy consumption data. More information about this program may be found at: *http://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.*

(i) Energy Conservation for New Construction or Purchase and Rehabilitation of an Existing Non-Farm Labor Housing Building (maximum 55 points). Projects may be eligible for up to 55 points when the pre-application includes a written certification by the applicant to participate and achieve certification in the following energy efficiency programs.

The points will be allocated as follows:

• Participation in the EPA's Energy Star for Homes V3 program. (20 points) *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.pt_bldr.*

OR

• Participation in the Green Communities program by the Enterprise Community Partners. (30 points) *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities.*

OR

• Participation in one of the following two programs will be awarded points for certification.

Note: Each program has four levels of certification. State the level of certification that the applicant plans will achieve in their certification:

• LEED for Homes program by the United States Green Building Council (USGBC): *http://www.usgbc.org.*

—Certified Level (30 points), OR
—Silver Level (35 points), OR
—Gold Level (40 points), OR
—Platinum Level (45 points)

Applicant must state the level of certification that the applicant's plans will achieve in their certification in its pre-application.

OR

• Home Innovation's and The National Association of Home Builders (NAHB) ICC 700 National Green Building Standard TM: *http://www.nahb.org/.*

—Green-Bronze Level (30 points), OR
—Silver Level (35 points), OR
—Gold Level (40 points), OR
—Emerald Level (45 points).

Applicant must state the level of certification that the applicant's plans will achieve in their certification in its pre-application.

AND

• Participation in the Department of Energy's Zero Energy Ready program. (8 points) *http://www.energy.gov/eere/buildings/zero-energy-ready-home.*

AND

• Participation in local green/energy efficient building standards. Applicants who participate in a city, county or municipality program, will receive an additional 2 points.

(ii) Energy Conservation for Rehabilitation (maximum 55 points). Pre-applications for the purchase and rehabilitation of non-program MFH and related facilities in rural areas may be eligible to receive 55 points when the pre-application includes a written certification by the applicant to participate in one of the following energy efficiency programs. Again, the certification must be accompanied by a signed affidavit by the project architect or engineer stating that the goals are achievable. Points will be award as follows:

• Participation in the Green Communities program by the Enterprise Community Partners (53 points) *http://www.enterprisecommunity.com/solutions-and-innovation/enterprise-green-communities.* At least 30 percent of the points needed to qualify for the Green Communities program must be earned under the Energy Efficiency section of Green Communities.

AND

• Participation in local green/energy efficient building standards. Applicants who participate in a city, county or municipality program, will receive an additional 2 points. The applicant should be aware of and look for additional requirements that are sometimes embedded in the third-party program's rating and verification systems. (2 points)

(iii) Energy Generation (maximum 7 points). Pre-applications for new construction or purchase and rehabilitation of non-program multi-family projects which participate in the above mentioned programs and receive at least 20 points in the point allocations above are eligible to earn additional points for installation of on-site renewable energy sources. Energy analysis of preliminary building plans using industry-recognized simulation software must document the projected total energy consumption of all of the building components and building site usage. Projects with an energy analysis of the preliminary or rehabilitation building plans that propose a 10 percent to 100 percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy) will be awarded points as follows:

• 0 to 9 percent commitment to energy generation receives 0 points
• 10 to 20 percent commitment to energy generation receives 1 point
• 21 to 40 percent commitment to energy generation receives 2 points
• 41 to 60 percent commitment to energy generation receives 3 points
• 61 to 80 percent commitment to energy generation receives 4 points
• 81–100 percent or more commitment to energy generation receives 5 points

Projects may participate in Power Purchase Agreements or Solar Leases to achieve their on-site renewable energy generation goals provided that the financial obligations of the lease/purchase agreements are clearly documented and included in the application, and qualifying ratios continue to be achieved.

An additional (2) points will be awarded for off-grid systems, or elements of systems, provided that at least 5 percent of on-site renewable system is off-grid. See *www.dsireusa.org* for State and local specific incentives and regulations of energy initiatives.

(iv) Water Conservation in Irrigation Measures (maximum 3 points). Projects may be awarded 3 points for the use of an engineered recycled water (gray water or storm water) for landscape irrigation covering 50 percent or more of the property's site landscaping needs.

(v) Property Management Credentials (maximum 5 points). Projects may be awarded an additional 5 points if the designated property management company or individuals that will assume maintenance and operations responsibilities upon completion of construction work have a Credential for Green Property Management. Credentialing can be obtained from the National Apartment Association (NAA), National Affordable Housing Management Association, the Institute for Real Estate Management, U.S. Green Building Council's Leadership in Energy and Environmental Design for Operations and Maintenance (LEED OM), or another source with a certifiable credentialing program. Credentialing must be illustrated in the resume(s) of the property management team and included with the pre-application.

The National Office will rank all pre-applications nationwide and distribute funds to States in rank order, within funding and RA limits. When proposals have an equal score, preference will be given first to Indian tribes as defined in § 3560.11 and then local non-profit organizations or public bodies whose principal purposes include low-income housing that meet the conditions of § 3560.55(c) and the following conditions:

- Is exempt from Federal income taxes under section 501(c)(3) or 501(c)(4) of the Internal Revenue code;
- Is not wholly or partially owned or controlled by a for-profit or limited-profit type entity;
- Whose members, or the entity, do not share an identity of interest with a for-profit or limited-profit type entity;
- Is not co-venturing with another entity; and
- The entity or its members will not be receiving any direct or indirect benefits pursuant to Low Income Housing Tax Credits.

If there are two or more applications that have the same score and both cannot be funded, a lottery in accordance with 7 CFR 3560.56(c)(2) will be used to break the tie. If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted.

Rural Development will notify all applicants whether their applications have been accepted or rejected and provide appeal rights under 7 CFR part 11, as appropriate.

E. Federal Award Administration Information

1. Federal Award Notices

Loan applicants must submit their initial applications by the due date specified in this Notice. Once the applications have been scored and ranked by the National Office, the National Office will advise State Offices of the proposals selected for further processing, State Offices will respond to applicants by letter.

If the application is not accepted for further processing, the applicant will be notified of appeal rights under 7 CFR part 11.

2. Administrative and National Policy

All Farm Labor Housing loans and grants are subject to the restrictive-use provisions contained in 7 CFR 3560.72(a) (2).

3. Reporting

Borrowers must maintain separate financial records for the operation and maintenance of the project and for tenant services. Tenant services will not be funded by Rural Development. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of tenant services, nor may tenant service funds be used to supplement the project operation and maintenance. Detailed financial reports regarding tenant services will not be required unless specifically requested by Rural Development, and then only to the extent necessary for Rural Development and the borrower to discuss the affordability (and competitiveness) of the service provided to the tenant. The project audit, or verification of accounts on Form RD 3560–10, ''*Borrower Balance Sheet,''* together with an accompanying Form RD 3560–7, ''*Multiple Family Housing Project Budget Utility Allowance,''* must allocate revenue and expense between project operations and the service component.

F. Equal Opportunity and Non-Discrimination Requirements

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program. Political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARTET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at: *http://www.ascr.usda.gov/complaint_filing_cust.html,* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of a complaint form, call, (866) 632–9992. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) *Fax:* (202) 690–7442; or

(3) *Email at: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Exceptions to Including the Full USDA Non-Discrimination Statement.

If the size of the material to too small to include the full statement, the material will at a minimum, include the following statement in print in the same size as the text:

''USDA is an equal opportunity provider, employer, and lender.'' Where appropriate, a recipient may state:

''This institution in an equal opportunity provider.''

Dated: January 4, 2016.

Tony Hernandez,

Administrator, Housing and Community Facilities Programs.

[FR Doc. 2016–00483 Filed 1–12–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 151221999–5999–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The United States Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to announce that the Director of the Census Bureau has determined the need to conduct the 2015 Annual Retail Trade Survey (ARTS). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2007 North American Industry Classification System (NAICS). Through this survey, the Census Bureau will collect data covering annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs such as economic and market analysis, company performance, and forecasting future demand. The Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity annually.

ADDRESSES: The Census Bureau will provide electronic worksheets to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Chris Savage, Economy-Wide Statistics Division, at (301) 763–4834 or by email at *john.c.savage@census.gov*.

SUPPLEMENTARY INFORMATION: Sections 182, 224, and 225 of Title 13 of the United States Code (U.S.C.) authorize the Census Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity for the period between economic censuses. ARTS is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2007 North American Industry Classification System (NAICS). ARTS provides, on a comparable classification basis, annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales for 2015. The Census Bureau has determined that the conduct of this survey is necessary because these data are not available publicly on a timely basis from any other sources.

Firms are selected for the ARTS survey using a stratified random sample based on industry groupings and annual sales size. We will provide electronic worksheets to the firms covered by this survey in March 2016, and will require their responses within 40 days after receipt. Firms' responses to the ARTS survey are required by law (Title 13 U.S.C. Sections 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales for 2015.

The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs including economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 U.S.C. 3501–3521, OMB has approved the Annual Retail Trade Survey under OMB Control Number 0607–0013.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–00507 Filed 1–12–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on January 27 and 28, 2016, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, January 27

Open Session

1. Welcome and Introductions
2. Working Group Reports
3. Old Business
4. Industry Presentations
5. New Business

Thursday, January 28

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than January 20, 2016.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of

the delegate of the General Counsel, formally determined on January 8, 2016, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section (10)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: January 8, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–00509 Filed 1–12–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Seven Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry representatives, academic leaders and U.S. Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members may be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately four times per year. Members of the Committees will not be compensated for their services.

The seven TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: The Export Administration Regulations (EAR) and Procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment) and the Emerging Technology and Research Advisory Committee: (1) The identification of emerging technologies and research and development activities that may be of interest from a dual-use perspective; (2) the prioritization of new and existing controls to determine which are of greatest consequence to national security; (3) the potential impact of dual-use export control requirements on research activities; and (4) the threat to national security posed by the unauthorized exports of technologies.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–2813.

Dated: January 7, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–00510 Filed 1–12–16; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on January 26, 2016, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session:

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session:

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than January 19, 2016.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 5, 2015 pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 section 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: January 7, 2016.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2016–00513 Filed 1–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coral Reef Conservation Program

AGENCY: Coral Reef Conservation Program, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of public meeting, notice of public comment.

SUMMARY: Notice is hereby given of a public meeting of the U.S. Coral Reef Task Force (USCRTF). The meeting will be held in Washington, DC, at the U.S. Department of Interior South Building, 1925 Constitution Avenue NW. The meeting provides a forum for coordinated planning and action among federal agencies, state and territorial governments, and nongovernmental partners. The meeting will be held Thursday, February 18, 2016. Additional workshops will be on Tuesday February 16; Wednesday, February 17; and Friday, February 19. Registration is requested for all events associated with the meeting.

This meeting has time allotted for public comment. All public comments must be submitted in written format. A written summary of the meeting will be posted on the USCRTF Web site within two months of occurrence. For information about the meeting, registering and submitting public comments, go to *http://www.coralreef.gov.*

Commenters may address the meeting, the role of the USCRTF, or general coral reef conservation issues. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment, including 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.

Established by Presidential Executive Order 13089 in 1998, the U.S. Coral Reef Task Force mission is to lead, coordinate and strengthen U.S. government actions to better preserve and protect coral reef ecosystems. Co-chaired by the Departments of Commerce and Interior, Task Force members include leaders of 12 federal agencies, seven U.S. states and territories and three freely associated states.

FOR FURTHER INFORMATION CONTACT: Jennifer Koss, NOAA USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, 1305 East-West Highway, N/OCRM, Silver Spring, MD 20910 at 301–533–0777 or Cheryl Fossani, USCRTF Executive Secretary, U.S. Department of Interior, MS–3530–MIB, 1849 C Street NW., Washington, DC 20240 at (202) 208–5004 or visit the USCRTF Web site at *http://www.coralreef.gov*

Dated: December 30, 2015.

Donna Rivelli,

Deputy Associate Assistant Administrator for Management and Deputy CFO/CAO, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–00017 Filed 1–12–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB157

Marine Mammals; File Nos. 14856 and 14809

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

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that major amendments to Permit No. 14809–01 and Permit No. 14856–03 have been issued to Douglas Nowacek, Ph.D., Duke University Marine Laboratory, 135 Duke Marine Lab Rd., Beaufort, NC 28516 and Bruce R. Mate, Ph.D., Hatfield Marine Science Center, Oregon State University, Newport, OR 97365, respectively.

ADDRESSES: The permit amendments and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 29, 2015 and April 2, 2015, notices were published in the **Federal Register** (80 FR 36975 and 80 FR 17721, respectively) that a request for amendments to Permit Nos. 14809–01 and 14856–03 to conduct research on marine mammals had been submitted by the above-named applicants. The requested permit amendments have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14809–01 authorizes Dr. Nowacek to conduct comparative research on 34 species/stocks of cetaceans in the North Atlantic, North Pacific and Southern Oceans. Authorized activities include suction cup tagging, acoustic playbacks, passive acoustics, biopsy sampling, photo-identification, behavioral observations, and incidental harassment during vessel surveys. The research objectives are to: (1) Document baseline foraging and social behavior of cetacean species under different ecological conditions; (2) place these behaviors in a population-level context; and (3) determine how these species respond to various natural sound sources. The permit has been amended (No. 02) to authorize the use of dart/barb tags during tagging efforts on Cuvier's beaked whales (*Ziphius cavirostris*), short-finned pilot whales (*Globicephala macrorhynchus*), Risso's dolphins (*Grampus griseus*), Arnoux's beaked whales (*Berardius arnuxii*), Antarctic minke whales (*Balaenoptera bonaerensis*) and endangered humpback whales (*Megaptera novaeangliae*) during vessel surveys. The permit is valid through March 31, 2019.

Permit No. 14856–03 authorizes Dr. Mate to take 66 species of cetaceans and 12 species of pinnipeds in U.S. and international waters worldwide for scientific research. The purposes of the research are to: (1) Identify migration routes; (2) identify specific feeding and breeding grounds; (3) characterize local movements and dive habits in both feeding and breeding grounds, and during migration; (4) examine the relationships between movements/dive habits and prey distribution, time of day, geographic location, or physical and biological oceanographic conditions; (5) characterize whale vocalizations; (6) characterize sound pressure levels to which whales are exposed; and (7) gather photo-identification and behavioral information. Researchers are authorized to conduct aerial and vessel surveys and a suite of research activities including: Observations, biopsy sampling, tagging,

and import, receive or export parts. The permit has been amended (No. 04) to increase the number of humpback whales that may be taken by Level B harassment during surveys from 1,000 to 2,000 animals annually. The permit expires December 31, 2018.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), a final determination has been made that the activity proposed for Permit No. 14809–02 is categorically excluded from the requirement to prepare an environmental assessment (EA) or environmental impact statement.

A supplemental EA analyzing the effects of the permitted activities on the human environment was prepared for Permit No. 14856–04 in compliance with NEPA. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on October 27, 2015.

As required by the ESA, issuance of the permits was based on a finding that each permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 6, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–00455 Filed 1–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE384

Endangered Species; File No. 19496

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Mariana Fuentes, Florida State University, 532 Hart Street, Tallahassee, FL 32301, has applied in due form for a permit to take loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and hawksbill (*Eretmochelys imbricata*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before February 12, 2016.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 19496 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Arturo Herrera or Amy Hapeman, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant requests a five-year permit to conduct year-round field activities in the Florida Big Bend Region to take, by capture or disturbance during vessel surveys, sea turtles to identify important foraging and developmental habitats. Vessel transect surveys would occur separately from capture efforts. Up to 1,225 sea turtles would be disturbed annually during vessel surveys for counts and observation to identify relative presence, abundance, and habitat use of turtles. Up to 480 sea turtles annually captured by hand, dip net or strike net would have the following procedures performed before release: Measure; weigh; blood, scute, and biopsy sampling; temporary carapace marking; satellite tagging; flipper passive integrated transponder tagging and/or photography/videography.

Dated: January 7, 2016.

Julia Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–00454 Filed 1–12–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended; the Department of the Air Force announces its intention to grant The Regents of the University of Michigan, a land-grant educational institution of the State of Michigan, having a place of business at 503 S. State St., Ann Arbor, MI 48109.

DATES: The Air Force intends to grant a license for the patent and pending applications unless a written objection is received within fifteen (15) calendar days from the date of publication of this Notice.

ADDRESSES: Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 101, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

FOR FURTHER INFORMATION CONTACT: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Rm. 101, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733.

SUPPLEMENTARY INFORMATION: An exclusive license in any right, title, and interest of the Air Force in: International Application No. PCT/US2014/059727, entitled, ''APPARATUS AND METHODS FOR ENERGY EFFICIENT SEPARATIONS INCLUDING REFINING OF FUEL PRODUCTS,'' by Reams et al., and filed on October 8, 2014.

Henry Williams,

Acting Air Force Federal Register Liaison Officer, Civ, DAF.

[FR Doc. 2016–00492 Filed 1–12–16; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2016–OS–0001]

Proposed Collection; Comment Request

AGENCY: United States Southern Command, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the United States Southern Command announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by March 14, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, Regulatory and Audit Matters Office, 9010 Defense Pentagon, Washington, DC 20301–9010.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the United States Southern Command, Attention: SCSJA-Privacy Act Official, 9301 NW. 33rd St., Doral, FL 33172, or email *javier.e.riverarosario.mil@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: SOUTHCOM Theater Enterprise Management System, OMB Control Number 0704–XXXX.

Needs and Uses: The information collection requirement is necessary to maintain a Single System of Record for all Enterprise Business services at USSOUTHCOM, to include Human Resources/Military Personnel records. Although each service has its own personnel records system, USSOUTHCOM requires basic personnel data for Command Manning Rosters and similar management purposes. The system will interface with those DoD systems, and present a single system dashboard to the USSOUTHCOM users.

Affected Public: Contractor personnel and Foreign Liaison Military assigned for duty with USSOUTHCOM.

Annual Burden Hours: 800.

Number of Respondents: 1,200.

Responses per Respondent: 2.

Annual Responses: 2,400.

Average Burden per Response: 20 minutes.

Frequency: Twice a year.

Respondents are personnel who will provide personnel information during on-boarding into the organization for employment purposes and will verify the information twice yearly for disaster preparedness readiness. This information is essential in maintaining the safety and security of US Southern Command employees during natural and man-made disaster.

Dated: January 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–00528 Filed 1–12–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Amendment of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Charter amendment of Federal advisory committee.

SUMMARY: The Department of Defense is publishing this notice to announce that it is amending the charter for the Uniform Formulary Beneficiary Advisory Panel (''the Panel'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: This committee's charter is being amended pursuant to 10 U.S.C. 1074g(c) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(a).

The Panel is a statutory Federal advisory committee that provides the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Assistant Secretary of Defense for Health Affairs (ASD(HA)), and the Director, Defense Health Agency (DHA), independent advice and recommendations on the development of the uniform formulary. The Secretary of Defense shall consider the comments of the Panel before implementing the uniform formulary or implementing changes to the uniform formulary.

The Panel reports to the Secretary of Defense and/or the Deputy Secretary of Defense, through the USD(P&R), the ASD(HA), and the Director, DHA. The USD(P&R), or designated representative, may act upon the Panel's advice and recommendations.

The Department of Defense (DoD), through the Office of the USD(P&R) and the DHA, provides support for the performance of the Panel's functions and ensures compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and established DoD policies and procedures.

Under the provisions of 10 U.S.C. 1074g(c)(2), the Panel shall be composed of no more than 15 members and shall include members that represent:

a. Non-governmental organizations and associations that represent the views and interests of a large number of eligible covered beneficiaries;

b. Contractors responsible for the TRICARE retail pharmacy program;

c. Contractors responsible for the national mail-order pharmacy program; and

d. TRICARE network providers.

The Panel members will be appointed by the Secretary of Defense or the Deputy Secretary of Defense, and their

appointments will be renewed on an annual basis in accordance with DoD policies and procedures. Panel members who are not full-time or permanent part-time Federal officers or employees will be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee (SGE) members. Panel members who are full-time or permanent part-time Federal officers or employees will serve as regular government employee (RGE) members pursuant to 41 CFR 102–3.130(a). Panel members shall be appointed for a term of service of one-to-four years, and no member may serve more than two consecutive terms of service without Secretary of Defense or Deputy Secretary of Defense approval.

Consistent with the Deputy Secretary of Defense policy, the USD(P&R) may appoint the Panel's Co-Chairs from among the Secretary of Defense approved panel membership and in doing so, shall determine the term of service for the Panel's Co-Chairs, which shall not exceed the member's approved term of service.

All members of the Panel are appointed to provide advice on the basis of their best judgment without representing any particular points of view and in a manner that is free from conflict of interest.

Panel members will serve without compensation except for reimbursement of travel and per diem as it pertains to official business of the Panel.

DoD, when necessary and consistent with the Panel's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P&R), as the Panel's Sponsor.

Such subcommittees will not work independently of the Panel and will report all of their recommendations and advice solely to the Panel for full and open deliberation and discussion. Subcommittees, task forces, or working groups have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Panel. No subcommittee or any of its members can update or report, verbally or in writing, on behalf of the Panel, directly to the DoD or any Federal officer or employee.

Each member, based upon his or her individual professional experience, provides his or her best judgment on the matters before the Panel, and he or she does so in a manner that is free from conflict of interest. All subcommittee members will be appointed by the Secretary of Defense or the Deputy Secretary of Defense to a term of service of one-to-four years, with annual renewals, even if the individual is already a member of the Panel. Subcommittee members will not serve more than two consecutive terms of service, unless authorized by the Secretary of Defense or the Deputy Secretary of Defense. Subcommittee members who are not full-time or permanent part-time Federal officers or employees will be appointed as an expert or consultant pursuant to 5 U.S.C. 3109, to serve as a SGE member. Subcommittee members who are full-time or permanent part-time Federal officers or employees will be appointed pursuant to 41 CFR 102–3.130(a) to serve as an RGE member. With the exception of reimbursement of official travel and per diem related to the Panel or its subcommittees, subcommittee members will serve without compensation.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

The Panel's Designated Federal Officer (DFO) must be a full-time or permanent part-time DoD officer or employee, designated in accordance with established DoD policies and procedures. The Panel's DFO is required to be in attendance at all meetings of the Panel and any subcommittees for the entire duration of each and every meeting. However, in the absence of the Panel's DFO, a properly approved Alternate DFO duly designated to the Panel according to established DoD policies and procedures, must attend the entire duration of all meetings of the Panel and any subcommittees.

The DFO, or the Alternate DFO, calls all meetings of the Panel and its subcommittees; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Panel.

All written statements shall be submitted to the DFO for the Panel, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Panel's DFO can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Panel. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: January 8, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–00526 Filed 1–12–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–1–000]

Southwestern Power Administration; Notice of Filing

Take notice that on December 18, 2015, Southwestern Power Administration submitted a tariff filing: 2015 RDW Rate Schedule Filing to be effective 1/1/2016.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.or* call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 19, 2016.

Dated: January 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–00488 Filed 1–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–205–001.
Applicants: DATC Path 15, LLC.
Description: Tariff Amendment: amendment to 300011 to be effective 1/1/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5070.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–208–001.
Applicants: International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC.
Description: Compliance Filing of the ITC Companies.
Filed Date: 1/7/16.
Accession Number: 20160107–5135.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–316–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Clean-Up Filing in Docket No. ER16–316–000 to be effective 12/31/9998.
Filed Date: 1/6/16.
Accession Number: 20160106–5316.
Comments Due: 5 p.m. ET 1/27/16.

Docket Numbers: ER16–688–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–01–07_SA 2748 ATC–WPL Amended CFA to be effective 3/7/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5085.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–689–000
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–01–07_SA 2756 ATC–WPSC Amended CFA to be effective 3/7/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5086.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–690–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–01–07_SA 2761 ATC–UPPCO Amended CFA to be effective 3/7/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5087.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–691–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–01–07_SA 2772 ATC–MGE Amended CFA to be effective 3/7/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5088.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–692–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–01–07_SA 2779 ATC–WE Amended CFA to be effective 3/7/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5089.
Comments Due: 5 p.m. ET 1/28/16.

Docket Numbers: ER16–693–000.
Applicants: California Independent System Operator Corporation.
Description: Section 205(d) Rate Filing: 2016–01–07 IPE 2015 Process Enhancements to be effective 3/8/2016.
Filed Date: 1/7/16.
Accession Number: 20160107–5140.
Comments Due: 5 p.m. ET 1/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–00487 Filed 1–12–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF16–2–000]

Southwestern Power Administration; Notice of Filing

Take notice that on December 18, 2015, Southwestern Power Administration submitted a tariff filing: 2015 SRD Rate Schedule Filing to be effective 1/1/2016.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above proceeding are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 19, 2016.

Dated: January 7, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–00489 Filed 1–12–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0324; FRL–9941–24]

Pesticide Product Registration; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before February 12, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0324 and the File Symbols: 7969–312 and 7969–GTN of interest as shown in the body of this document, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

EPA Registration numbers: 7969–312 (Technical), 7969–GTN (End-use products). *Docket ID number:* EPA–HQ–OPP–2015–0324. *Applicant:* BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. *Active ingredient:* Fluxapyroxad. *Product type:* Fungicide. *Proposed uses:* Ornamentals grown outdoors or grown in a greenhouse. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: January 7, 2016.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–00537 Filed 1–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0584; FRL–9941–25–OLEM]

Proposed Information Collection Request; Comment Request; Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Spill Prevention, Control, and Countermeasure (SPCC) Plans'' (EPA ICR No. 0328.17, OMB Control No. 2050–0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through May 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before March 14, 2016.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPA–2007–0584, online using

www.regulations.gov (our preferred method), by email to *superfund.docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Alan Tarrab, Regulations Implementation Division, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–564–0206 fax number: (202) 564–2625; email address: *tarrab.alan@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The authority for EPA's oil pollution prevention requirements is derived from section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR part 112. An SPCC Plan will help an owner or operator identify the necessary procedures, equipment, and resources to prevent an oil spill and to respond to an oil spill in a timely manner. If implemented effectively, the SPCC Plan is expected to prevent oil spills and reduce the impact and severity of oil spills. Although the owner or operator is the primary data user, EPA may also require the owner or operator to submit data to the Agency in certain situations to ensure facilities comply with the SPCC regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can assist local emergency preparedness planning efforts. EPA does not require an owner or operator to submit SPCC Plans, but may request the SPCC Plan during a facility inspection or an oil spill incident for review. The SPCC regulation requires the owner or operator maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day or at the nearest field office if the facility is not so attended. The rule also requires that the Plan be available to the Regional Administrator for on-site review during normal working hours (40 CFR 112.3(e)).

SPCC Plan Preparation. Under section 112.3(a) or (b), the owner or operator or onshore or offshore facility subject to this section must prepare in writing and implement an SPCC Plan in accordance with section 112.7 and any other applicable sections in the regulation. Section 112.7 requires that the Plan be prepared in accordance with good engineering practices. The section also requires the Plan have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan. Specific provisions in this section, among others, require the owner or operator to predict the direction, rate of flow, and total quantity of oil which could be discharged from the facility as result of each type of major equipment failure (section 112.7(b)); provide for appropriate containment and/or diversionary structures or equipment to prevent a discharge (section 112.7(c)); provide for PE certification or a qualified facility certification (section 112.7(d)); and conduct inspections and tests and maintain records (section 112.7(e)).

Plan Certification. Under section 112.3(d), a SPCC Plan must, except as provided by 40 CFR 112.6, Qualified Facilities Plan Requirements, be reviewed and certified by a licensed Professional Engineer (PE) for it to be effective to satisfy the requirements. Under section 112.6, the owner or operator of a qualified facility may self-certify the Plan if the facility meets the eligibility criteria in section 112.3(g).

SPCC Plan Maintenance. Under section 112.5, the owner or operator must complete a review and evaluation of the SPCC Plan at least once every five years. As a result of this review and evaluation, the owner or operator must amend the Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge of oil.

Recordkeeping. Under section 112.7(e), an owner or operator must conduct inspections and tests and maintain records. The inspections and tests must be conducted in accordance with written procedures the facility or the certifying engineer developed for the facility. The written procedures and a record of the inspections and tests must be signed by the appropriate supervisor or inspector and kept with the SPCC Plan for a period of three years. Records of inspections and tests may be kept under usual and customary business practices.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are the owners or operators of facilities that are required to have a Spill Prevention, Control, and Countermeasure (SPCC) Plan under the Oil Pollution Prevention regulation (40 CFR part 112). The applicability, definitions, and general requirements for all facilities and all types of oil are located in section 112.1 of the regulations and apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil into navigable waters or adjoining shorelines in quantities that may be harmful. (See 40 CFR 112.1(a) through (d) for further information about the applicability of the oil pollution prevention regulations.)

The private industry sectors subject to this action include but are not limited

to: (1) Oil and Gas Extraction (NAICS 211); (2) Farms (NAICS 111, 112); (3) Electric Utility Plants (NAICS 2211); (4) Petroleum Refining and Related Industries (NAICS 324); (5) Chemical Manufacturing (NAICS 325); (6) Food Manufacturing (NAICS 311, 312); (7) Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils (NAICS 311, 325); (8) Metal Manufacturing (NAICS 331, 332); (9) Other Manufacturing (NAICS 31–33); (10) Real Estate Rental and Leasing (NAICS 531, 533); (11) Retail Trade (NAICS 441–446, 448,451–454); (12) Contract Construction (NAICS 23); (13) Wholesale Trade (NAICS 42); (14) Other Commercial (NAICS 492, 541, 551, 561–562); (15) Transportation (NAICS 481–488); (16) Arts, Entertainment, and Recreation (NAICS 711–713); (17) Other Services (Except Public Administration) (NAICS 811–813); (18) Education (NAICS 611); (19) Petroleum Bulk Stations and Terminals (NAICS 4247); (19) Fuel Oil Dealers (NAICS 45431); (20) Hospitals & Other Health Care (NAICS 621–624); (21) Accommodation and Food Services (NAICS 721,722); (22) Fuel Oil Dealers (NAICS 45431); (23) Gasoline Stations (NAICS 4471); (24) Information Finance and Insurance (NAICS 51, 52); (25) Mining (NAICS 212, 213); (26) Warehousing and Storage (NAICS 493); (27) Pipelines (NAICS 4861, 48691); (28) Government (NAICS 92); (29) Military Installations (NAICS 928110); and (30) Religious Organizations (NAICS 813110).

Respondent's obligation to respond: Mandatory, pursuant to 40 CFR 112.3(e).

Estimated number of respondents: 683,000 (total).

Frequency of response: Less than once per year.

Total estimated burden: 9,200,000 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1,034,000,000 (per year), includes $198,100,000 annualized capital or operation & maintenance costs.

Changes in Estimates: The number of respondents, burden, and costs stated above are from the current approved ICR, 0328.16. EPA may adjust these estimates based on public comments received or other information gained by the Agency prior to submitting the ICR renewal package to OMB.

Dated: December 23, 2105.

Reggie Cheatham,

Director, Office of Emergency Management.

[FR Doc. 2016–00538 Filed 1–12–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–04–2016–3750; FRL 9941–28–Region 4]

Stony Hill Road Superfund Site; Wake Forest, Wake County, North Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into a settlement with Flextronics International USA, Inc., concerning the Stony Hill Road Superfund Site located in Wake Forest, Wake County, North Carolina. The proposed settlement addresses recovery of CERCLA costs for a cleanup action performed by the EPA at the Site.

DATES: The Agency will consider public comments on the proposed settlement until February 12, 2016. The Agency will consider all comments received and may modify or withdraw its consent to the proposed settlement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlement are available from the Agency by contacting Ms. Paula V. Painter, Program Analyst, using the contact information provided in this notice. Comments may also be submitted by referencing the Site's name through one of the following methods:

- *Internet: http://www2.epa.gov/nc/public-settlement-concerning-stony-hill-road-superfund-site.*
- *U.S. Mail:* U.S. Environmental Protection Agency, Superfund Division, Attn: Paula V. Painter, 61 Forsyth Street SW., Atlanta, Georgia 30303.
- *Email: Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: November 3, 2015.

Anita L. Davis,

Chief, Enforcement and Community Engagement Branch, Superfund Division.

[FR Doc. 2016–00539 Filed 1–12–16; 8:45 am]

BILLING CODE P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0844]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 12, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the

information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0844.

Title: Carriage of the Transmissions of Television Broadcast Stations: Section 76.56(a), Carriage of qualified noncommercial educational stations; Section 76.57, Channel positioning; Section 76.61(a)(1)–(2), Disputes concerning carriage; Section 76.64, Retransmission consent.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 835 respondents and 14,040 responses.

Estimated Time per Response: 1 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 325, 336, 614 and 615 of the Communications Act of 1934, as amended.

Total Annual Burden: 14,840 hours.

Total Annual Cost: No cost.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Under section 614 of the Communications Act and the implementing rules adopted by the Commission, commercial TV broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's television market. Under section 325(b) of the Communications Act, commercial TV broadcast stations are entitled to negotiate with local cable systems for carriage of their signal pursuant to retransmission consent agreements in lieu of asserting must carry rights. This system is therefore referred to as ''Must-Carry and Retransmission Consent.'' Under section 615 of the Communications Act, noncommercial educational (NCE) stations are also entitled to assert mandatory carriage rights on cable systems located within the station's market; however, noncommercial TV broadcast stations are not entitled to retransmission consent. The information collection requirements for this collection are contained in 47 CFRs 76.56(a), 76.57, 76.61(a)(1)–(2) and 76.64.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–00498 Filed 1–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0920]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before February 12, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **''SUPPLEMENTARY INFORMATION''** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0920.

Title: Application for Construction Permit for a Low Power FM Broadcast Station; Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service; §§ 73.807, 73.809, 73.810, 73.827, 73.850, 73.865, 73.870, 73.871, 73.872, 73.877, 73.878, 73.318, 73.1030, 73.1207, 73.1212, 73.1230, 73.1300, 73.1350, 73.1610, 73.1620, 73.1750, 73.1943, 73.3525, 73.3550, 73.3598, 11.61(ii), FCC Form 318.

Form No.: FCC Form 318.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; State, local or Tribal governments.

Number of Respondents and Responses: 21,019 respondents with multiple responses; 27,737 responses.

Estimated Time per Response: .0025–12 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Monthly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in sections 154(i), 303, 308 and 325(a) of the Communications Act of 1934, as amended.

Total Annual Burden: 35,471 hours.

Total Annual Costs: $39,750.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Needs and Uses: This submission is being made as an extension to an existing information collection pursuant to 44 U.S.C. 3507. This submission covers FCC Form 318 and its accompanying instructions and worksheets. FCC Form 318 is required: (1) To apply for a construction permit for a new Low Power FM (LPFM) station; (2) to make changes in the existing facilities of such a station; (3) to amend a pending FCC Form 318 application; or (4) to propose mandatory time-sharing.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–00499 Filed 1–12–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10326, Legacy Bank; Scottsdale, Arizona

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Legacy Bank, Scottsdale, Arizona (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Legacy Bank on January 7, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: January 8, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–00517 Filed 1–12–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 16–01]

Cargo Agents, Inc, International Transport Management Corp., and RCL Agencies, Inc., on Behalf of Themselves and All Others Similarly Situated v. Nippon Yusen Kabushiki Kaisha, NYK Line (North America) Inc., Mitsui O.S.K. Lines, Ltd., MITSUI O.S.K. Bulk Shipping (USA) Inc., World Logistics Service (U.S.A.), Inc., Kawasaki Kisen Kaisha Ltd., ''K'' Line America, Inc., Eukor Car Carriers Inc., Wallenius Wilhelmsen Logistics as, Wallenius Wilhelmsen Logistics Americas LLC, Compañia Sud Americana de Vapores S.A., CSAV Agency North America, LLC, Höegh Autoliners Holdings as, Höegh Autoliners as, Höegh Autoliners, Inc., Autotrans as, Alliance Navigation LLC, and Nissan Motor Car Carrier Co., LTD.; Notice of Filing of Complaint and Assignment

Notice is given that a ''Class Action Complaint'' has been filed with the Federal Maritime Commission (Commission) by Cargo Agents, Inc., International Transport Management, Corp., and RCL Agencies, Inc. on behalf of themselves and all others similarly situated, hereinafter ''Complainants,'' against the vehicle transport services providers named in the above caption, hereinafter ''Respondents.''

Complainants state that they are purchasers of ''Vehicle Carrier Services'' from Respondents. Complainants allege that Respondents ''are the largest providers of deep sea vehicle transport services . . . in the world, including for shipments to and from the United States.''

Complainants allege that Respondents violated provisions of the Shipping Act of 1984, including 46 U.S.C. 40302(a), 41102(b)(1), 41102(c), 41104(10), 41105, and the Commission's regulations at 46 CFR 535.401 *et seq.,* because they ''have conspired to allocate customers and markets, to rig bids, to restrict supply, and otherwise to raise, fix, stabilize, or maintain prices for Vehicle Carrier Services for shipment to and from the United States, pursuant to agreements between and among them that were not filed with the Federal Maritime Commission . . . and that otherwise violated the Shipping Act and regulations promulgated thereunder.''

Complainants request the following relief:

''(a) That the Respondents be required to answer the charges herein;

(b) That the Commission certify this action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and that Complainants be deemed adequate representatives of the Class;

(c) That, after due investigation and hearing, Respondents be found to have violated [the Shipping Act provisions and Commission regulations listed above];

(d) That the Commission order Respondents to cease and desist from violating the Shipping Act, including the above-specified provisions thereof;

(e) That Complainants and the Class recover reparations in a sum to be proven under 46 U.S.C. 41305, with interest . . .;

(f) That Complainants and the Class members recover their costs of the suit including reasonable attorneys' fees as provided by 46 U.S.C. 41305(e);

(g) That Complainants and the Class be awarded up to double their proven actual injury under 46 U.S.C. 41305(c) because Respondents and their co-conspirators violated 46 U.S.C. 41102(b) and 41105(1) and (3);

(h) That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators; and

(i) That the Commission direct further relief as it may deem just and proper.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *www.fmc.gov/16–01.*

This proceeding has been assigned to the Office of Administrative Law Judges.

The initial decision of the presiding officer in this proceeding shall be issued by January 6, 2017 and the final decision of the Commission shall be issued by July 20, 2017.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–00516 Filed 1–12–16; 8:45 am]

BILLING CODE 6731–0AA–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011787–001.

Title: NSCSA/NYK Middle East/Europe Space Charter Agreement

Parties: National Shipping Company of Saudi Arabia and Nippon Yusen Kaisha.

Filing Party: Robert Shababb; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The amendment adds the Mediterranean Coast of Europe to the geographical scope of the agreement, and updates language in the agreement concerning routine operational and administrative matters.

By Order of the Federal Maritime Commission.

Dated: January 8, 2016.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–00515 Filed 1–12–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 8, 2016.

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *NCAL Bancorp, Los Angeles, California;* to acquire Commercial Bank of California, Irvine, California.

Board of Governors of the Federal Reserve System, January 8, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–00511 Filed 1–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority to revise and extend for three years the following report:

Report title: Annual Company-Run Stress Test Report for State Member Banks, Bank Holding Companies, and Savings and Loan Holding Companies with Total Consolidated Assets Greater Than $10 Billion and Less Than $50 Billion.

Agency form number: FR Y–16.

OMB control number: 7100–0356.

Frequency: Annual.

Reporters: Bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with average total consolidated assets of greater than $10 billion but less than $50 billion, and any affiliated or unaffiliated state member bank (SMB) with average total consolidated assets of more than $10 billion but less than $50 billion, excluding SMB subsidiaries of covered companies.

Estimated annual reporting hours: BHCs: 24,388 hours; SLHCs: 3,283 hours; SMBs: 4,690 hours; One-time implementation: 7,200 hours.

Estimated average hours per response: BHCs: 469 hours; SLHCs: 469 hours; SMBs: 469 hours; One-time implementation: 3,600 hours.

Number of respondents: BHCs: 52; SLHCs: 7; SMBs: 10; One-time implementation: 2.

General description of report: This information collection is authorized pursuant section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which specifically authorizes the Board to issue regulations implementing the annual stress testing requirements for its supervised institutions (12 U.S.C. 5365(i)(2)(C)). More generally, with respect to BHCs, section 5(c) of the Bank

Holding Company Act (12 U.S.C. 1844(c)), authorizes the Board to require a BHC and any subsidiary ''to keep the Board informed as to—(i) its financial condition, [and] systems for monitoring and controlling financial and operating risks . . . .'' Section 9(6) of the Federal Reserve Act (12 U.S.C. 324), requires SMBs to make reports of condition to their supervising Reserve Bank in such form and containing such information as the Board may require. Finally, with respect to SLHCs, under section 312 of the Dodd-Frank Act (12 U.S.C. 5412), the Board succeeded to all powers and authorities of the Office of Thrift Supervision, U.S. Department of the Treasury, and its Director, including the authority to require SLHCs to ''file . . . such reports as may be required . . . in such form and for such periods as the [agency] may prescribe'' (12 U.S.C. 1467a(b)(2)).

The obligation to respond is mandatory. Section 165(i)(2)(A) provides that ''financial companies that have total consolidated assets [meeting the asset thresholds] . . . and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests.'' Section 165(i)(2)(B) provides that a company required to conduct annual stress tests ''shall submit a report to the Board and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require'' (12 U.S.C. 5365(i)(2)(B)).

As noted under section 165(i)(2)(C)(iv), companies conducting annual stress tests under these provisions are ''require[d] . . . to publish a summary of the results of the required stress tests.'' (12 U.S.C. 5365(i)(2)(C)(iv)). Regarding the information collected by the Board, however, as such information will be collected as part of the Board's supervisory process, it may be accorded confidential treatment under Exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). This information also is the type of confidential commercial and financial information that may be withheld under Exemption 4 of FOIA (5 U.S.C. 552(b)(4)).

Abstract: The FR Y–16 applies to BHCs, SLHCs,[1] and SMBs, excluding SMB subsidiaries of covered companies,[2] with average total consolidated assets of greater than $10 billion but less than $50 billion. The annual FR Y–16 report collects quantitative projections of revenues, losses, assets, liabilities, and capital across three scenarios provided by the Federal Reserve (baseline, adverse, and severely adverse) and qualitative supporting information on the methodologies and processes used to develop these internal projections. The FR Y–16 collects data through two primary schedules: (1) The Results Schedule (which includes the quantitative results of the stress tests under the baseline, adverse, and severely adverse scenarios for each quarter of the planning horizon) and (2) the Scenario Variables Schedule. In addition, respondents are required to submit a summary of the qualitative information supporting its quantitative projections. The qualitative supporting information must include:

- A description of the types of risks included in the stress test;
- a summary description of the methodologies used in the stress test;
- an explanation of the most significant causes for the changes in regulatory capital ratios, and
- the use of the stress test results.

Results Schedule: For each of the three supervisory scenarios (Baseline, Adverse, and Severely Adverse), data are reported on two supporting schedules: (1) the Income Statement Schedule and (2) the Balance Sheet Schedule. In addition, the Results Schedule includes a Summary Schedule, which summarizes key results from the Income Statement and Balance Sheet Schedules.

Income statement data are collected on a projected quarterly basis showing both projections of revenues and losses. These data are organized in a similar fashion to the mandatory Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), Schedule HI—Consolidated Income Statement, and the Consolidated Report of Condition and Income (FFIEC 031 and FFIEC 041; OMB No. 7100–0036) (Call Report), Schedule RI—Income Statement. For example, respondents project net charge-offs by loan type (stratified by twelve specific loan types), gains and losses on securities, pre-provision net revenue, and other key components of net income (*i.e.,* provision for loan and lease losses, taxes, etc.).

Balance sheet data are collected on a quarterly basis for projections of certain assets, liabilities, and capital. These data are organized in a similar fashion to the FR Y–9C, Schedule HC—Consolidated Balance Sheet, and Call Report, Schedule RC—Balance Sheet. For example, respondents would project loans, allowance for loan and lease losses, securities, funding sources, and equity capital. Capital data are also collected on a projected quarterly basis and include components of regulatory capital, including the projections of risk weighted assets and capital actions such as common dividends and share repurchases.

Scenario Variables Schedule: To conduct the stress tests, an institution may choose to project additional economic and financial variables beyond the mandatory supervisory scenarios provided to estimate losses or revenues for some or all of its portfolios. In such cases, the institution would be required to complete the Scenario Variables Schedule for each scenario where the institution chooses to use additional variables. The Scenario Variables Schedule collects information on the additional scenario variables used over the planning horizon for each supervisory scenario.

Current Actions: The revisions to the FR Y–16 report would be effective for the 2016 stress test cycle and would: (1) Change the report as-of date from September 30 to December 31, (2) change the reporting submission or due date from March to July, and (3) modify the reporting instructions to make corresponding changes to the dates, reflect technical changes related to final implementation of BASEL III requirements, and to clarify certain of the instructions in coordination with the other federal regulatory agencies. None of the changes impose additional information collection requirements.

On July 8, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 39117) requesting public comment for 60 days on the proposal to revise and extend for three years the Annual Company-Run Stress Test Report for $10–50 Billion Companies. The comment period for this notice expired on September 8, 2015. The Federal Reserve did not receive any comments, and the information collection will be revised as proposed.

[1] The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) annual company-run stress testing requirements do not apply to SLHCs until 2017, and will only apply to an SLHC that is subject to minimum regulatory capital requirements. *See* 12 CFR 252.13(b)(2)(iii).

[2] ''Covered company'' is defined in 12 CFR 252(g) as a BHC (other than a foreign banking organization (FBO)) with average total consolidated assets of $50 billion or more; a U.S. intermediate holding company (IHC) subject to 12 CFR 252.153, and a nonbank financial company supervised by the Board.

Board of Governors of the Federal Reserve System, January 7, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–00441 Filed 1–12–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 28, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Kristina Davidson, Greenwood Village, Colorado; and Zachary Davidson and Tiffany Davidson, both of Nine Mile Falls, Washington; Shauna Cumin and Macaulay Kerr, both of Billings, Montana; Robert Kerr, Spokane Washington; Scott Kerr, Satellite Beach, Florida; the Joshua K. Davidson Irrevocable Trust, Brighton, Colorado; and the Michelle M. Davidson Irrevocable Trust,* Englewood, Colorado, as members of the Davidson Family group and acting in concert; to retain voting shares of First American Bancorp, and thereby indirectly retain voting shares of First American State Bank, both in Greenwood Village, Colorado.

Board of Governors of the Federal Reserve System, January 8, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–00512 Filed 1–12–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–5106]

Clinical Outcome Assessment Compendium

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the establishment of a docket to receive suggestions, recommendations, and comments from interested parties (including academic institutions, regulated industry, and patient groups) on our pilot ''Clinical Outcome Assessment Compendium'' (COA Compendium). FDA has developed a Web site that describes the purpose of the pilot COA Compendium and provides background information. Comments received on the pilot COA Compendium during its pilot phase will help FDA determine its utility, and may assist FDA in developing future iterations of the COA Compendium and identifying best methods for conveying COA Compendium information on FDA's Web site.

DATES: Submit either electronic or written comments by March 14, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2015–N–5106 for ''Clinical Outcome Assessment Compendium.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the

electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nikunj B. Patel, Clinical Outcome Assessments Staff (formerly Study Endpoints and Labeling Development (SEALD)), Office of New Drugs, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6369, Silver Spring, MD 20993–0002, 240–402–6502, email: *COACompendium@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Capturing outcomes that are important to patients in clinical trials is a high priority for FDA. The pilot COA Compendium is part of FDA's efforts to foster patient-focused drug development.[1] The COA Compendium is intended to facilitate communication and to provide clarity and transparency to drug developers and the research community by collating and summarizing clinical outcome assessment information for many different diseases and conditions into a single resource. It can be used as a starting point when considering how certain clinical outcome assessments might be utilized in clinical trials and will likely be most informative in early drug development. The public is referred to the following FDA Web site for additional background information, along with the pilot COA Compendium: *http://www.fda.gov/COACompendium.*

II. Establishment of a Docket and Request for Comments

To help FDA determine the utility of the COA Compendium, develop future iterations of the COA Compendium, and identify best methods for conveying COA Compendium information on FDA's Web site, FDA is launching the pilot COA Compendium and soliciting public suggestions, recommendations, and comments for each aspect of the COA Compendium mentioned on the following FDA Web site: *http://www.fda.gov/COACompendium.* Specifically, FDA welcomes your comments concerning: (1) The utility of the COA Compendium; (2) the best approach for developing future iterations of it, including any suggested expansions of its scope; and (3) COA Compendium-related questions you would like FDA to address in its future communications. FDA will consider all comments submitted but will generally not respond directly to the person or organization submitting the comment.

Dated: January 7, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–00529 Filed 1–12–16; 8:45 am]

BILLING CODE 4164–01–P

[1] The term *drug,* as used in this notice, refers to human drugs including biological products.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Cancer Genomics Cloud Pilots Survey (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; 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; The quality, utility, and clarity of the information to be collected; and Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Anthony Kerlavage, NCI CBIIT, Program Manager, 9609 Medical Center Drive, Room 1W–436, Rockville, MD 20850 or call non-toll-free number 240–276–5190 or email your request, including your address to: *anthony.kerlavage@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION:

Proposed Collection: Cancer Genomics Cloud Pilots Survey, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Center for Biomedical Informatics and Information Technology (CBIIT), in collaboration with the Center for Cancer Genomics at the National Cancer Institutes (NCI) in the National Institutes of Health (NIH), is coordinating a program to develop three Cancer Genomics Cloud Pilots to help meet the research community's needs to access and analyze high quality, large-scale cancer genomic data and associated clinical information. The goal of this effort is to develop an innovative, cost-effective model for computational analysis of biological data and provide broader yet secure access to genomic data that NCI generates. Cloud computing will be a valuable tool to support studies related to the mechanisms of cancer. This capability will be equally valuable to other NCI scientific areas, including clinical trials and other types of patient-focused research. In order to understand the utility and value of the tools being developed, the NCI has developed a survey instrument to capture feedback from the cancer research community. The information collected as part of this survey process will be used exclusively by the NCI to determine future funding of cloud technology projects.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 375.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Cloud Pilot Survey	Principal Investigator	1500	1	15/60	375

Dated: January 6, 2016.

Karla Bailey,

Project Clearance Liaison, National Cancer Institute, NIH.

[FR Doc. 2016–00458 Filed 1–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: 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/contract proposals 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/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Purification of Cancer Cell Extracellular Vesicles.

Date: February 10, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Quantification of Redox.

Date: February 11, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Nadeem Khan, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750, 240–276–5856, *nkhann3@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Biomarker Immunoassay Signal Amplification.

Date: February 16–17, 2016.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892–9750, 240–276–6371, *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee F—Institutional Training and Education.

Date: February 22–23, 2016.

Time: 7:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road Bethesda, MD 20852.

Contact Person: Timothy C. Meeker, MD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W624, Bethesda, MD 20892–9750, 240–276–6464, *meekert@mail.nih.gov.*

(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, Cancer Control, National Institutes of Health, HHS)

Dated: January 7, 2016.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–00459 Filed 1–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; P50 Clinical Research Center Vocal Disorders Review Meeting.

Date: January 28, 2016.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.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.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trial Review.

Date: February 2, 2016.

Time: 2:45 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute

on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Chemosensory Fellowship Review.

Date: February 10, 2016.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; VSL Fellowships Review.

Date: February 11, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sheo Singh, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, 6001 Executive Blvd., Room 8351, Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 7, 2016.

Sylvia Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–00457 Filed 1–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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: NIDCR Special Grants Review Committee; NIDCR Special Grants Review.

Date: February 18–19, 2016.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Clinical Trials SEP.

Date: February 29, 2016,

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Room 651, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Crina Frincu, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Suite 662, Bethesda, MD 20892, *cfrincu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 6, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–00456 Filed 1–12–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2015–0468]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0004

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with change, of the following collection of information: 1625–0004, United States Coast Guard Academy Application and Supplemental Forms. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before February 12, 2016.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2015–0468] to the Coast Guard using the Federal eRulemaking Portal at *http://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) Email: *OIRA-submission@omb.eop.gov.*

(2) Mail: OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) Fax: 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR AVE SE., STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of

Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2015–0468], and must be received by February 12, 2016.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0004.

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (80 FR 42510, July 17, 2015) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments. Accordingly, no changes have been made to the Collection.

Information Collection Request

1. *Title:* United States Coast Guard Academy Application and Supplemental Forms.

OMB Control Number: 1625–0004.

Summary: This collection contains the application and all supplemental forms required to be considered as an applicant to the U.S. Coast Guard Academy.

Need: The information is needed to select applicants for appointment as Cadet, U.S. Coast Guard to attend the U.S. Coast Guard Academy.

Forms: CGA–14, English Instructor Evaluation; CGA–14A, High School Transcript; CGA–14B, Math Instructor Evaluation and CGA–14D, Physical Fitness Examination (PFE) Scoring Form.

Respondents: Approximately 2,500 applicants apply annually to the U.S. Coast Guard Academy.

Frequency: Applicants must apply only once per year. There are no recordkeeping requirements for this collection of information.

Hour Burden Estimate: The estimated burden has decreased from 24,250 hours to 21,750 hours a year due to a decrease in the estimated number of annual respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: December 30, 2015.

Thomas P. Michelli,

U.S. Coast Guard, Deputy Chief Information Officer.

[FR Doc. 2016–00524 Filed 1–12–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0010]

Agency Information Collection Activities: Certificate of Registration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security 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: Certificate of Registration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before February 12, 2016 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** (80 FR 61221) on October 9, 2015, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10. CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden, including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a

matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Certificate of Registration.

OMB Number: 1651–0010.

Form Number: CBP Forms 4455 and 4457.

Abstract: Travelers who do not have proof of prior possession in the United States of foreign made articles and who do not want to be assessed duty on these items can register them prior to departing on travel. In order to register these articles, the traveler completes CBP Form 4457, *Certificate of Registration for Personal Effects Taken Abroad,* and presents it at the port at the time of export. This form must be signed in the presence of a CBP official after verification of the description of the articles is completed. CBP Form 4457 is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=4457&=Apply.*

CBP Form 4455, *Certificate of Registration,* is used primarily for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, or processing, which will subsequently be returned to the United States either duty free or at a reduced duty rate. CBP Form 4455 is accessible at: *http://www.cbp.gov/newsroom/publications/forms?title=4455&=Apply.*

CBP Forms 4455 and 4457 are provided for by 19 CFR 10.8, 10.9, 10.68, 148.1, 148.8, 148.32 and 148.37.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected on CBP Forms 4455 and 4457.

Type of Review: Extension (with no change).

Affected Public: Businesses.

CBP Form 4455

Estimated Number of Respondents: 60,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 9,960.

CBP Form 4457

Estimated Number of Respondents: 140,000.

Estimated Time per Response: 3 minutes.

Estimated Total Annual Burden Hours: 7,000.

Dated: January 7, 2016.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2016–00495 Filed 1–12–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5924–N–01]

Announcement of Requirements and Registration for ''Innovation in Affordable Housing Student Design and Planning Competition''

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: This notice announces the third year of the Innovation in Affordable Housing Student Design and Planning Competition. The competition requires teams of graduate students from multiple disciplines to submit plans in response to a real life affordable housing design issue. The goals of this competition are: To encourage research and innovation in quality affordable housing design that strengthens the social and physical fabric of low and moderate-income communities and neighborhoods, to raise practitioner and future practitioner capacity to produce more livable and sustainable housing for low and moderate-income people through disseminating best practices, and to foster cross-cutting team-work within the design and community development process.

DATES: February 8, 2016. The real life affordable housing design issue was released on December 11, 2015. The deadline for phase one of the competition will be February 8, 2016. Finalists will be announced on February 19, 2016, and will have until April 19, 2016, to prepare their presentations.

FOR FURTHER INFORMATION CONTACT: Rachelle Levitt, Research Utilization Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8110, Washington, DC 20410, telephone 202–402–5867. Email: *Rachelle.L.Levitt@hud.gov*.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Entrants in the Innovation in Affordable Housing Design are requested to present their plans for a site owned by a public housing authority (PHA). This presentation will include architectural designs, neighborhood planning, and financial plans.

Eligibility Rules for Participating in the Competition

The competition is open to any contestant, defined as a team of U.S. citizens or permanent residents of the United States who are currently enrolled in a graduate level program at a university in the United States. The team members must represent at least three related academic disciplines and will be supported by a faculty advisor. Individuals may not participate in more than one team.

To be eligible to win a prize under this challenge (Challenge), an individual or entity—

(1) Shall have registered to participate in the competition under the rules promulgated by HUD;

(2) Shall have complied with all the requirements under this section;

(3) In the case of a private entity, shall be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, shall be a citizen or permanent resident of the United States in order to receive prize money;

(4) May not be a Federal entity or Federal employee acting within the scope of their employment;

(5) Shall not be a HUD employee working on their applications or submissions during assigned duty hours;

(6) May not be a judge of the competition, or any other party involved with the design, production, execution, or distribution of the Challenge or their immediate family (spouse, parents or step-parents, siblings and step-siblings, and children and step-children);

(7) Federal grantees may not use Federal funds to develop challenge applications under the America COMPETES Reauthorization Act of 2011 (COMPETES Act) unless consistent with the purpose of their grant award;

(8) Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

An individual or entity shall not be ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

By participating in this Challenge, contestants agree to assume any and all risks and waive claims against the Federal Government and its related

entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this Challenge, contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to Challenge activities.

Registration Process for Participants

All Contestants could register on the competition Web site, *http://www.huduser.ogov/challenge* . Interested parties can also read all official rules and sign up to receive more information and competition updates on this site.

Submission Period Begins: 12:01 a.m., EDT, December 11, 2015.

Submission Period Ends: 11:59 p.m., EDT, February 8, 2016.

Amount of the Prize

The winning team of the competition will be awarded $20,000. The runner-up team will be awarded $10,000. Prizes awarded under this competition may be subject to Federal income taxes. HUD will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Basis Upon Which Winner Will Be Selected

Submissions to the competition will be assessed by an informed jury of approximately five practitioners and experts in the fields of architecture, urban planning, affordable housing, and other relevant areas, in compliance with the requirements of the COMPETES Act. Jury members will be named after the commencement of the competition.

The jury will make decisions based on the following criteria: Completeness of design, applicability, financial and economic viability, planning criterion, and innovation and creativity.

Additional Information

The finalists will be invited to a site visit of the PHA in early March, with expenses paid for two team members. All rules and competition information and updates can be found at *www.huduser.gov/challenge.*

Copyright and Intellectual Property: Upon submission, each team warrants that the team members are the sole owners of the submission, and that the submission is wholly original to the team and does not infringe on any copyright or other rights of any third party of which the team is aware.

Submission Rights: By participating in this Challenge, each Team grants to HUD an irrevocable, paid-up, royalty-free, non-exclusive license to post, link to, share, and display publicly on the Web. The Public Housing Authority may use ideas from submissions in their future efforts to address the affordable housing design issue.

Compliance With Rules and Contacting Contest Winners

Finalists and the Contest Winners must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements herein. The initial finalists will be notified by email after the date of the judging.

Privacy

Personal information provided to HUD by Contestants registering or filling out the submission form through huduser.gov is protected by the Privacy Act, and is used to respond to Contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the Contest. Winners are permitted to cite that they won this contest.

General Conditions

HUD reserves the right to cancel, suspend, and/or modify the Competition, or any part of it, for any reason, at HUD's sole discretion.

Participation in this competition constitutes a contestant's and team's full and unconditional agreement to abide by the competition's official rules found at *http://www.huduser.gov/challenge.*

Authority: 15 U.S.C. 3719

Dated: January 5, 2016.

Katherine O'Regan,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2016–00520 Filed 1–12–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Ohkay Owingeh Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: On January 4, 2016, the Bureau of Indian Affairs (BIA) approved the Ohkay Owingeh leasing regulations under the HEARTH Act. With this approval, the Tribe is authorized to enter into the following type of leases without BIA approval: Business; residential; agricultural wind and solar resource; public; religious; educational; cultural; and other authorized purposes.

FOR FURTHER INFORMATION CONTACT: Ms. Sharlene Round Face, Bureau of Indian Affairs, Division of Real Estate Services, MS–4642–MIB, 1849 C Street NW., Washington, DC 20240, at (202) 208–3615.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH (Helping Expedite and Advance Responsible Tribal Homeownership) Act of 2012 (the Act) makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The Act authorizes Tribes to negotiate and enter into agricultural and business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior. The Act also authorizes Tribes to enter into leases for residential, recreational, religious, or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department's leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Ohkay Owingeh.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. *See* 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest

in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 465, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 465 preempts state taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* No. 14–14524, *13–*17, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' *Id.* at 5–6.

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 134 S. Ct. 2024, 2043 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 2043–44 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Just like BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* Guidance for the Approval of Tribal Leasing Regulations under the HEARTH Act, NPM–TRUS–29 (effective Jan. 16, 2013) (providing guidance on Federal review process to ensure consistency of proposed tribal regulations with part 162 regulations and listing required Tribal regulatory provisions). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Ohkay Owingeh.

Dated: January 6, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–00518 Filed 1–12–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[133D5670LC DLCAP0000.000000 DS10100000 DX.10129]

Land Buy-Back Program for Tribal Nations Under Cobell Settlement

AGENCY: Office of the Deputy Secretary, Interior.

ACTION: Notice.

SUMMARY: On November 4, 2015, the Department of the Interior released the 2015 Status Report for the Land Buy-Back Program for Tribal Nations (Buy-Back Program or Program), which summarizes its implementation to date: *https://www.doi.gov/buybackprogram/about.* Since December 2013, the Program has paid nearly $715 million to individual landowners and has restored approximately 1.5 million acres of land to tribal governments.

The Report highlights the Program's launch of two efforts to help determine its next implementation schedule. The two-pronged planning initiative seeks input from tribal governments and landowners who are interested in participating in the Program. Eligible tribal governments not already scheduled for implementation are invited to formally indicate their interest in participating in the Program no later than March 11, 2016. More information is available to tribal leaders at: *https://www.doi.gov/buybackprogram/tribes.* Additionally, the Program has launched a nationwide recruitment drive to identify and engage landowners who are interested in learning more about this opportunity.

The Department also announced that Deputy Secretary Connor will host a Listening Session on March 3, 2016, at the Albuquerque Convention Center in Albuquerque, New Mexico, from 1:00–5:00 p.m. MT.

DATES: The Department will accept expressions of interest from eligible tribal governments that exercise jurisdiction over locations not on its current implementation schedule until March 11, 2016. Interested landowners are strongly encouraged to contact the Trust Beneficiary Call Center (Call Center) at 888–678–6836 to register their interest and confirm contact information by that same deadline, in order for their interest to be incorporated as a factor as

the Program develops its next implementation schedule.

FOR FURTHER INFORMATION CONTACT: Tribal staff should contact *buybackprogram@ios.doi.gov* with questions regarding the expressions of interest. Landowners seeking to register their interest should contact the Call Center at (888) 678–6836.

SUPPLEMENTARY INFORMATION:

I. Background

The Buy-Back Program is the Department of the Interior's collaborative effort with Indian Country to realize the historic opportunity afforded by the *Cobell* Settlement—a $1.9 billion Trust Land Consolidation Fund—to compensate individuals who voluntarily choose to sell fractional land interests for fair market value. Purchased lands are then transferred to the tribal government with jurisdiction for uses to benefit the tribal community as a whole.

Individuals who accept their purchase offers receive payments directly into their Individual Indian Money accounts at the Office of Special Trustee for American Indians (OST). In addition to receiving fair market value based on objective appraisals, individuals also receive a base payment of $75 per offer, regardless of the value of the land.

The Department is currently implementing the Buy-Back Program at multiple locations across Indian Country. Thus far, the Program has paid nearly $715 million directly to individuals who have chosen to sell fractional interests. This has restored the equivalent of more than 1.5 million acres to tribes. Our working relationships with tribes (25 cooperative agreements or other arrangements to date) and continued outreach to landowners are important elements of continued progress.

II. Planning Initiative—Tribal Nations

The Buy-Back Program's implementation schedule has thus far been guided by various planning activities, an open solicitation from November 2013–March 2014, and by a number of factors developed in partnership with tribal leaders and individuals through early Program consultation and one-on-one meetings. Those factors include severity of fractionation; degree of ownership overlap between locations; geographic location to maximize efficiency and resources; appraisal complexity; and overall interest of a tribe.

Using this strategy, the Department identified 42 locations where land consolidation activities—such as planning, outreach, mapping, mineral evaluations, appraisals or acquisitions—are expected to take place through the middle of 2017. These communities represented approximately 83 percent of all outstanding fractional interests across Indian Country. More information on this selection can be found in the Program's 2014 Status Report: *https://www.doi.gov/sites/doi.gov/files/uploads/Buy-BackProgramStatusReport-11-20-14.pdf.*

The Program is currently inviting all eligible tribal governments that exercise jurisdiction over locations not on its current implementation schedule to submit expressions of interest regarding participation. In addition to noting any interest, the Program also seeks to understand what plans each tribal government may have to utilize consolidated lands, such as economic development, additional housing, infrastructure improvements, habitat protection, and cultural preservation. Details regarding this solicitation are available at *https://www.doi.gov/buybackprogram/tribes.* This will likely be one of the final opportunities for the remaining eligible tribal governments to register their interest in participating in the Program. The Program will accept expressions of interest through March 11, 2016.

III. Planning Initiative—Interested Landowners

There are about 245,000 owners of nearly three million fractional interests across Indian Country who are eligible to participate in the Buy-Back Program. Many receive little or no economic benefit from what are often small, undivided interests in lands that cannot be utilized due to their highly fractionated state.

Since the inception of the Buy-Back Program, it has been a priority to provide as much access to information as possible to landowners who may be interested in participating. Across the Department, teams within the Offices of the Secretary and Deputy Secretary, OST and the Bureau of Indian Affairs (BIA) have conducted significant outreach to provide resources to individuals so that they may make informed decisions about the use of their fractional land.

The level of interest—or willing sellers—registered with the Department has always been one of the determining factors as the Program develops its implementation schedules. In fact, we have identified more than 15,000 unique willing sellers across the country. The Program has now launched a nationwide recruitment drive to further identify and engage landowners who are interested in participating in the Program.

Interested landowners should call the Call Center at (888) 678–6836 to register their interest and confirm contact information. While landowners who do not register as willing sellers may still receive an offer, contacting the Call Center is the best way to ensure that the Program is aware of their interest in receiving and considering an offer. Registration in no way commits a landowner to sell their land and is no guarantee that they will receive an offer; it merely identifies the landowner's interest in receiving an offer.

IV. Additional Resources

Information about the Program is available at: *http://www.doi.gov/buybackprogram.* To learn more about how the Program works, understand the appraisal process, or receive financial training and resources to think strategically about how to use funds they may receive, individuals can contact the Call Center or visit their local OST or BIA office.

Extensive frequently asked questions and answers are also online at: *http://www.doi.gov/buybackprogram/landowners/upload/Frequently-Asked-Questions.pdf.*

Dated: December 21, 2015.

Michael L. Connor,

Deputy Secretary.

[FR Doc. 2016–00496 Filed 1–12–16; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–HPS–19352; PPWOCRADI0, PCU00RP14.R50000]

Proposed Renewal of Information Collection; Historic Preservation Certification Application

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to renew approval for the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. This IC is scheduled to expire on July 31, 2016. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before March 14, 2016.

ADDRESSES: Please send your comments on the ICR to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, Room 2C114, Mail Stop 242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please reference ''1024–0009'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Brian Goeken, Chief, Technical Preservation Services, 1849 C St. NW. (2255), Washington, DC 20240. You may send an email to *brian_goeken@nps.gov* or via fax at (202) 371–1616.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Historic Preservation Tax Incentives Program encourages private sector investment in the rehabilitation and re-use of historic buildings. Through this program, underutilized or vacant schools, warehouses, factories, retail stores, apartments, hotels, houses, offices, and other buildings throughout the country, of every period, size, style and type, have been returned to useful life in a manner that maintains their historic character.

Section 47 of the Internal Revenue Code requires that the Secretary of the Interior certify to the Secretary of the Treasury upon application by owners of historic properties for Federal tax benefits: (a) The historic character of the property, and (b) that the rehabilitation work is consistent with that historic character. We administer the program with the Internal Revenue Service in partnership with the State Historic Preservation Offices. We use the Historic Preservation Certification Application (Forms 10–168, 10–168a, 10–168b, and 10–168c) to evaluate the condition and historic significance of buildings undergoing rehabilitation for continued use, and to evaluate whether or not the rehabilitation work meets the Secretary of the Interior's Standards for Rehabilitation. Regulations at 36 CFR part 67 contain a requirement for completion of an application form. We need the information required on the application form to allow the authorized officer to determine if the applicant is qualified to obtain historic preservation certifications from the Secretary of the Interior. These certifications are necessary for an applicant to receive substantial Federal tax incentives authorized by Section 47 of the Internal Revenue Code. These incentives include a 20% Federal income tax credit for the rehabilitation of historic buildings and an income tax deduction for the donation of easements on historic properties. The Internal Revenue Code also provides a 10% Federal income tax credit for the rehabilitation of nonhistoric buildings built before 1936, and an owner of a nonhistoric building in a historic district must also use the application to obtain a certification from the Secretary of the Interior that his or her building does not contribute to the significance of the historic district before claiming this lesser tax credit for rehabilitation.

State Historic Preservation Offices (SHPOs) are the first point of contact for property owners wishing to use the rehabilitation tax credit. They help applicants determine if an historic building is eligible for Federal or State historic preservation tax incentives, provide guidance on an application before or after the project begins, and provide advice on appropriate preservation work. SHPOs use Forms 10–168d and 10–168e to make recommendations to NPS.

In accordance with 36 CFR 67, we also collect information for: (1) Certifications of State and local statutes (§ 67.8), (2) certifications of State or local historic districts (§ 67.9), and (3) appeals (§ 67.10).

II. Data

OMB Control Number: 1024–0009.

Title: Historic Preservation Certification Application—36 CFR part 67.

Form Numbers (s): 10–168, 10–168a, 10–168b, 10–168c, 10–168d, and 10–168e.

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

Description of Respondents: Individuals or households, businesses, and other for-profit entities.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Activity	Estimated total annual responses	Estimated average completion time	Estimated total annual burden hours
Part 1—Form 10–168	1,117	27	15,066
Part 2—Form 10–168a	1,181	51	30,090
Amendment—Form 10–168b	1,817	17	15,436
Part 3—Form 10–168c	790	14	5,530
State Review			
Form 10–168d	1,117	2.5	2,793
Form 10–168e (for Part 2s)	1,181	5	5,905
Form 10–168e (for Part 3s)	790	3.5	2,765
Form 10–168e (for Amds.)	1,817	2.5	4,543
Certification of Statutes	2	5	10
Certification of Historic Districts	2	60	120
Appeals	34	40	160
Totals	9,848	.....	82,418

Estimated Total Annual Nonhour Cost Burden: $3,407.43, primarily associated with application fees and other costs, such as printing photographs and architectural drawings.

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. Before

including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 7, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–00500 Filed 1–12–16; 8:45 am]

BILLING CODE 4310–EH–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–BRD–20078; PPWONRADB1, PPMRSNR1Y.NM000]

Proposed Information Collection: Comment Request: NPS Institutional Animal Care and Use Committee (IACUC) General Submission, Annual Review, Amendment, and Exhibitor Forms

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve an information collection (IC) described below. This is a renewal for a collection currently consisting of four forms (General Submission, Annual Review, Amendment, and Exhibitor Submission) used by the Institutional Animal Care and use Committee (NPS IACUC/the Committee) to ensure compliance with the Animal Welfare Act (AWA), its regulations (AWAR) and standards, and the Interagency Research Animal Committee (IRAC) principles for projects involving the use of vertebrate animals in research, teaching, and/or exhibition. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before March 14, 2016.

ADDRESSES: Direct all written comments on this IC to Phadrea Ponds, Information Collection Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *pponds@nps.gov* (email). Please reference Information Collection ''1024–0265 IACUC'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Aaron Smith, NPS IACUC Administrator by mail at Biological Resource Division, 1201 Oakridge Dr, Suite 200, Fort Collins, CO, 80525 or *aaron_d_smith@nps.gov* (email). You may also contact Tracy Thompson at *tracy_thompson@nps.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

All research, teaching, and exhibition projects involving vertebrate animals taking place on NPS territories must be approved by the NPS IACUC prior to their commencement. Principal Investigators (PI) are required to submit the completed General Submission, Annual Renewal, Amendment, or Exhibitor Submission as required for approval to the NPS IACUC Office.

II. Data

OMB Number: 1024–0265.

Title: NPS Institutional Animal Care and Use Committee (IACUC) General Submission, Annual Review, Amendment, and Exhibitor Forms.

Type of Request: Renewal.

Affected Public: Any researcher affiliated with an academic research institution; or state or federal agency.

Respondent Obligation: Mandatory.

Frequency of Collection: One-time, on occasion.

Estimated Number of Annual Responses: 190.

Annual Burden Hours: 570 hours. We expect to receive 190 annual responses. We estimate an average of 3 hours per response.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this information collection on:

- The practical utility of the information being gathered;
- The accuracy of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be to do so.

Dated: January 7, 2016.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2016–00501 Filed 1–12–16; 8:45 am]

BILLING CODE 4310–EH–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–770–773, and 775 (Third Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, and Taiwan; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 (''the Act'' as amended) to determine whether revocation of the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: *Effective Date:* January 6, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the

Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On August 4, 2015, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed (80 FR 48336, August 12, 2015); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Act (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on May 9, 2016, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, May 26, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 19, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on May 23, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 17, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 6, 2016. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before June 6, 2016. On June 29, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 1, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Act; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 7, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–00481 Filed 1–12–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070B (Second Review)]

Certain Tissue Paper Products From China; Scheduling of a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on certain tissue paper products from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: Effective date: January 6, 2016.

FOR FURTHER INFORMATION CONTACT: Justin Enck ((202) 205–3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW.,

Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 4, 2015, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review should proceed (80 FR 57386, September 23, 2015); accordingly, a full review is being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 14, 2016, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on Thursday, April 28, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 21, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on April 25, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 21, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 5, 2016. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 5, 2016. On May 31, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 2, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: January 7, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–00480 Filed 1–12–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0098]

Agency Information Collection Activities; Proposed eCollection eComments Requested; COPS Application Package

AGENCY: Community Oriented Policing Services, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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.

DATES: Comments are encouraged and will be accepted for 60 days until March 14, 2016.

FOR FURTHER INFORMATION CONTACT: If you have 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 Lashon M. Hilliard, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@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 agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a previously approved collection, with change.

(2) *Title of the Form/Collection:* COPS Application Package.

(3) *Agency form number: 1103–0098* U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Law Enforcement Agencies and other public and private entities that apply for COPS Office grants.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5,000 respondents annually will complete the form within 11 hours

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 55,000 hours (5,000 respondents × 11 hours = 55,000 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: January 7, 2016.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2016–00434 Filed 1–12–16; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1704]

Contraband Detection Market Survey

AGENCY: National Institute of Justice (NIJ), Justice.

ACTION: Notice of request for information.

SUMMARY: The NIJ is soliciting information in support of the upcoming National Criminal Justice Technology Research, Test, and Evaluation Center (NIJ RT&E Center) ''Market Survey of Contraband Detection Technologies.'' This market survey, which will identify commercially available contraband detection systems for use in corrections facilities, will be published by NIJ to assist purchasing agents or other representatives of corrections facilities in their assessment of relevant information prior to making purchasing decisions. Comments with regard to the market survey itself, including which categories of information are appropriate for comparison, as well as promotional material (*e.g.,* slick sheets) and print-quality images in electronic format, are also invited.

DATES: Responses to this request will be accepted through 11:59 p.m. Eastern Standard Time on February 15, 2016.

ADDRESSES: Responses to this request may be submitted electronically in the body of, or as an attachment to, an email sent to *administrator@nijrtecenter.org* with the recommended subject line ''Contraband Federal Register Response.'' Questions and responses may also be sent by mail (please allow additional time for processing) to the following address: National Criminal Justice Technology Research, Test and Evaluation Center, ATTN: Contraband Federal Register Response, Johns Hopkins University Applied Physics Laboratory, 11100 Johns Hopkins Road, Mail Stop 17–N444, Laurel, MD 20723–6099.

FOR FURTHER INFORMATION: For more information on this request, please contact Rebecca Koslover (NIJ RT&E Center) by telephone at 443–778–1643 or *administrator@nijrtecenter.org.* For more information on the NIJ RT&E Center, visit *http://nij.gov/funding/awards/Pages/award-detail.aspx?award=2013-MU-CX-K111* and view the description, or contact Jack Harne (NIJ) by telephone at 202–616–2911 or at *Jack.Harne@usdoj.gov.* Please note that these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

Information Sought: Information is sought for an upcoming ''Market Survey of Contraband Detection Technologies,'' which seeks to identify commercially available contraband detection systems for use in corrections facilities. Applicable technologies should be capable of detecting contraband types in one or more of the following categories: (1) Weapons; (2) drug paraphernalia; (3) cell phones (or other mobile devices); and (4) forms of currency (*e.g.,* money, stamps, etc.). In addition to these categories of contraband types, NIJ seeks to identify systems capable of detecting contraband under the following conditions: (1) Person-borne; (2) vehicle-borne; and (3) environmental.

The person-borne category seeks to identify technology that is capable of detecting contraband concealed either on a person, or within body cavities. The vehicle-borne category seeks to identify technology that is capable of detecting contraband concealed in vehicles (*e.g.,* passenger cars, delivery trucks, etc.) entering and leaving correctional facilities. Lastly, the environmental category seeks to identify technology that is capable of detecting contraband concealed in the environment (*e.g.,* walls, furniture, etc.).

Usage: This market survey will be published by NIJ to assist corrections agencies in their assessment of relevant information prior to making purchasing decisions.

Information Categories: Comments are invited with regard to the market survey, including which categories of information are appropriate for comparison, as well as promotional material (*e.g.,* slick sheet) and print-quality photographs of the technology. At a minimum, the Center intends to include the following categories of information for *each* Contraband Detection technology that may be of use in corrections facilities:

1. Vendor Information

a. Name
b. Address and phone number of corporate office
c. Web site
d. Years your company has been in business
e. Number and types of customers (*e.g.,* state, local, or federal corrections)
f. Location where technology is manufactured, assembled, or refurbished

2. Product Information—Person-Borne Contraband Detection

a. Name and model number
b. Primary purpose of product
c. Physical dimensions (height × width × depth, in inches) of device
d. Operational dimensions (*i.e.,* limitations to the detection area)
e. Weight (in pounds and ounces) of device
f. Portability (*e.g.,* fixed, portable, or handheld)
g. Intended environment (*e.g.,* indoor use only? Indoor/outdoor use?)
h. Operating conditions or limitations (*e.g.,* temperature, humidity, etc.)
i. Ability of the system/device to detect metal objects
  i. Types of metals that are detected by the system
  ii. Types of metals that are not detected by the system
j. Ability of the system/device to detect non-metal objects
  i. Types of non-metal materials that can be detected by the system/device (*e.g.,* liquids, gels, plastic, wood, ceramic, powder, paper, currency, etc.)
k. Ability of the system/device to detect objects concealed within a body cavity
  i. Types of body cavities that are covered by the system/device
l. Ability of the system/device to detect other types of contraband and related material not specifically listed here (*i.e.,* potential next generation contraband detection)
m. Modes of operation (*e.g.,* settings for detecting different materials)
n. Number of detection areas (*e.g.,* ability to simultaneous detect threats)
o. Type of detector used (*e.g.,* transmission x-ray, active millimeter wave, pulse induction detector, continuous wave detector, passive, etc.)
p. Minimum size of objects that can be detected (length × width × height in inches, or weight in pounds and ounces)
  i. On a person
  ii. Concealed within body cavities
q. Total inspection time per individual screened with the system/device (seconds/person)
r. Penetration depth of the system/device's scan when used on a clothed person (in inches)
s. Alert/alarm mechanism (*e.g.,* alarm only, body location alarm, anomaly image, body region image, full body image, etc.)
t. Average time (in seconds) to process/generate an alarm
u. Privacy safeguards or features (*e.g.,* remote viewing, body masking)
v. Number of recommended operators
w. Safeguards for cyber security, unintentional disassembly, jamming, or intentional damage
x. Sturdiness/fragility of the technology material
y. Ability for easy storage when not in use
z. Data management with respect to saving, archiving, retrieving, and printing subject scan information
aa. Onboard memory storage (*e.g.,* quantity of data that can be stored on device in number of files/alerts/days activity)
bb. Power requirements (*e.g.,* 120 volts)
cc. Battery discharge time (hours of continuous operation before needing a charge), if applicable
dd. Battery shelf life (in months), if applicable
ee. Battery recharge time (hours required to fully charge battery after complete discharge), if applicable
ff. Battery replacement procedure and where it must be done (*e.g.,* field or factory), if applicable
gg. Availability of supplemental charger for emergency battery charging (*e.g.,* hand crank, backup battery, solar, etc.), if applicable
hh. Regulatory and Compliance safety requirements (*e.g.,* FCC approved) and/or NIJ Compliance (*e.g.,* NIJ Standard 0602.02, and 0601.02)
ii. Radiation safety standards (*e.g.,* ANSI, ICRP, NCRP, EURATOM, etc.), if applicable
jj. Length of warranty (in months) that comes standard with the system/device and the components that are covered
kk. Auxiliary equipment (*e.g.,* car chargers, emergency chargers, etc.)
ll. Manufacturer suggested retail price (MSRP) without optional features, accessories or service plans
mm. Availability of extended maintenance plans
nn. Service contract costs
oo. Other information or notes that are relevant to the system/device

3. Product Information—Vehicle-Borne Contraband Detection

a. Name and model number
b. Primary purpose of product
c. Physical dimensions (height × width × depth, in inches) of device
d. Operational dimensions (*i.e.,* limitations to the detection area)
e. Weight (in pounds and ounces) of device
f. Portability (*e.g.,* fixed, portable, or handheld)
g. Operating conditions or limitations (*e.g.,* temperature, humidity, etc.)
h. Ability of the system/device to detect explosives, firearms, or other weapons
i. Ability of the system/device to detect narcotics, alcohol, or other chemicals
j. Ability of the system/device to detect people or animals
k. Ability of the system/device to detect other types of contraband and related material not specifically listed here (*i.e.,* potential next generation contraband detection)
l. Modes of operation (*e.g.,* settings for detecting different materials)
m. Number of detection areas (*e.g.,* ability to simultaneous detect threats)
n. Type of detector used (*e.g.,* transmission x-ray, active millimeter wave, pulse induction detector, continuous wave detector, passive, etc.)
o. Minimum size of objects that can be detected (length × width × height in inches, or weight in pounds and ounces) in and underneath a vehicle
p. Total inspection time per vehicle screened with the system/device (seconds/vehicle)
q. Alert/alarm mechanism (*e.g.,* alarm only, vehicle location alarm, anomaly image, vehicle region image, full vehicular image, etc.)
r. Average time (in seconds) to process/generate an alarm
s. Number of recommended operators
t. Safeguards for cyber security, unintentional disassembly, jamming, or intentional damage
u. Sturdiness/fragility of the technology material
v. Ability for easy storage when not in use
w. Data management with respect to saving, archiving, retrieving, and printing vehicle scan information
x. Onboard memory storage (*e.g.,* quantity of data that can be stored on device in number of files/alerts/days activity)
y. Power requirements (*e.g.,* 120 volts)
z. Battery discharge time (hours of continuous operation before needing a charge), if applicable
aa. Battery shelf life (in months), if applicable
bb. Battery recharge time (hours required to fully charge battery after complete discharge), if applicable
cc. Battery replacement procedure and where it must be done (*e.g.,* field or factory), if applicable
dd. Availability of supplemental charger for emergency battery charging (*e.g.,* hand crank, backup battery, solar, etc.), if applicable
ee. Regulatory and Compliance safety requirements (*e.g.,* FCC approved) and/or NIJ Compliance (*e.g.,* NIJ Standard 0602.02, and 0601.02)
ff. Radiation safety standards (*e.g.,* ANSI, ICRP, NCRP, EURATOM, etc.), if applicable
gg. Length of warranty (in months) that comes standard with the system/device and the components that are covered
hh. Auxiliary equipment (*e.g.,* emergency chargers, etc.)
ii. Manufacturer suggested retail price (MSRP) without optional features, accessories or service plans
jj. Availability of extended maintenance plans
kk. Service contract costs
ll. Other information or notes that are relevant to the system/device

4. Product Information—Environmental Contraband Detection

a. Name and model number
b. Primary purpose of product
c. Physical dimensions (height × width × depth, in inches) of device
d. Operational dimensions (*i.e.,* limitations to the detection area)
e. Weight (in pounds and ounces) of device
f. Portability (*e.g.,* fixed, portable, or handheld)
g. Operating conditions or limitations (*e.g.,* temperature, humidity, etc.)
h. Ability of the system/device to detect metal objects
  i. Types of metals that are detected by the system
  ii. Types of metals that are not detected by the system
i. Ability of the system/device to detect non-metal objects
  i. Types of non-metal materials that can be detected by the system/device (*e.g.,* liquids, gels, plastic, wood, ceramic, powder, paper, currency, etc.)
j. Ability of the system/device to detect other types of contraband and related material not specifically listed here (*i.e.,* potential next generation contraband detection)
k. Modes of operation (*e.g.,* settings for detecting different materials)
l. Number of detection areas (*e.g.,* ability to simultaneous detect threats)
m. Type of detector used (*e.g.,* transmission x-ray, active millimeter wave, pulse induction detector, continuous wave detector, passive, etc.)
n. Minimum size of objects that can be detected (length × width × height in inches, or weight in pounds and ounces)
o. Maximum size of objects that can be detected (length × width × height in inches, or weight in pounds and ounces)
p. Alert/alarm mechanism (*e.g.,* alarm only, anomaly image, full picture image, etc.)
q. Average time (in seconds) to process/generate an alarm
r. Number of recommended operators
s. Safeguards for cyber security, unintentional disassembly, jamming, or intentional damage
t. Sturdiness/fragility of the technology material
u. Ability for easy storage when not in use
v. Data management with respect to saving, archiving, retrieving, and printing scan information
w. Onboard memory storage (*e.g.,* quantity of data that can be stored on device in number of files/alerts/days activity)
x. Power requirements (*e.g.,* 120 volts)
y. Battery discharge time (hours of continuous operation before needing a charge), if applicable
z. Battery shelf life (in months), if applicable
aa. Battery recharge time (hours required to fully charge battery after complete discharge), if applicable
bb. Battery replacement procedure and where it must be done (*e.g.,* field or factory), if applicable
cc. Availability of supplemental charger for emergency battery charging (*e.g.,* hand crank, backup battery, solar, etc.), if applicable
dd. Regulatory and Compliance safety requirements (*e.g.,* FCC approved) and/or NIJ Compliance (*e.g.,* NIJ Standard 0602.02, and 0601.02)
ee. Radiation safety standards (*e.g.,* ANSI, ICRP, NCRP, EURATOM, etc.), if applicable
ff. Length of warranty (in months) that comes standard with the system/device and the components that are covered
gg. Auxiliary equipment (*e.g.,* car chargers, emergency chargers, etc.)
hh. Manufacturer suggested retail price (MSRP) without optional features, accessories or service plans
ii. Availability of extended maintenance plans
jj. Service contract costs
kk. Other information or notes that are relevant to the system/device

5. Usability/Training

a. Types of processes used to ensure usability of hardware and software products (*e.g.,* requirements gathering, observation, task analysis, interaction design, usability testing, ergonomics, etc.)
b. Types of data gathered from the user community (*e.g.,* interviews, observations during hands-on training, survey, satisfaction surveys, repeat customers, etc.) to evaluate your products, and how often it is collected
c. Types of user-group meetings and frequency of their occurrence
d. Categories of problems reported to vendor and percentage of user community that experienced them within the last three (3) years
  i. Resolution(s) to the problems identified above
e. Hours of technology support and location (*e.g.,* telephone or at agency)
f. Calibration requirements (*e.g.,* cost, methodology, hours required)
g. Hours and type of training provided (*e.g.,* on-site, web-based, pre-recorded, play environment etc.)

6. Features and Functions

a. Types of reports that are available (*e.g.,* standard information examples, extent that reports are customizable, etc.)
b. Types of on-demand custom reports

7. Performance and Security

a. Average time to install and activate device (in minutes, hours, or days)
b. False positive (alert generated when it should not have been) and false negative (alert was not generated when it should have been) rates
c. Mean time to failure
d. Percent availability versus downtime of the device
e. Data protection mechanism while in transit and during storage (*e.g.,* SSL, encryption, password strength, etc.)
f. Types of database change record maintenance practices for historical data

Nancy Rodriguez,

Director, National Institute of Justice.

[FR Doc. 2016–00503 Filed 1–12–16; 8:45 am]

BILLING CODE 4410–18–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76851; File No. SR–EDGA–2015–49]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers

January 7, 2016.

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 December 24, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(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 Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers, in order to update certain provisions and conform to the rules of BATS Exchange, Inc. (''BZX''), BATS Y-Exchange, Inc. (''BYX''), EDGX Exchange, Inc.'s (''EDGX'') equity options trading platform (''EDGX Options''), BZX's equity options trading platform (''BZX Options''), and the Nasdaq Stock Market LLC (''Nasdaq'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] *See* BYX and BZX Rules 11.5 and 11.8; BZX Options Rule 22.6(d)(4), (5), and (7); EDGX Options Rule 22.6(d)(4), (5), and (7); and Nasdaq Rules Rule 4613(a)(2)(ii), 4613(a)(2)(D) and (E).

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

In early 2014, the Exchange and its affiliate, EDGX received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and the BYX (together with BZX, EDGA and EDGX, the ''BGM Affiliated Exchanges'').[6] In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the Exchange proposes to amend Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers, in order to update certain provisions and conform to the rules of BYX and BZX and provide a consistent rule set across each of the BGM Affiliated Exchanges.[7] As amended, Exchange Rules 11.17 and 11.20 would be identical to BYX and BZX Rules 11.5 and 11.8 but for different cross references to Exchange Rules that are due to the different rule numbering amongst the Exchange, BYX and BZX.[8]

Rule 11.17, Registration of Market Makers

Like BYX and BZX Rule 11.5, Exchange Rule 11.17 governs the registration of Market Makers on the Exchange. In particular, paragraphs (a) and (b) of Rule 11.17 set forth the application process for Members seeking to register as Market Makers on the Exchange. To harmonize Exchange Rule 11.17(a) with BYX and BZX Rule 11.5(a), the Exchange proposes to replace the word ''under'' with ''of'' when referencing Rule 15c3–1 of the Exchange Act. But for different cross-referencing to Exchange rules that are identical or substantially similar to corresponding BYX and BZX rules, this change would make Exchange Rule 11.17 identical to BYX and BZX Rule 11.5.

The Exchange also proposes to amend paragraphs (c)(4) and (e) to update rule cross-references to reflect the renumbering of certain rules as part of an earlier exchange rule filing.[9] Within paragraph (c)(4) to Rule 11.17, the Exchange proposes to replace reference to Rule 11.19(b)(5) with Rule 11.18(b)(5). The Exchange also proposes to amend paragraph (e) to Rule 11.17 to replace references to Rules 11.18, 11.19, and 11.20 with Rules 11.17, 11.18, and 11.19.

Rule 11.20, Obligations of Market Makers

Like BYX and BZX Rules 11.8, Exchange Rule 11.20 sets forth the obligations of Market Makers. In short, Members who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The Exchange proposes to make the following changes to harmonize Rule 11.20(a), (c), and (d) with BYX and BZX Rule 11.8:

- Amend subparagraph (a)(5) to replace in the second sentence the word ''entering'' with ''entry'';
- amend paragraph (c) to replace in the second sentence the word ''limits'' with ''will limit'';
- amend paragraph (d)(1) to: (i) add the phrase ''is identified to the Exchange as the interest meeting the obligation and'' to the first sentence; (ii) add the word ''either'' to the fourth sentence; and (iii) add the phrase ''or by identifying existing interest on the EDGA Book that will satisfy this obligation'' to the last sentence; and
- amend paragraphs (d)(2)(A) and (B) to add to the last sentence of each paragraph the phrase '', or must be able to identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.''

The Exchange also proposes to amend Rule 11.20(d)(1) to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of BZX Options and EDGX Options.[10] Proposed Rule 11.20(d)(1)(A) addresses a Market Maker's ability to satisfy the quoting standard in the event of a technical failure or system limitation. In particular, if a technical failure or limitation of a system of the Exchange prevents the Market Maker from maintaining or communicating to the Exchange timely and accurate quotes in each security in which a Member is registered as a Market Maker, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the quoting standard with respect to that security.[11]

In addition, proposed Rule 11.20(d)(1)(B) addresses a Market Maker's ability to satisfy the quoting standard during a halt, suspension or pause. A Market Maker's quoting obligation under Rule 11.20 would be suspended during a trading halt, suspension, or pause in the security.[12] A Market Maker's quoting obligation would re-commence after the first regular way transaction on the primary listing market following such halt, suspension, or pause in the security, as reported by the responsible single plan processor.[13] A Market Maker's quoting obligation would also be suspended under Rule 11.20(d)(1)(B) for the duration that an NMS stock is in a Limit State or a Straddle State declared pursuant to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[14]

[6] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43; SR–EDGA–2013–34).

[7] The Exchange notes that EDGX intends to file an identical proposal with the Commission to amend its Rules 11.17 and 11.20 to update certain provisions and conform to BYX and BZX Rules 11.5 and 11.8. The Exchange notes that BYX and BZX intend to file proposed rule changes to make related changes to their Rules 11.5 and 11.8 to conform with the changes proposed herein.

[8] The Exchange notes that the substance of the rules that are cross-referenced in Rule 11.17 and 11.20 are identical or substantially similar to the corresponding BYX and BZX Rules.

[9] *See* Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (SR–EDGA–2014–20).

[10] *See* BZX Options Rule 22.6(d)(4), (5), and (7). *See also* EDGX Options Rule 22.6(d)(4), (5), and (7).

[11] *See* Securities Exchange Act Release No. 71229 (December 18, 2013), 78 FR 77736 (December 24, 2013) (SR–BATS–2013–062) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify BATS Options Market Maker Continuous Quoting Obligation Rules).

[12] The Exchange notes that proposed Rule 11.20(d)(1)(B) would differ from BZX Options and EDGX Options Rules 22.6(d)(5) in so far as proposed Rule 11.20(d)(1)(B) references ''security'' rather than ''underlying security'' in order to conform to the equities markets.

[13] *See also* Nasdaq Stock Market LLC (''Nasdaq'') Rule 4613(a)(2)(ii).

[14] *See* EDGA and EDGX Rules 11.16(e). *See also* BZX and BYX Rules 11.18(e). Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498

Under proposed Rule 11.20(d)(1)(C), the Exchange would have the ability to consider other exceptions to the Two-Sided Obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. For example, a Market Maker must implement the pre-trade and other risk controls required by Rule 15c3–5 of the Act (the ''Market Access Rule'') with respect to all of their quoting activity. These pre-trade risk controls must be reasonably designed to systemically limit financial exposure and ensure compliance with all regulatory requirements. The risk controls a Market Maker may have in place to comply with the Market Access Rule may prevent that Market Maker from satisfying its quoting obligation. In such case, the Exchange would consider whether the Market Maker's failure to satisfy its quoting obligation due to its compliance with the Market Access Rule was proper.

Lastly, the Exchange proposes to amend its definitions of ''Designated Percentage'' and ''Defined Limit'' under Rules 11.8(d)(2)(D) and (E) respectively to be substantially similar to Nasdaq Rules 4613(a)(2)(D) and (E). The pricing obligations applicable to quotations of Market Makers are based on the Designated Percentage and the Defined Limit, which are determined based on the applicable trigger percentage. The amended definitions would include additional specificity and updated descriptions of the categories of securities that are subject to those percentages. Notably, the Exchange proposes to replace references to the terms Original Circuit Breaker Securities (defined below) with Tier 1 or Tier 2 NMS Stocks under the Limit Up-Limit Down Plan (also defined below), as the Exchange believes these terms more accurately describe the securities to which a certain percentage applies. The Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide consistent rules with regard to Market Maker's quoting obligations.[15] The Exchange believes consistent definitions would avoid confusion amongst market participants that make markets on multiple venues.

The Exchange currently defines Designated Percentage under Rule 11.20(d)(2)(D) as 8% with respect to securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a primary listing market (''Original Circuit Breaker Securities''). For times during Regular Trading Hours [16] when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage shall be 20% for Original Circuit Breaker Securities. Under Rule 11.20(d)(2)(E), the Designated Percentage shall be 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1.00, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.00.

As amended, Designated Percentage would be defined solely under Exchange Rule 11.20(d)(2)(D) as 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan,[17] 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan [18] with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.16(e) is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00.

The Exchange currently defines Defined Limit under Rule 11.20(d)(2)(F) and (G) as 9.5% for Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit shall be 21.5% for Original Circuit Breaker Securities. The Defined Limit is 29.5% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1.00, and 31.5% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.00.

As amended, subparagraphs (d)(2)(F) and (G) of Exchange Rule 11.20 would be deleted and Defined Limit would be defined solely under Exchange Rule 11.20(d)(2)(E) as 9.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.16(e) is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00. Exchange Rule 11.8(d)(2)(E) also states that for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit will be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Defined Limit will remain the same throughout Regular Trading Hours for all other NMS stocks.

The Exchange proposes to delete Interpretation and Policy .01 to Rule 11.20 as its content is not included in BYX and BZX Rules 11.8 and its requirement to furnished records to the Exchange are duplicative with current Exchange Rule 4.2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[19] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[20] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in

(June 6, 2012) (the ''Limit Up-Limit Down Release'').

[15] The Exchange proposed to categorize securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as Tier 1 NMS Stocks under the under the Limit Up-Limit Down Plan. Securities not included in the S&P 500® Index, Russell 1000® Index, or in the pilot list of Exchange Traded Products would be categorized as Tier 2 NMS Stocks under the under the Limit Up-Limit Down Plan. Nasdaq Rule 4613(a)(2)(D) and (E) references securities as included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as such and those that are not as Tier 2 NMS Stocks. The Exchange notes that BYX and BZX also intent to amend their definitions of Designated Percentage and Defined Limit to mirror that proposed herein.

[16] *See* Exchange Rule 1.5(y).

[17] Tier 1 NMS Stocks under the Limit Up-Limit Down Plan are securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *See* the Limit Up-Limit Down Release *supra* note 14.

[18] Tier 2 NMS Stocks under the Limit Up-Limit Down Plan are securities that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. As mentioned above, the proposed rule changes, combined with the planned filing for the BYX, BZX, and EDGX would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the registration and obligations of Market Makers. Consistent rules, in turn, will simplify the regulatory requirements for Market Makers on the Exchange that are also Market Makers on EDGX, BZX, and/or BYX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Market Makers by utilizing a consistent rule set and obligations across each of the BGM Affiliated Exchanges. Consistent rules would enable the Exchange to apply identical standards to that of its affiliates, alleviating confusion by Market Makers on who may also be registered as such on BYX, BZX, or EDGX, thereby promoting just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.[21]

The Exchange also believes the proposed amendments to Rule 11.8(d) are consistent with Section 6(b)(5) of the Act,[22] because they are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments to Rule 11.8(d)(1) are meant to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of the BZX Options, EDGX Options and Nasdaq.[23] The Exchange believes it is appropriate to have consistent rules across its equities and options platforms. Consistent rules would aid in alleviating confusion amongst those that are Members on both platforms. The Exchange believes it is reasonable to suspend or alleviate a Market Maker's quoting obligations in the event of a technical or system limitation, during a trading halt, suspension or pause, as well as where demonstrated legal or regulatory requirements prevent the Market Maker from quoting. In each scenario, the Exchange will review the reasons behind the Market Maker inability to quote for compliance with the Rule. The Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to those of Nasdaq in order to provide a consistent rules with regard to Market Makers quoting obligations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules across each of the BGM Affiliated Exchanges regarding Market Maker registration and their obligations does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, BZX, and EDGX rules of similar purpose. The proposed rule change should, therefore, result in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Market Makers.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[24] and Rule 19b–4(f)(6)[25] thereunder. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change,

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 proposal 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–EDGA–2015–49 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 No. SR–EDGA–2015–49. 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

[21] *Id.*

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* notes 10 and 13.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

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 will also 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 No. SR–EDGA–2015–49 and should be submitted on or before February 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00466 Filed 1–12–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76853; File No. SR–EDGX–2015–68]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers

January 7, 2016.

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 December 24, 2015, 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 Act[3] 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 Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers, in order to update certain provisions and conform to the rules of BATS Exchange, Inc. (''BZX''), BATS Y-Exchange, Inc. (''BYX''), Exchange's equity options trading platform (''EDGX Options''), BZX's equity options trading platform (''BZX Options''), and the Nasdaq Stock Market LLC (''Nasdaq'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, EDGA Exchange, Inc. (''EDGA'') received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and the BYX (together with BZX, EDGA and EDGX, the ''BGM Affiliated Exchanges'').[6] In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the Exchange proposes to amend Rules 11.17, Registration of Market Makers, and 11.20, Obligations of Market Makers, in order to update certain provisions and conform to the rules of BYX and BZX and provide a consistent rule set across each of the BGM Affiliated Exchanges.[7] As amended, Exchange Rules 11.17 and 11.20 would be identical to BYX and BZX Rules 11.5 and 11.8 but for different cross references to Exchange Rules that are due to the different rule numbering amongst the Exchange, BYX and BZX.[8]

Rule 11.17, Registration of Market Makers

Like BYX and BZX Rule 11.5, Exchange Rule 11.17 governs the registration of Market Makers on the Exchange. In particular, paragraphs (a) and (b) of Rule 11.17 set forth the application process for Members seeking to register as Market Makers on the Exchange. To harmonize Exchange Rule 11.17(a) with BYX and BZX Rule 11.5(a), the Exchange proposes to replace the word ''under'' with ''of'' when referencing Rule 15c3–1 of the Exchange Act. But for different cross-referencing to Exchange rules that are identical or substantially similar to corresponding BYX and BZX rules, this change would make Exchange Rule 11.17 identical to BYX and BZX Rule 11.5.

The Exchange also proposes to amend paragraphs (c)(4) and (e) to update rule cross-references to reflect the renumbering of certain rules as part of an earlier exchange rule filing.[9] Within paragraph (c)(4) to Rule 11.17, the Exchange proposes to replace reference to Rule 11.19(b)(5) with Rule 11.18(b)(5). The Exchange also proposes to amend paragraph (e) to Rule 11.17 to replace references to Rules 11.18, 11.19, and 11.20 with Rules 11.17, 11.18, and 11.19.

Rule 11.20, Obligations of Market Makers

Like BYX and BZX Rules 11.8, Exchange Rule 11.20 sets forth the obligations of Market Makers. In short, Members who are registered as Market Makers in one or more securities traded

[26] 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).

[5] *See* BYX and BZX Rules 11.5 and 11.8; BZX Options Rule 22.6(d)(4), (5), and (7); EDGX Options Rule 22.6(d)(4), (5), and (7); and Nasdaq Rules Rule 4613(a)(2)(ii), 4613(a)(2)(D) and (E).

[6] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43; SR–EDGA–2013–34).

[7] The Exchange notes that EDGA intends to file an identical proposal with the Commission to amend its Rules 11.17 and 11.20 to update certain provisions and conform to BYX and BZX Rules 11.5 and 11.8. The Exchange notes that BYX and BZX intend to file proposed rule changes to make related changes to their Rules 11.5 and 11.8 to conform with the changes proposed herein.

[8] The Exchange notes that the substance of the rules that are cross-referenced in Rule 11.17 and 11.20 are identical or substantially similar to the corresponding BYX and BZX Rules.

[9] *See* Securities Exchange Act Release No. 73468 (October 29, 2014), 79 FR 65450 (November 4, 2014) (SR–EDGX–2014–18).

on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The Exchange proposes to make the following changes to harmonize Rule 11.20(a), (c), and (d) with BYX and BZX Rule 11.8:

• Amend subparagraph (a)(5) to replace in the second sentence the word ''entering'' with ''entry'';

• amend paragraph (c) to replace in the second sentence the word ''limits'' with ''will limit'';

• amend paragraph (d)(1) to: (i) Add the phrase ''is identified to the Exchange as the interest meeting the obligation and'' to the first sentence; (ii) add the word ''either'' to the fourth sentence; and (iii) add the phrase ''or by identifying existing interest on the EDGX Book that will satisfy this obligation'' to the last sentence; and

• amend paragraphs (d)(2)(A) and (B) to add to the last sentence of each paragraph the phrase '', or must be able to identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.''

The Exchange also proposes to amend Rule 11.20(d)(1) to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of BZX Options and EDGX Options.[10] Proposed Rule 11.20(d)(1)(A) addresses a Market Maker's ability to satisfy the quoting standard in the event of a technical failure or system limitation. In particular, if a technical failure or limitation of a system of the Exchange prevents the Market Maker from maintaining or communicating to the Exchange timely and accurate quotes in each security in which a Member is registered as a Market Maker, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the quoting standard with respect to that security.[11]

In addition, proposed Rule 11.20(d)(1)(B) addresses a Market Maker's ability to satisfy the quoting standard during a halt, suspension or pause. A Market Maker's quoting obligation under Rule 11.20 would be suspended during a trading halt, suspension, or pause in the security.[12] A Market Maker's quoting obligation would re-commence after the first regular way transaction on the primary listing market following such halt, suspension, or pause in the security, as reported by the responsible single plan processor.[13] A Market Maker's quoting obligation would also be suspended under Rule 11.20(d)(1)(B) for the duration that an NMS stock is in a Limit State or a Straddle State declared pursuant to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[14]

Under proposed Rule 11.20(d)(1)(C), the Exchange would have the ability to consider other exceptions to the Two-Sided Obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. For example, a Market Maker must implement the pre-trade and other risk controls required by Rule 15c3–5 of the Act (the ''Market Access Rule'') with respect to all of their quoting activity. These pre-trade risk controls must be reasonably designed to systemically limit financial exposure and ensure compliance with all regulatory requirements. The risk controls a Market Maker may have in place to comply with the Market Access Rule may prevent that Market Maker from satisfying its quoting obligation. In such case, the Exchange would consider whether the Market Maker's failure to satisfy its quoting obligation due to its compliance with the Market Access Rule was proper.

Lastly, the Exchange proposes to amend its definitions of ''Designated Percentage'' and ''Defined Limit'' under Rules 11.8(d)(2)(D) and (E) respectively to be substantially similar to Nasdaq Rules 4613(a)(2)(D) and (E). The pricing obligations applicable to quotations of Market Makers are based on the Designated Percentage and the Defined Limit, which are determined based on the applicable trigger percentage. The amended definitions would include additional specificity and updated descriptions of the categories of securities that are subject to those percentages. Notably, the Exchange proposes to replace references to the terms Original Circuit Breaker Securities (defined below) with Tier 1 or Tier 2 NMS Stocks under the Limit Up-Limit Down Plan (also defined below), as the Exchange believes these terms more accurately describe the securities to which a certain percentage applies. The Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide consistent rules with regard to Market Maker's quoting obligations.[15] The Exchange believes consistent definitions would avoid confusion amongst market participants that make markets on multiple venues.

The Exchange currently defines Designated Percentage under Rule 11.20(d)(2)(D) as 8% with respect to securities included in the S&P 500® Index and the Russell 1000® Index, as well as a pilot list of Exchange Traded Products for securities subject to an individual stock pause trigger under the applicable rules of a primary listing market (''Original Circuit Breaker Securities''). For times during Regular Trading Hours [16] when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage shall be 20% for Original Circuit Breaker Securities. Under Rule 11.20(d)(2)(E), the Designated Percentage shall be 28% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1.00, and 30% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.00.

As amended, Designated Percentage would be defined solely under Exchange Rule 11.20(d)(2)(D) as 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan,[17] 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down

[10] *See* BZX Options Rule 22.6(d)(4), (5), and (7). *See also* EDGX Options Rule 22.6(d)(4), (5), and (7).

[11] *See* Securities Exchange Act Release No. 71229 (December 18, 2013), 78 FR 77736 (December 24, 2013) (SR–BATS–2013–062) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify BATS Options Market Maker Continuous Quoting Obligation Rules).

[12] The Exchange notes that proposed Rule 11.20(d)(1)(B) would differ from BZX Options and EDGX Options Rules 22.6(d)(5) in so far as proposed Rule 11.20(d)(1)(B) references ''security'' rather than ''underlying security'' in order to conform to the equities markets.

[13] *See also* Nasdaq Stock Market LLC (''Nasdaq'') Rule 4613(a)(2)(ii).

[14] *See* EDGA and EDGX Rules 11.16(e). *See also* BZX and BYX Rules 11.18(e). Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[15] The Exchange proposed to categorize securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as Tier 1 NMS Stocks under the under the Limit Up-Limit Down Plan. Securities not included in the S&P 500® Index, Russell 1000® Index, or in the pilot list of Exchange Traded Products would be categorized as Tier 2 NMS Stocks under the under the Limit Up-Limit Down Plan. Nasdaq Rule 4613(a)(2)(D) and (E) references securities as included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as such and those that are not as Tier 2 NMS Stocks. The Exchange notes that BYX and BZX also intent to amend their definitions of Designated Percentage and Defined Limit to mirror that proposed herein.

[16] *See* Exchange Rule 1.5(y).

[17] Tier 1 NMS Stocks under the Limit Up-Limit Down Plan are securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *See* the Limit Up-Limit Down Release *supra* note 14.

Plan [18] with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.16(e) is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00.

The Exchange currently defines Defined Limit under Rule 11.20(d)(2)(F) and (G) as 9.5% for Original Circuit Breaker Securities. For times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit shall be 21.5% for Original Circuit Breaker Securities. The Defined Limit is 29.5% for all NMS securities that are not Original Circuit Breaker Securities with a price equal to or greater than $1.00, and 31.5% for all NMS securities that are not Original Circuit Breaker Securities with a price less than $1.00.

As amended, subparagraphs (d)(2)(F) and (G) of Exchange Rule 11.20 would be deleted and Defined Limit would be defined solely under Exchange Rule 11.20(d)(2)(E) as 9.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.16(e) is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00. Exchange Rule 11.8(d)(2)(E) also states that for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit will be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Defined Limit will remain the same throughout Regular Trading Hours for all other NMS stocks.

The Exchange proposes to delete Interpretation and Policy .01 to Rule 11.20 as its content is not included in BYX and BZX Rules 11.8 and its requirement to furnished records to the Exchange are duplicative with current Exchange Rule 4.2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[19] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[20] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. As mentioned above, the proposed rule changes, combined with the planned filing for the BYX, BZX, and EDGA would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the registration and obligations of Market Makers. Consistent rules, in turn, will simplify the regulatory requirements for Market Makers on the Exchange that are also Market Makers on EDGA, BZX, and/or BYX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Market Makers by utilizing a consistent rule set and obligations across each of the BGM Affiliated Exchanges. Consistent rules would enable the Exchange to apply identical standards to that of its affiliates, alleviating confusion by Market Makers who may also be registered as such on BYX, EDGA, or EDGX, thereby promoting just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.[21]

The Exchange also believes the proposed amendments to Rule 11.8(d) are consistent with Section 6(b)(5) of the Act,[22] because they are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments to Rule 11.8(d)(1) are meant to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of the BZX Options, EDGX Options and Nasdaq.[23] The Exchange believes it is appropriate to have consistent rules across its equities and options platforms. Consistent rules would aid in alleviating confusion amongst those that are Members on both platforms. The Exchange believes it is reasonable to suspend or alleviate a Market Maker's quoting obligations in the event of a technical or system limitation, during a trading halt, suspension or pause, as well as where demonstrated legal or regulatory requirements prevent the Market Maker from quoting. In each scenario, the Exchange will review the reasons behind the Market Maker inability to quote for compliance with the Rule. The Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to those of Nasdaq in order to provide a consistent rules with regard to Market Makers quoting obligations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules across each of the BGM Affiliated Exchanges regarding Market Maker registration and their obligations does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, BZX, and EDGA rules of similar purpose. The proposed rule change

[18] Tier 2 NMS Stocks under the Limit Up-Limit Down Plan are securities that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] 15 U.S.C. 78f(b)(5).

[23] *See supra* notes 10 and 13.

should, therefore, result in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Market Makers.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6) [25] thereunder. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change,

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 proposal 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–EDGX–2015–68 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 No. SR–EDGX–2015–68. 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 will also 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 No. SR–EDGX–2015–68 and should be submitted on or before February 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00467 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Friday, January 15, 2016, at 12:00 p.m., in the Auditorium (L–002) at the Commission's headquarters building, to hear oral argument in an appeal from an initial decision of an administrative law judge by respondents optionsXpress, Inc. and Jonathan I. Feldman.

On June 7, 2013, the law judge found that optionsXpress violated Rules 204 and 204T of Regulation SHO by relying on buy-writes—that is, purchases of equity securities paired with the simultaneous sale of deep-in-the-money call options representing the same number of shares—to satisfy its delivery and close-out obligations under Rules 204(a) and 204T(a). The initial decision also found that Feldman committed fraud in violation of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b–5 and 10b–21 by repeatedly placing buy-writes to intentionally avoid his own, distinct delivery obligations. In addition, the initial decision found that optionsXpress caused and aided and abetted Feldman's antifraud violations.

For these violations, the law judge ordered optionsXpress to cease and desist from violating Rule 204 of Reg. SHO and from causing or aiding and abetting violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b–5 and 10b–21 and ordered Feldman to cease and desist from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act, and Exchange Act Rules 10b–5 and 10b–21. The law judge also ordered that optionsXpress disgorge $1,574,599 and that Feldman disgorge $2,656,377 and imposed civil money penalties of $2,000,000 on optionsXpress and $2,000,000 on Feldman.

Respondents appealed the initial decision's findings of violations and the sanctions imposed. The issues likely to be considered at oral argument include, among other things, whether optionsXpress violated Reg. SHO; whether Feldman violated the antifraud provisions; and, if so, what sanction, if any, is appropriate in the public interest.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 8, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–00566 Filed 1–11–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76844; File No. SR–BATS–2015–123]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

January 7, 2016.

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 December 30, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 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 Act[3] 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 Members[5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c) (''Fee Schedule''). The 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 *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the standard rate for routing and removing liquidity from other market centers for both securities priced at or above $1.00 and for securities priced below $1.00. Specifically, the Exchange proposes to increase the fee for orders yielding fee code X, which results from an order routed to a displayed market that removes liquidity using the Parallel D, Parallel 2D, ROUT, ROUX[6] or Post to Away[7] routing strategy from $0.0029 to $0.0030 per share in securities priced at or above $1.00 and from 0.29% to 0.30% of total dollar value in securities priced below $1.00. The Exchange proposes to reflect these changes to the Fee Schedule in the Standard Rates table, the Fee Codes and Associated Fees table, and in Footnote 8. In addition to the increase to the Exchange's standard routing fee, the Exchange proposes to increase the fee for orders yielding field code Z, which results from an order routed to a dark liquidity venue (except through the SLIM routing strategy) from $0.00200 to $0.00250 per share.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule January 4, 2016.[8]

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 believes that its proposal to increase the standard rate for routing and removing liquidity in securities priced at or above $1.00 and in securities priced below $1.00 for Parallel D, Parallel 2D, ROUT, ROUX, and Post to Away routed executions and the increased fee for orders routed to a dark liquidity venue represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities in that they are designed to, in part, cover the costs of routing. While Members that route orders through the Exchange's standard routing strategies will be paying higher fees due to the proposal, the increased revenue received by the Exchange will be used to fund the Exchange generally, including the cost of maintaining and improving the technology used to handle and route orders from the Exchange as well as programs that the Exchange believes help to attract additional liquidity and thus improve the depth of liquidity available on the Exchange. Accordingly, although the cost of routing is increasing, the Exchange believes that the increase is a modest increase and that higher routing fees will benefit Members in other ways. Furthermore, the Exchange notes that routing through the Exchange is voluntary. 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 the Exchange'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 its proposal would not burden intramarket competition because

[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 that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

[6] Parallel D, Parallel 2D, ROUT, and ROUX are the Exchange's standard best execution routing strategies and are further described in Rule 11.13(b)(3)(A), (B), and (G).

[7] Post to Away is a routing strategy that posts an order on another market center. Although the Post to Away routing strategy had various specific fees and rebates for adding liquidity on other market centers, Post to Away routed orders can potentially remove liquidity and are charged the Exchange's standard routing fee when they do. *See* Rule 11.13(b)(3)(H).

[8] The Exchange notes that the date of the Fee Schedule was amended to January 4, 2016 in a separate fee filing. *See* Securities Exchange Act Release No. 76709 (December 21, 2015), 80 FR 80827 (December 28, 2015) (SR–BATS–2015–115).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

the proposed rate would apply uniformly to all Members.

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 Act[11] and paragraph (f) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2015–123 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–123. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–123, and should be submitted on or before February 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00462 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 31953; File No. 812–14411 Columbia Funds Series Trust I, et al.; Notice of Application

January 7, 2016.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies and unit investment trusts (collectively, ''Underlying Funds'') that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Columbia Funds Series Trust I and Columbia Funds Variable Insurance Trust, each Massachusetts business trusts registered under the Act as an open-end management investment company with multiple series, Columbia Management Investment Advisers, LLC (the ''Adviser''), a Minnesota limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 and Columbia Management Investment Distributors, Inc. (the ''Distributor''), a Delaware Corporation registered as a broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act'').

DATES: *Filing Dates:* The application was filed on January 6, 2015, and amended on May 27, 2015 and December 24, 2015.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on Tuesday, February 2, 2016 and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: c/o Brian D. McCabe, Esq. and Nathan D. Somogie, Esq., Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, MA 02199–3600.

FOR FURTHER INFORMATION CONTACT: Michael S. Didiuk, Senior Counsel, at (202) 551–6839, or Holly Hunter-Ceci, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Applicants request an order to permit (a) a Fund [1] (each a ''Fund of Funds'') to acquire shares of Underlying Funds [2] in excess of the limits in sections 12(d)(1)(A) and (B) of the Act and (b) each Underlying Fund that is a registered open-end investment company or series thereof, the Distributor or any principal underwriter and any broker or dealer registered under the Exchange Act to sell shares of the Underlying Fund to the Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants also request an order of exemption under sections 6(c) and 17(b) of the Act from the prohibition on certain affiliated transactions in section 17(a) of the Act to the extent necessary to permit the Underlying Funds to sell their shares to, and redeem their shares from, the Funds of Funds.[3] Applicants state that such transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act and will be based on the net asset values of the Underlying Funds.

2. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over an Underlying Fund that is not in the same ''group of investment companies'' as the Fund of Funds through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00470 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

[1] Applicants request that the order apply to each existing and future series of Columbia Funds Series Trust I and Columbia Funds Variable Insurance Trust, and to each existing and future registered open-end management investment company or series thereof which is advised by the Adviser or any entity controlling, controlled by or under common control with the Adviser and which is part of the same ''group of investment companies'' as Columbia Funds Series Trust I and Columbia Funds Variable Insurance Trust (each, a ''Fund''). For purposes of the request for relief, the term ''group of investment companies'' means any two or more investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.

[2] Certain of the Underlying Funds have obtained exemptions from the Commission necessary to permit their shares to be listed and traded on a national securities exchange at negotiated prices and, accordingly, to operate as exchange-traded funds (''ETFs'').

[3] A Fund of Funds generally would purchase and sell shares of an Unaffiliated Fund that operates as an ETF through secondary market transactions rather than through principal transactions with the Unaffiliated Fund. To the extent that a Fund of Funds purchases or redeems shares from an ETF that is an affiliated person of the Fund of Funds in exchange for a basket of specified securities as described in the Application for the exemptive order upon which the ETF relies, Applicants also request relief from Section 17(a) for those in-kind transactions. Applicants are not seeking relief from Section 17(a) for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because an investment adviser to the ETF is also an investment adviser to the Fund of Funds.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76849; File No. SR–BATS–2015–121]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes to Rules 11.5, Registration of Market Makers, 11.6, Obligations of Market Maker Authorized Traders, 11.7, Registration of Market Makers in a Security, and 11.8, Obligations of Market Makers

January 7, 2016.

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 December 29, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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 this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rules 11.5, Registration of Market Makers, 11.6, Obligations of Market Maker Authorized Traders, 11.7, Registration of Market Makers in a Security, and 11.8, Obligations of Market Makers, in order to update certain provisions and conform to the rules of EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Exchange's equity options trading platform (''BZX Options''), EDGX's equity options trading platform (''EDGX Options''), and the Nasdaq Stock Market LLC (''Nasdaq'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[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).

[5] *See* EDGA and EDGX Rules 11.17, 11.18, 11.19, and 11.20; BZX Options Rule 22.6(d)(4), (5), and (7); EDGX Options Rule 22.6(d)(4), (5), and (7); and Nasdaq Rules Rule 4613(a)(2)(ii) [sic], 4613(a)(2)(D) and (E).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, BATS Y-Exchange, Inc. (''BYX''), received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[6] In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the Exchange proposes to amend Rules 11.5, Registration of Market Makers, 11.6, Obligations of Market Maker Authorized Traders, 11.7, Registration of Market Makers in a Security, and 11.8, Obligations of Market Makers, in order to update certain provisions and conform to the rules of EDGA and EDGX and provide a consistent rule set across each of the BGM Affiliated Exchanges.[7] As amended, Exchange Rules 11.5, 11.6, 11.7, and 11.8 would be identical to EDGA and EDGX Rules 11.17, 11.18, 11.19, and 11.20 but for different cross references to Exchange Rules that are due to the different rule numbering amongst the Exchange, EDGA and EDGX.[8]

Rule 11.5, Registration of Market Makers

Like EDGA and EDGX Rule 11.17, Exchange Rule 11.5 governs the registration of Market Makers on the Exchange. In particular, paragraphs (a) and (b) of Rule 11.5 sets forth the application process for Members seeking to register as Market Makers on the Exchange. The Exchange proposes to amend paragraphs (c) and (d) of Rule 11.5 to harmonize Rule 11.5 with EDGA and EDGX Rule 11.17.

Paragraph (c) sets for [sic] the scenarios under which the Exchange may suspend or terminate a Market Maker's registration which include where the Market Maker has: (i) substantially of [sic] continuously failed to engage in dealings in accordance with Rule 11.8 (discussed below); (ii) failed to meet the minimum net capital requirements set forth under paragraph (a) of the Rule; and [sic] (iii) maintain a fair and orderly market. Rule 11.5(c) is substantially similar to EDGA and EDGX Rules 11.17(c)(1) thru (3). EDGA and EDGX contain an additional provision under Rule 11.17(c)(4) allowing them to suspend or terminate a Market Maker's registration where it does not have at least one registered Market Maker Authorized Trader (''MMAT'') qualified to perform market making activities as set forth in EDGA and EDGX Rule 11.18(b)(5).[9] Under proposed Rule 11.5(c)(4), a MMAT whose registration is suspended pursuant to Exchange Rule 11.6(c) shall not be deemed qualified within the meaning of Exchange Rule 11.6(c). In order to harmonize the scenarios under which the Exchange may suspend or terminate a Market Maker's registration under Rule 11.5(c) with EDGA and EDGX, the Exchange proposes to adopt the provisions under EDGA and EDGX Rule 11.17(c)(4) as new subparagraph (c)(4) under Rule 11.5. The Exchange believes it is reasonable to suspend or terminate a Market Maker's registration where it does not have at least one registered MMAT qualified to perform market making activities as the absence of a qualified MMAT would impede its ability to satisfy its market making obligations. To accommodate the addition of subparagraph (c)(4) under Rule 11.5, the Exchange also proposes to relocate the ''or'' from the end of subparagraph (c)(2) to the end of subparagraph (c)(3).

Lastly, to conform to EDGA and EDGX Rules 11.17(d), the Exchange proposes to amend paragraph (d) or [sic] Rule 11.5 to remove the letter ''s'' from after the word ''interests''.

Rule 11.6, Obligations of Market Maker Authorized Traders

Like EDGA and EDGX Rules 11.18, Exchange Rule 11.6 governs the registration of MMATs. The Exchange proposes to amend paragraph (b)(4) to remove the letter ''s'' from after the word ''interests'' to harmonize Rule 11.6 with EDGA and EDGX Rule 11.18.

Rule 11.7, Registration of Market Makers in a Security

Like EDGA and EDGX Rules 11.19, Exchange Rule 11.7 sets forth the process for a Market Maker to become registered in a newly authorized security or in a security already admitted to dealings on the Exchange. The Exchange proposes to make the following changes to harmonize Rule 11.7 with EDGA and EDGX Rule 11.19:

- Amend paragraph (a) to state that registration in a security shall become effective on the same day as the Exchange's approval of the registration, unless otherwise provided by the Exchange; rather than the day following the following the Exchange's approval of the registration. This proposed amendment would harmonize Exchange Rule 11.7(a) with EDGA and EDGX Rules 11.19(a) in order to provide for consistent timeframes within which a registration may become effective across each of the BGM Affiliated Exchanges. Also, allowing for a registration to become effective on the same day as Exchange approval would enable a Market Maker to immediately provide liquidity in a security, rather than waiting until the following trading day. The Exchange would continue to maintain the authority to delay the effectiveness of the registration due to the Market Maker satisfying additional procedural requirements, such as the daily notification to the Exchange of the symbols to which it will make a market in on a particular trading day;
- Amend paragraph (a)(4) to replace the term ''they are'' with ''Market Maker is'';
- amend paragraph (a)(5) to add an ''and'' to the end of the paragraph; and
- amend paragraph (b) to remove the letter ''s'' from after the word ''interests''.

The changes proposed above would harmonize Exchange Rule 11.7 with EDGA and EDGX Rules 11.19.

Rule 11.8, Obligations of Market Makers

Like EDGA and EDGX Rules 11.20, Exchange Rule 11.8 sets forth the obligations of Market Makers. In short, Members who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The

[6] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[7] The Exchange notes that BYX intends to file an identical proposal with the Commission to amend its Rules 11.5, 11.6, 11.7, and 11.8 to updated certain provisions and conform to EDGA and EDGX Rules 11.17, 11.18, 11.19, and 11.20. The Exchange also notes that EDGA and EDGX intend to file proposals with the Commission to amend Rules 11.17, 11.18, 11.19, and 11.20 to update certain provisions to harmonize with the changes to Exchange Rules 11.5, 11.6, 11.7, and 11.8 proposed herein.

[8] The Exchange notes that the substance of the rules that are cross-referenced in Rule 11.5, 11.6, 11.7 and 11.8 are identical or substantially similar to the corresponding EDGA and EDGX Rules.

[9] Under Exchange Rule 11.6(b)(5), a Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in Exchange Rule 11.6(b)(2). In addition, the Exchange notes that EDGA and EDGX Rules [sic] Rule 11.17(c)(4) currently reference EDGA and EDGX Rules 11.19(b)(5). The Exchange notes that this reference should be to EDGA and EDGX Rules 11.18(b)(5) and that EDGA and EDGX intend to include this correction in an upcoming rule filing to be submitted to the Commission.

Exchange proposes to make the following changes to harmonize Rule 11.8(a), (c), and (d) with EDGA and EDGX Rule 11.19:

- Amend subparagraph (a)(1) to clarify that the Market Maker must maintain continuous, *two-sided* quotations; [10]
- amend paragraph (c) to: (i) Replace in the first sentence ''or'' with ''including, but without limitation'' and ''the'' with ''its''; (ii) delete the ''other'' from the second sentence; and (iii) add an ''s'' to the word ''power'' in the second sentence;
- amend paragraph (d)(1) to: (i) Add ''Continuous'' to the title ''Two-Sided Quote Obligations''; [11]
- amend paragraphs (d)(2) and (d)(2)(C) to replace the word ''under'' with ''of'' before Regulation NMS;
- amend paragraph (d)(2)(A) to replace ''from'' with ''as reported by'' before reference to the responsible single plan processor; and
- amend paragraph (d)(2)(B) to replace ''received from'' with ''reported by'' before reference to the responsible single plan processor.

The Exchange also proposes to amend Rule 11.8(d)(1) to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of BZX Options and EDGX Options.[12] Proposed Rule 11.8(d)(1)(A) addresses a Market Maker's ability to satisfy the quoting standard in the event of a technical failure or system limitation. In particular, if a technical failure or limitation of a system of the Exchange prevents the Market Maker from maintaining or communicating to the Exchange timely and accurate quotes in each security in which a Member is registered as a Market Maker, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the quoting standard with respect to that security.[13]

In addition, proposed Rule 11.8(d)(1)(B) addresses a Market Maker's ability to satisfy the quoting standard during a halt, suspension or pause. A Market Maker's quoting obligation under Rule 11.8 would be suspended during a trading halt, suspension, or pause in the security.[14] A Market Maker's quoting obligation would recommence after the first regular way transaction on the primary listing market following such halt, suspension, or pause in the security, as reported by the responsible single plan processor.[15] A Market Maker's quoting obligation would also be suspended under Rule 11.8(d)(1)(B) for the duration that an NMS stock is in a Limit State or a Straddle State declared pursuant to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[16]

Under proposed Rule 11.8(d)(1)(C), the Exchange would have the ability to consider other exceptions to the Two-Sided Obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. For example, a Market Maker must implement the pre-trade and other risk controls required by Rule 15c3–5 of the Act (the ''Market Access Rule'') with respect to all of their quoting activity. These pre-trade risk controls must be reasonably designed to systemically limit financial exposure and ensure compliance with all regulatory requirements. The risk controls a Market Maker may have in place to comply with the Market Access Rule may prevent that Market Maker from satisfying its quoting obligation. In such case, the Exchange would consider whether the Market Maker's failure to satisfy its quoting obligation due to its compliance with the Market Access Rule was proper.

Lastly, the Exchange proposes to amend its definitions of ''Designated Percentage'' and ''Defined Limit'' under Rules 11.8(d)(2)(D) and (E) respectively to be substantially similar to Nasdaq Rules 4613(a)(2)(D) and (E). The pricing obligations applicable to quotations of Market Makers are based on the Designated Percentage and the Defined Limit, which are determined based on the applicable trigger percentage. The amended definitions would include revised percentages and updated descriptions of the categories of securities that are subject to those percentages. The Exchange notes that the percentages discussed below in the proposed definitions of Designated Percentage and Defined Limit are currently included in Interpretation and Policy .01 to Rule 11.8. Therefore, the Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide consistent rules with regard to Market Maker's quoting obligations.[17] The Exchange believes consistent definitions would avoid confusion amongst market participants that make markets on multiple venues.

The Exchange currently defines Designated Percentage under Rule 11.8(d)(2)(D) as the individual stock pause trigger percentage under the applicable rules of a primary listing market less: Two (2) percentage points for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than $1.00 per share; and twenty (20) percentage points for all NMS stocks with a price less than $1.00 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. Exchange Rule 11.8(d)(2)(D) also states that for times during Regular Trading Hours [18] when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage will be 20% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Designated Percentage will remain the same throughout Regular Trading Hours for all other NMS stocks.

As amended, Designated Percentage would be defined as 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down

[10] The Exchange does not propose to amend a Market Maker's quoting obligations. The proposed change is simply intended to make clear that the obligation is to maintain a *continuous, two-sided* quotation.

[11] *Id.*

[12] *See* BZX Options Rule 22.6(d)(4), (5), and (7). *See also* EDGX Options Rule 22.6(d)(4), (5), and (7).

[13] *See* Securities Exchange Act Release No. 71229 [sic] (December 18, 2013), 78 FR 77736 (December 24, 2013) (SR–BATS–2013–062) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify BATS Options Market Maker Continuous Quoting Obligation Rules).

[14] The Exchange notes that proposed Rule 11.8(d)(B) would differ from BZX Options and EDGX Options Rules 22.6(d)(5) in so far as proposed Rule 11.8(d)(B) references ''security'' rather than ''underlying security'' in order to conform to the equities markets.

[15] *See also* Nasdaq Stock Market LLC (''Nasdaq'') Rule 4613(a)(2)(ii).

[16] *See* BZX and BYX Rules 11.18(e). *See also* EDGA and EDGX Rules 11.16(e). *See also* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[17] The Exchange proposed to categorize securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as Tier 1 NMS Stocks under the under the Limit Up-Limit Down Plan. Securities not included in the S&P 500® Index, Russell 1000® Index, or in the pilot list of Exchange Traded Products would be categorized as Tier 2 NMS Stocks under the under the Limit Up-Limit Down Plan. Nasdaq Rule 4613(a)(2)(D) and (E) references securities as included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as such and those that are not as Tier 2 NMS Stocks. The Exchange notes that EDGA and EDGX also intent [sic] to amend their definitions of Designated Percentage and Defined Limit to mirror that proposed herein.

[18] *See* Exchange Rule 1.5(w).

Plan,[19] 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan [20] with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.18(b) is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00.

The Exchange currently defines Defined Limit under Rule 11.8(d)(2)(E) as the individual stock pause trigger percentage under the applicable rules of a primary listing market less one-half (½) percentage point for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than $1.00 per share; and eighteen and one-half (18.5) percentage points for all NMS stocks with a price less than $1.00 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. As amended, Defined Limit would be defined as 9.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.18(b) is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00. Exchange Rule 11.8(d)(2)(E) also states that for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit will be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Defined Limit will remain the same throughout Regular Trading Hours for all other NMS stocks.

The Exchange proposes to delete Interpretation and Policy .01 to Rule 11.8 as its content would now be duplicative with the definitions of Designated Percentage and Defined Limit under proposed Rules 11.8(d)(2)(D) and (E).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[21] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[22] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. As mentioned above, the proposed rule changes, combined with the planned filing for the BYX, EDGA, and EDGX, would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the registration and obligations of Market Makers. Consistent rules, in turn, will simplify the regulatory requirements for Market Makers on the Exchange that are also Market Makers on EDGA, EDGX and/or BYX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Market Makers by utilizing a consistent rule set and obligations across each of the BGM Affiliated Exchanges. Consistent rules would enable the Exchange to apply identical standards to that of its affiliates, alleviating confusion by Market Makers on who may also be registered as such on BYX, EDGA, or EDGX, thereby promoting just and equitable principles of trade in accordance with Section 6(b)(5) of the Act.[23]

The Exchange also believes the proposed amendments to Rule 11.8(d) are consistent with Section 6(b)(5) of the Act,[24] because they are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments to Rule 11.8(d)(1) are meant to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of the BZX Options, EDGX Options and Nasdaq.[25] The Exchange believes it is appropriate to have consistent rules across its equities and options platforms. Consistent rules would aid in alleviating confusion amongst those that are Members on both platforms. The Exchange believes it is reasonable to suspend or alleviate a Market Maker's quoting obligations in the event of a technical or system limitation, during a trading halt, suspension or pause, as well as where demonstrated legal or regulatory requirements prevent the Market Maker from quoting. In each scenario, the Exchange will review the reasons behind the Market Maker inability to quote for compliance with the Rule. In addition, the percentages included in the proposed definitions of Designated Percentage and Defined Limit are currently included in Interpretation and Policy .01 to Rule 11.8. Therefore, the Exchange is not proposing to new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide a consistent rules with regard to Market Makers quoting obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to

[19] Tier 1 NMS Stocks under the Limit Up-Limit Down Plan are securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *See* the Limit Up-Limit Down Release *supra* note 16.

[20] Tier 2 NMS Stocks under the Limit Up-Limit Down Plan are securities that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *Id.*

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

[25] *See supra* notes 12 and 15.

implement substantively identical rules across each of the BGM Affiliated Exchanges regarding Market Maker registration and their obligations does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BYX, EDGX, and EDGA rules of similar purpose. The proposed rule change should, therefore, result in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and paragraph (f)(6) of Rule 19b–4 thereunder,[27] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) 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.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4.

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–BATS–2015–121 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 No. SR–BATS–2015–121. 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 No. SR–BATS–2015–121, and should be submitted on or before February 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00464 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76852; File No. SR–BYX–2015–53]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Changes to Rules 11.5, Registration of Market Makers, 11.6, Obligations of Market Maker Authorized Traders, 11.7, Registration of Market Makers in a Security, and 11.8, Obligations of Market Makers

January 7, 2016.

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 December 29, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rules 11.5, Registration of Market Makers, 11.6, Obligations of Market Maker Authorized Traders, 11.7, Registration of Market Makers in a Security, and 11.8, Obligations of Market Makers, in order to update certain provisions and conform to the rules of EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), BATS Exchange, Inc.'s (''BZX'') equity options trading platform (''BZX Options''), EDGX's equity options trading platform

[28] 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).

(''EDGX Options''), and the Nasdaq Stock Market LLC (''Nasdaq'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In early 2014, the Exchange and its affiliate, BZX, received approval to effect a merger (the ''Merger'') of the Exchange's parent company, BATS Global Markets, Inc., with Direct Edge Holdings LLC, the indirect parent of EDGX and EDGA (together with BZX, BYX and EDGX, the ''BGM Affiliated Exchanges'').[6] In the context of the Merger, the BGM Affiliated Exchanges are working to align their rules, retaining only intended differences between the BGM Affiliated Exchanges. Thus, the Exchange proposes to amend Rules 11.5, Registration of Market Makers, 11.6, Obligations of Market Maker Authorized Traders, 11.7, Registration of Market Makers in a Security, and 11.8, Obligations of Market Makers, in order to update certain provisions and conform to the rules of EDGA and EDGX and provide a consistent rule set across each of the BGM Affiliated Exchanges.[7] As amended, Exchange Rules 11.5, 11.6, 11.7, and 11.8 would be identical to EDGA and EDGX Rules 11.17, 11.18, 11.19, and 11.20 but for different cross references to Exchange Rules that are due to the different rule numbering amongst the Exchange, EDGA and EDGX.[8]

Rule 11.5, Registration of Market Makers

Like EDGA and EDGX Rule 11.17, Exchange Rule 11.5 governs the registration of Market Makers on the Exchange. In particular, paragraphs (a) and (b) of Rule 11.5 sets forth the application process for Members seeking to register as Market Makers on the Exchange. The Exchange proposes to amend paragraphs (c) and (d) of Rule 11.5 to harmonize Rule 11.5 with EDGA and EDGX Rule 11.17.

Paragraph (c) sets for [sic] the scenarios under which the Exchange may suspend or terminate a Market Maker's registration which include where the Market Maker has: (i) Substantially of [sic] continuously failed to engage in dealings in accordance with Rule 11.8 (discussed below); (ii) failed to meet the minimum net capital requirements set forth under paragraph (a) of the Rule; and [sic] (iii) maintain a fair and orderly market. Rule 11.5(c) is substantially similar to EDGA and EDGX Rules 11.17(c)(1) thru (3). EDGA and EDGX contain an additional provision under Rule 11.17(c)(4) allowing them to suspend or terminate a Market Maker's registration where it does not have at least one registered Market Maker Authorized Trader (''MMAT'') qualified to perform market making activities as set forth in EDGA and EDGX Rule 11.18(b)(5).[9] Under proposed Rule 11.5(c)(4), a MMAT whose registration is suspended pursuant to Exchange Rule 11.6(c) shall not be deemed qualified within the meaning of Exchange Rule 11.6(c). In order to harmonize the scenarios under which the Exchange may suspend or terminate a Market Maker's registration under Rule 11.5(c) with EDGA and EDGX, the Exchange proposes to adopt the provisions under EDGA and EDGX Rule 11.17(c)(4) as new subparagraph (c)(4) under Rule 11.5. The Exchange believes it is reasonable to suspend or terminate a Market Maker's registration where it does not have at least one registered MMAT qualified to perform market making activities as the absence of a qualified MMAT would impede its ability to satisfy its market making obligations. To accommodate the addition of subparagraph (c)(4) under Rule 11.5, the Exchange also proposes to relocate the ''or'' from the end of subparagraph (c)(2) to the end of subparagraph (c)(3).

Lastly, to conform to EDGA and EDGX Rules 11.17(d), the Exchange proposes to amend paragraph (d) or [sic] Rule 11.5 to remove the letter ''s'' from after the word ''interests''.

Rule 11.6, Obligations of Market Maker Authorized Traders

Like EDGA and EDGX Rules 11.18, Exchange Rule 11.6 governs the registration of MMATs. The Exchange proposes to amend paragraph (b)(4) to remove the letter ''s'' from after the word ''interests'' to harmonize Rule 11.6 with EDGA and EDGX Rule 11.18.

Rule 11.7, Registration of Market Makers in a Security

Like EDGA and EDGX Rules 11.19, Exchange Rule 11.7 sets forth the process for a Market Maker to become registered in a newly authorized security or in a security already admitted to dealings on the Exchange. The Exchange proposes to make the following changes to harmonize Rule 11.7 with EDGA and EDGX Rule 11.19:

• Amend paragraph (a) to state that registration in a security shall become effective on the same day as the Exchange's approval of the registration, unless otherwise provided by the Exchange; rather than the day following the following the Exchange's approval of the registration. This proposed amendment would harmonize Exchange Rule 11.7(a) with EDGA and EDGX Rules 11.19(a) in order to provide for consistent timeframes within which a registration may become effective across each of the BGM Affiliated Exchanges. Also, allowing for a registration to become effective on the same day as Exchange approval would enable a Market Maker to immediately provide liquidity in a security, rather than waiting until the following trading day. The Exchange would continue to maintain the authority to delay the effectiveness of the registration due to

[5] *See* EDGA and EDGX Rules 11.17, 11.18, 11.19, and 11.20; BZX Options Rule 22.6(d)(4), (5), and (7); EDGX Options Rule 22.6(d)(4), (5), and (7); and Nasdaq Rules Rule 4613(a)(2)(ii) [sic], 4613(a)(2)(D) and (E).

[6] *See* Securities Exchange Act Release No. 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059; SR–BYX–2013–039).

[7] The Exchange notes that BZX intends to file an identical proposal with the Commission to amend its Rules 11.5, 11.6, 11.7, and 11.8 to updated certain provisions and conform to EDGA and EDGX Rules 11.17, 11.18, 11.19, and 11.20. The Exchange also notes that EDGA and EDGX intend to file proposals with the Commission to amend Rules 11.17, 11.18, 11.19, and 11.20 to update certain provisions to harmonize with the changes to Exchange Rules 11.5, 11.6, 11.7, and 11.8 proposed herein.

[8] The Exchange notes that the substance of the rules that are cross-referenced in Rule 11.5, 11.6, 11.7 and 11.8 are identical or substantially similar to the corresponding EDGA and EDGX Rules.

[9] Under Exchange Rule 11.6(b)(5), a Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in Exchange Rule 11.6(b)(2). In addition, the Exchange notes that EDGA and EDGX Rules [sic] Rule 11.17(c)(4) currently reference EDGA and EDGX Rules 11.19(b)(5). The Exchange notes that this reference should be to EDGA and EDGX Rules 11.18(b)(5) and that EDGA and EDGX intend to include this correction in an upcoming rule filing to be submitted to the Commission.

the Market Maker satisfying additional procedural requirements, such as the daily notification to the Exchange of the symbols to which it will make a market in on a particular trading day;

• amend paragraph (a)(4) to replace the term ''they are'' with ''Market Maker is'';

• amend paragraph (a)(5) to add an ''and'' to the end of the paragraph; and

• amend paragraph (b) to remove the letter ''s'' from after the word ''interests''.

The changes proposed above would harmonize Exchange Rule 11.7 with EDGA and EDGX Rules 11.19.

Rule 11.8, Obligations of Market Makers

Like EDGA and EDGX Rules 11.20, Exchange Rule 11.8 sets forth the obligations of Market Makers. In short, Members who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The Exchange proposes to make the following changes to harmonize Rule 11.8(a), (c), and (d) with EDGA and EDGX Rule 11.19:

• Amend subparagraph (a)(1) to clarify that the Market Maker must maintain continuous, *two-sided* quotations; [10]

• amend paragraph (c) to: (i) Replace in the first sentence ''or'' with ''including, but without limitation'' and ''the'' with ''its''; (ii) delete the ''other'' from the second sentence; and (iii) add an ''s'' to the word ''power'' in the second sentence;

• amend paragraph (d)(1) to: (i) Add ''Continuous'' to the title ''Two-Sided Quote Obligations''; [11]

• amend paragraphs (d)(2) and (d)(2)(C) to replace the word ''under'' with ''of'' before Regulation NMS;

• amend paragraph (d)(2)(A) to replace ''from'' with ''as reported by'' before reference to the responsible single plan processor; and

• amend paragraph (d)(2)(B) to replace ''received from'' with ''reported by'' before reference to the responsible single plan processor.

The Exchange also proposes to amend Rule 11.8(d)(1) to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of BZX Options and EDGX Options.[12] Proposed Rule 11.8(d)(1)(A) addresses a Market Maker's ability to satisfy the quoting standard in the event of a technical failure or system limitation. In particular, if a technical failure or limitation of a system of the Exchange prevents the Market Maker from maintaining or communicating to the Exchange timely and accurate quotes in each security in which a Member is registered as a Market Maker, the duration of such failure shall not be considered in determining whether the Market Maker has satisfied the quoting standard with respect to that security.[13]

In addition, proposed Rule 11.8(d)(1)(B) addresses a Market Maker's ability to satisfy the quoting standard during a halt, suspension or pause. A Market Maker's quoting obligation under Rule 11.8 would be suspended during a trading halt, suspension, or pause in the security.[14] A Market Maker's quoting obligation would recommence after the first regular way transaction on the primary listing market following such halt, suspension, or pause in the security, as reported by the responsible single plan processor.[15] A Market Maker's quoting obligation would also be suspended under Rule 11.8(d)(1)(B) for the duration that an NMS stock is in a Limit State or a Straddle State declared pursuant to the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or ''Plan'').[16]

Under proposed Rule 11.8(d)(1)(C), the Exchange would have the ability to consider other exceptions to the Two-Sided Obligation based on demonstrated legal or regulatory requirements or other mitigating circumstances. For example, a Market Maker must implement the pre-trade and other risk controls required by Rule 15c3–5 of the Act (the ''Market Access Rule'') with respect to all of their quoting activity. These pre-trade risk controls must be reasonably designed to systemically limit financial exposure and ensure compliance with all regulatory requirements. The risk controls a Market Maker may have in place to comply with the Market Access Rule may prevent that Market Maker from satisfying its quoting obligation. In such case, the Exchange would consider whether the Market Maker's failure to satisfy its quoting obligation due to its compliance with the Market Access Rule was proper.

Lastly, the Exchange proposes to amend its definitions of ''Designated Percentage'' and ''Defined Limit'' under Rules 11.8(d)(2)(D) and (E) respectively to be substantially similar to Nasdaq Rules 4613(a)(2)(D) and (E). The pricing obligations applicable to quotations of Market Makers are based on the Designated Percentage and the Defined Limit, which are determined based on the applicable trigger percentage. The amended definitions would include revised percentages and updated descriptions of the categories of securities that are subject to those percentages. The Exchange notes that the percentages discussed below in the proposed definitions of Designated Percentage and Defined Limit are currently included in Interpretation and Policy .01 to Rule 11.8. Therefore, the Exchange is not proposing new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide consistent rules with regard to Market Maker's quoting obligations.[17] The Exchange believes consistent definitions would avoid confusion amongst market participants that make markets on multiple venues.

The Exchange currently defines Designated Percentage under Rule 11.8(d)(2)(D) as the individual stock pause trigger percentage under the applicable rules of a primary listing market less: Two (2) percentage points

[10] The Exchange does not propose to amend a Market Maker's quoting obligations. The proposed change is simply intended to make clear that the obligation is to maintain a *continuous, two-sided* quotation.

[11] *Id.*

[12] *See* BZX Options Rule 22.6(d)(4), (5), and (7). *See also* EDGX Options Rule 22.6(d)(4), (5), and (7).

[13] *See* Securities Exchange Act Release No. 71229 [sic] (December 18, 2013), 78 FR 77736 (December 24, 2013) (SR–BATS–2013–062) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify BATS Options Market Maker Continuous Quoting Obligation Rules).

[14] The Exchange notes that proposed Rule 11.8(d)(B) would differ from BZX Options and EDGX Options Rules 22.6(d)(5) in so far as proposed Rule 11.8(d)(B) references ''security'' rather than ''underlying security'' in order to conform to the equities markets.

[15] *See also* Nasdaq Stock Market LLC (''Nasdaq'') Rule 4613(a)(2)(ii).

[16] *See* BZX and BYX Rules 11.18(e). *See also* EDGA and EDGX Rules 11.16(e). *See also* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release'').

[17] The Exchange proposed to categorize securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as Tier 1 NMS Stocks under the under the Limit Up-Limit Down Plan. Securities not included in the S&P 500® Index, Russell 1000® Index, or in the pilot list of Exchange Traded Products would be categorized as Tier 2 NMS Stocks under the under the Limit Up-Limit Down Plan. Nasdaq Rule 4613(a)(2)(D) and (E) references securities as included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products as such and those that are not as Tier 2 NMS Stocks. The Exchange notes that EDGA and EDGX also intent [sic] to amend their definitions of Designated Percentage and Defined Limit to mirror that proposed herein.

for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than $1.00 per share; and twenty (20) percentage points for all NMS stocks with a price less than $1.00 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. Exchange Rule 11.8(d)(2)(D) also states that for times during Regular Trading Hours [18] when stock pause triggers are not in effect under the rules of the primary listing market, the Designated Percentage will be 20% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Designated Percentage will remain the same throughout Regular Trading Hours for all other NMS stocks.

As amended, Designated Percentage would be defined as 8% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan,[19] 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan [20] with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.18(b) is not in effect, the Designated Percentage shall be 20% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 28% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 30% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00.

The Exchange currently defines Defined Limit under Rule 11.8(d)(2)(E) as the individual stock pause trigger percentage under the applicable rules of a primary listing market less one-half (1/2) percentage point for securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products and for all other NMS stocks with a price equal to or greater than $1.00 per share; and eighteen and one-half (18.5) percentage points for all NMS stocks with a price less than $1.00 per share that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. As amended, Defined Limit would be defined as 9.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Exchange Rule 11.18(b) is not in effect, the Defined Limit shall be 21.5% for Tier 1 NMS Stocks under the Limit Up-Limit Down Plan, 29.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than $1.00, and 31.5% for Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price less than $1.00. Exchange Rule 11.8(d)(2)(E) also states that for times during Regular Trading Hours when stock pause triggers are not in effect under the rules of the primary listing market, the Defined Limit will be 21.5% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. The Defined Limit will remain the same throughout Regular Trading Hours for all other NMS stocks.

The Exchange proposes to delete Interpretation and Policy .01 to Rule 11.8 as its content would now be duplicative with the definitions of Designated Percentage and Defined Limit under proposed Rules 11.8(d)(2)(D) and (E).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[21] Specifically, the proposed change is consistent with section 6(b)(5) of the Act,[22] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. As mentioned above, the proposed rule changes, combined with the planned filing for the BZX, EDGA, and EDGX, would allow the BGM Affiliated Exchanges to provide a consistent set of rules as it relates to the registration and obligations of Market Makers. Consistent rules, in turn, will simplify the regulatory requirements for Market Makers on the Exchange that are also Market Makers on EDGA, EDGX and/or BZX. The proposed rule change would provide greater harmonization between rules of similar purpose on the BGM Affiliated Exchanges, resulting in greater uniformity and less burdensome and more efficient regulatory compliance and understanding of Exchange Rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. Similarly, the Exchange also believes that, by harmonizing the rules across each BGM Affiliated Exchange, the proposal will enhance the Exchange's ability to fairly and efficiently regulate its Market Makers by utilizing a consistent rule set and obligations across each of the BGM Affiliated Exchanges. Consistent rules would enable the Exchange to apply identical standards to that of its affiliates, alleviating confusion by Market Makers on who may also be registered as such on BZX, EDGA, or EDGX, thereby promoting just and equitable principles of trade in accordance with section 6(b)(5) of the Act.[23]

The Exchange also believes the proposed amendments to Rule 11.8(d) are consistent with section 6(b)(5) of the Act,[24] because they are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed amendments to Rule 11.8(d)(1) are meant to clarify the scenarios in which a Market Maker's two-sided quoting obligation may be temporarily suspended or alleviated. The provisions proposed to be added are each substantially similar to the rules of the BZX Options, EDGX Options and Nasdaq.[25] The Exchange believes it is appropriate to have consistent rules across its equities and options platforms. Consistent rules would aid in alleviating confusion amongst those that are Members on both platforms. The Exchange believes it is reasonable to suspend or alleviate a Market Maker's quoting obligations in the event of a technical or system limitation, during a trading halt, suspension or pause, as well as where demonstrated legal or regulatory

[18] *See* Exchange Rule 1.5(w).

[19] Tier 1 NMS Stocks under the Limit Up-Limit Down Plan are securities that are included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *See* the Limit Up-Limit Down Release *supra* note 16.

[20] Tier 2 NMS Stocks under the Limit Up-Limit Down Plan are securities that are not included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products. *Id.*

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] *Id.*

[24] 15 U.S.C. 78f(b)(5).

[25] *See supra* notes 12 and 15.

requirements prevent the Market Maker from quoting. In each scenario, the Exchange will review the reasons behind the Market Maker inability to quote for compliance with the Rule. In addition, the percentages included in the proposed definitions of Designated Percentage and Defined Limit are currently included in Interpretation and Policy .01 to Rule 11.8. Therefore, the Exchange is not proposing to new percentages governing a Market Maker's quoting obligations; it is seeking to adopt revised definitions that are substantially similar to that of Nasdaq in order to provide a consistent rules with regard to Market Makers quoting obligations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the act. To the contrary, allowing the Exchange to implement substantively identical rules across each of the BGM Affiliated Exchanges regarding Market Maker registration and their obligations does not present any competitive issues, but rather is designed to provide greater harmonization among Exchange, BZX, EDGX, and EDGA rules of similar purpose. The proposed rule change should, therefore, result in less burdensome and more efficient regulatory compliance and understanding of Exchange Rules for common members of the BGM Affiliated Exchanges and an enhanced ability of the BGM Affiliated Exchanges to fairly and efficiently regulate Market Makers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (A) Significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to section 19(b)(3)(A) of the Act [26] and paragraph (f)(6) of Rule 19b–4 thereunder,[27] the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BYX–2015–53 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 No. SR–BYX–2015–53. 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 No. SR–BYX–2015–53, and should be submitted on or before February 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00493 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of DC Brands International Inc., Order of Suspension of Trading

January 11, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of DC Brands International Inc. (''DC Brands'') because DC Brands has not filed any periodic reports since it filed a Form 10–Q for the period ended June 30, 2014. Specifically, DC Brands is over a year delinquent in its periodic reporting and it has not submitted the following required filings:

- Form 10–Q for the quarter ended September 30, 2014 (due November 15, 2014)
- Form 10–K for the fiscal year ended December 31, 2014 (due March 31, 2015)
- Form 10–Q for the quarter ended March 31, 2015 (due May 15, 2015)
- Form 10–Q for the quarter ended June 30, 2015 (due August 15, 2015)
- Form 10–Q for the quarter ended September 30, 2015 (due November 15, 2015)

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST on January 11, 2016, through 11:59 p.m. EST on January 25, 2016.

By the Commission.

Brent J. Fields,

Secretary.

[FR Doc. 2016–00591 Filed 1–11–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76850; File No. SR–FINRA–2016–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps)

January 7, 2016.

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 January 4, 2016, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 11, 2017. FINRA Rule 0180 temporarily limits, with certain exceptions, the application of FINRA rules with respect to security-based swaps.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 1, 2011, the SEC issued an Order granting temporary exemptive relief (the ''Temporary Exemptions'') from compliance with certain provisions of the Exchange Act in connection with the revision, pursuant to Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''),[4] of the Exchange Act definition of ''security'' to encompass security-based swaps.[5] Consistent with the Commission's action, on July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180,[6] which, with certain exceptions, is intended to temporarily limit the application of FINRA rules [7] with respect to security-based swaps, thereby helping to avoid undue market disruptions resulting from the change to the definition of ''security'' under the Act.[8]

The Commission, noting the need to avoid a potential unnecessary disruption to the security-based swap market in the absence of an extension of the Temporary Exemptions, and the need for additional time to consider the potential impact of the revision of the Exchange Act definition of ''security'' in light of ongoing Commission rulemaking efforts under Title VII of the Dodd-Frank Act, issued an Order which extended and refined the applicable expiration dates for the previously granted Temporary Exemptions.[9] The Commission previously noted that extending the Temporary Exemptions would facilitate a coordinated consideration of these issues with the

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] *See* Securities Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of ''Security'' To Encompass Security-Based Swaps, and Request for Comment) (the ''Exemptive Release''). The term ''security-based swap'' is defined in Section 761 of the Dodd-Frank Act. *See also* Securities Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48207 (August 13, 2012) (Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping).

[6] *See* Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2011–033) (''FINRA Rule 0180 Notice of Filing''). *See also* Securities Exchange Act Release No. 74049 (January 14, 2015), 80 FR 2983 (January 21, 2015) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR–FINRA–2015–001) (extending the expiration date of FINRA Rule 0180 to February 11, 2016).

[7] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE. The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[8] In its Exemptive Release, the Commission noted that the relief is targeted and does not include, for instance, relief from the Act's antifraud and anti-manipulation provisions. FINRA has noted that FINRA Rule 0180 is similarly targeted. For instance, paragraph (a) of FINRA Rule 0180 provides that FINRA rules shall not apply to members' activities and positions with respect to security-based swaps, except for FINRA Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), 3310 (Anti-Money Laundering Compliance Program) and 4240 (Margin Requirements for Credit Default Swaps). *See also* paragraphs (b) and (c) of FINRA Rule 0180 (addressing the applicability of additional rules) and FINRA Rule 0180 Notice of Filing.

[9] *See* Securities Exchange Act Release No. 71485 (February 5, 2014), 79 FR 7731 (February 10, 2014) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment) (''Temporary Exemptions Extension Release'') stating that, for those expiring Temporary Exemptions ''that are not directly linked to pending security-based swap rulemakings, the Commission is extending the expiration date until the earlier of such time as the Commission issues an order or rule determining whether any continuing exemptive relief is appropriate for security-based swap activities with respect to any of these Exchange Act provisions or until three years following the effective date of this Order.'' The Temporary Exemptions Extension Release further stated that for each expiring Temporary Exemption ''that is related to pending security-based swap rulemakings, the Commission is extending the expiration date until the compliance date for the related security-based swap-specific rulemaking.'' *See also* Securities Exchange Act Release No. 71482 (February 5, 2014), 79 FR 7570 (February 10, 2014) (Extension of Exemptions for Security-Based Swaps) (extending the expiration dates in interim final rules that provide exemptions under the Securities Act of 1933 (the ''Securities Act''), the Exchange Act, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as ''securities'' under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Act).

relief provided pursuant to FINRA Rule 0180.[10] In establishing Rule 0180, and in extending the rule's expiration date, FINRA noted its intent, pending the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities, to align the expiration date of FINRA Rule 0180 with the termination of relevant provisions of the Temporary Exemptions.[11]

The Commission's rulemaking and development of guidance in relation to security-based swap activities is ongoing. As such, FINRA believes it is appropriate and in the public interest, in light of the Commission's goals as set forth in the Exemptive Release and the Temporary Exemptions Extension Release, to extend FINRA Rule 0180 for a limited period, to February 11, 2017, so as to avoid undue market disruptions resulting from the change to the definition of ''security'' under the Act. As noted in the FINRA Rule 0180 Notice of Filing, FINRA will amend the expiration date of Rule 0180 in subsequent filings as necessary such that the expiration date will be coterminous with the termination of relevant provisions of the Temporary Exemptions.

FINRA has filed the proposed rule change for immediate effectiveness. FINRA is proposing that the implementation date of the proposed rule change will be February 11, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because, consistent with the goals set forth by the Commission in the Exemptive Release and in the Temporary Exemptions Extension Release, the proposed rule change will help to avoid undue market disruption that could result if FINRA Rule 0180 expires before the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change would prevent undue market disruption that would otherwise result if security-based swaps were, by virtue of the expansion of the Act's definition of ''security'' to encompass security-based swaps, subject to the application of all FINRA rules before the implementation of any SEC rules and guidance that would provide greater regulatory clarity in relation to security-based swap activities. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–001 and should be submitted on or before February 3, 2016.

[10] *See* Securities Exchange Act Release No. 68864 (February 7, 2013), 78 FR 10218 (February 13, 2013) (Order Extending Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment).

[11] *See* note 6 *supra*.

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00465 Filed 1–12–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76845; File No. SR–NYSE–2016–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 132.30(9) To Conform the Exchange's Rules to Industry-Wide Standards for Recording the Capacity in Which a Member Organization Executes a Transaction

January 7, 2016.

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 January 4, 2016, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Rule 132.30(9) to conform the Exchange's rules to industry-wide standards for the recording the capacity in which a member organization executes a transaction. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Supplementary Material .30 of Rule 132 to conform the Exchange's rules to industry-wide standards for recording the capacity in which a member organization executes a transaction. To effect this change, the Exchange would eliminate the current requirement to identify the account for which an order was executed and require instead that clearing members and member organizations submit account type indicators (''ATI'') reflecting the capacity in which the member organization executed a transaction (*e.g.,* agency, principal or riskless principal). The Exchange believes that the proposed rule change would align the Exchange's rules with industry-wide conventions focusing on the capacity in which a broker-dealer acts in effecting a transaction and, by eliminating the complex set of ATIs developed over the years, significantly simplify order entry on the Exchange.

Background

Rule 132 requires clearing member organizations submitting transactions to comparison to include the audit trail data elements set forth in Supplementary Material .30. Rule 132.30(9) requires that all orders submitted to the Exchange include specified trade data elements, including ''[w]hether the account for which the order was executed was that of a member or member organization or of a non-member or non-member organization.'' The Exchange has periodically published guidance regarding the ATIs that can be used to satisfy this requirement.[4]

ATIs are included as part of the audit trail data reported for each transaction on the Exchange. The Exchange also uses ATIs to capture program trade information for those portions of the program trades that are submitted to and executed on the Exchange.[5] Since 2009, the Exchange has used ATI data to report program trading statistics for portions of program trades executed on the Exchange to the Commission on a weekly basis.[6]

Proposed Rule Change

The Exchange proposes to amend the current requirement in subsection (9) of Rule 132.30 that clearing member organizations identify whether the account for which an order was executed was that of a member or member organization or of a non-member or non-member organization. The current requirement can be satisfied by entering the appropriate ATI from a list of ATIs that have evolved over the past 30 years.[7]

In place of this cumbersome process, the Exchange proposes to require member organizations to identify the capacity in which the member organization executed the transaction as follows: Agency, principal or riskless principal.[8] The ''principal'' category would include proprietary trades by a member on the trading Floor relating to the member's error account pursuant to Rule 134.[9]

By requiring member organizations to identify the capacity in which a broker-dealer enters an order, the Exchange would be harmonizing its order entry requirements with those of other

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See, e.g.,* Information Memos 85–37 (Nov. 12, 1985); 88–29 (Oct. 19, 1988); 92–34 (Nov. 13, 1992); 96–36 (Dec. 5, 1996); 02–59 (Dec. 17, 2002); 09–31 (June 24, 2009); 12–25 (October 9, 2012); 14–04 (January 30, 2014). The current list contains 24 distinct ATIs.

[5] Prior to 2009, member organizations reported program trading activity to the Exchange via the Daily Program Trading Report (''DPTR''). *See* Securities Exchange Act Release No. 60179 (June 26, 2009), 74 FR 31786, 31786 (July 2, 2009) (SR–NYSE–2009–61). The DPTR requirement was decommissioned in July 2009. *See id.* at 31787.

[6] *See id.* Since the decommissioning of DPTR in 2009, weekly statistics regarding program trades the Exchange provides to media outlets have also been derived from ATI data. *Id.*

[7] *See* note 4, *supra.*

[8] In general, the term ''capacity'' refers to whether a broker-dealer acts as agent, *i.e.,* directly on behalf of a customer, or whether the broker-dealer acts as principal, *i.e.,* for its own account, in a transaction. A riskless principal transaction is one where a broker-dealer receives a customer order and then immediately executes an identical order in the marketplace, while taking on the role of principal, in order to fill the customer order pursuant to Rule 5320.

[9] Rule 134 requires a member or member organization who acquires or assumes a security position resulting from an error transaction to clear such error transaction in the member's or member organization's error account, or in the error account established for a group of members. Rule 123.22 further requires members to enter orders executed to offset transactions made in error into an electronic system and sends a copy of such order to an electronic system on the Floor within 60 seconds of execution. *See also* Rule 123(e) (defining system entry). This type of proprietary trade is currently identified by the ''Q'' account type indicator, which would be retained to identify these trading Floor-based executions.

national securities exchanges.[10] The proposed change would also simplify the order entry process at the Exchange and eliminate the requirement for member organizations to use order entry requirements unique to the Exchange, thereby reducing complexity in the marketplace. This proposed amendment would not alter a member organization's obligation to meet order audit trail system requirements, as set forth in the Rule 7400 Series.

In connection with this proposed rule change, the Exchange proposes to retire the unique ATIs used to capture program trading information.[11] The Exchange currently uses program trading ATIs to capture program trading information in order to provide weekly statistics regarding program trading to both the Commission and the public. However, no other national securities exchange either captures program trading information in the same manner or has an obligation to report weekly statistics regarding program trading. Given the fragmentation in the equities market, the Exchange believes that the statistics published by the Exchange regarding program trading are incomplete and potentially misleading regarding the scope of program trading occurring in equities markets. Accordingly, the Exchange believes it would benefit investors and the public for the Exchange to cease publishing program trading information, because such information is no longer representative of program trading in the equities market and could cause confusion regarding the true scope of program trading in the U.S. equities markets.

The Exchange will publish an Information Memo advising member organizations of the proposed change that will provide guidance of which ATIs should be submitted in connection with agency, principal, or riskless principal capacity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and national market system because it would provide greater harmonization between order entry on the Exchange and other marketplaces, resulting in greater uniformity and more efficient order entry to enable member organizations to use the same order-market conventions across all equities markets. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed change to cease providing program trading statistics to the Commission and the public based on current ATIs would benefit investors and the public because no other market provides similar statistics regarding program trading on their markets. Because of the fragmentation of trading in the equities market, the Exchange believes that the proposed change would eliminate a source of incomplete information about program trading that could potentially be misleading regarding the scope of program trading in the U.S. equities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but rather it is designed to provide greater harmonization between Exchange and other markets in the marking of orders, resulting in less burdensome and more efficient order entry.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] 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)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] 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)[18] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2016–07 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 20549–1090.

All submissions should refer to File Number SR–NYSE–2016–07. This file

[10] *See, e.g.,* BATS Exchange, Inc. (''BATS'') Rule 11.21; BATS Y-Exchange, Inc. (''BATS–Y'') Rule 11.21; EDGA Exchange, Inc. (''EDGA'') Rule 11.5; EDGX Exchange, Inc. Rule 11.5; and NASDAQ Stock Market LLC (''NASDAQ'') Rule 4611(a)(6).

[11] ''Program Trading'' means either (1) index arbitrage, or (2) any trading strategy involving the related purchase or sale of a basket or group of 15 or more stocks. *See* Rule 7410(m).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] 15 U.S.C. 78s(b)(2)(B).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2016–07and should be submitted on or before February 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76855; File No. SR–FINRA–2015–47]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Establish Rules To Adopt FINRA Rule 6191(a) To Implement the Quoting and Trading Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

January 7, 2016.

On November 13, 2015, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA Rule 6191(a) to implement the quoting and trading requirements of the Plan to Implement a Tick Size Pilot Program.[3] The proposed rule change was published for comment in the **Federal Register** on November 25, 2015.[4] The Commission has received two comment letters on the proposal.[5]

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of the 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 the proposed rule change should be disapproved. The 45th day for this filing is January 9, 2016.

The Commission is extending this 45-day time period. 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 the proposal.

Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates February 23, 2016, 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–FINRA–2015–47).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00469 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (order approving the Tick Size Pilot).

[4] *See* Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853.

[5] *See* Letters from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 16, 2015 and Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated December 18, 2015, to Robert W. Errett, Deputy Secretary, Commission.

[6] 15 U.S.C. 78s(b)(2).

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–76854; File No. SR–FINRA–2015–48]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Establish Rules To Adopt FINRA Rule 6191(b) and Amend FINRA Rule 7440 To Implement the Data Collection Requirements of the Plan To Implement a Tick Size Pilot Program

January 7, 2016.

On November 13, 2015, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA Rule 6191(b) and amend FINRA Rule 7440 to implement the data collection requirements of the Plan to Implement a Tick Size Pilot Program.[3] The proposed rule change was published for comment in the **Federal Register** on November 25, 2015.[4] The Commission has received two comment letters on the proposal.[5]

Section 19(b)(2) of the Act [6] provides that, within 45 days of the publication of the 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 the proposed rule change should be disapproved. The 45th day for this filing is January 9, 2016.

The Commission is extending this 45-day time period. 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 the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

[4] *See* Securities Exchange Act Release No. 76484 (November 19, 2015), 80 FR 73858.

[5] *See* Letters from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, dated December 16, 2015 and Manisha Kimmel, Chief Regulatory Officer, Wealth Management, Thomson Reuters, dated December 16, 2015 to Robert W. Errett, Deputy Secretary, Commission.

[6] 15 U.S.C. 78s(b)(2).

Accordingly, pursuant to Section 19(b)(2) of the Act,[7] the Commission designates February 23, 2016, 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–FINRA–2015–48).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–00468 Filed 1–12–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 55 (Sub-No. 752X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Harlan County, KY

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 CFR part 1152, subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 7.3-mile rail line on its Southern Region, Huntington Division, CV Subdivision, Engineering Appalachian Division, also known as the Catron's Creek Branch from milepost 0WO 243.0 to milepost 0WO 249.8 and from milepost 0WOS 249.5 to milepost 0WOS 250.0, in Harlan County, Ky. (the Line). The Line traverses United States Postal Service Zip Codes 40831 and 40964, and includes no stations.

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is not a through line, no overhead traffic has operated, and, therefore, none needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on February 12, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[1] must be filed by January 22, 2016.[2] Petitions to reopen must be filed by February 2, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: December 31, 2015.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2016–00592 Filed 1–12–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–83]

Petition for Exemption; Summary of Petition Received; SkyPhilly, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 2, 2016.

ADDRESSES: Send comments identified by docket number FAA–2014–0908 using any of the following methods:

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

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Joshua Parker (202) 267–1538, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

[7] *Id.*

[8] 17 CFR 200.30–3(a)(31).

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinuance proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be environmental review during an abandonment, this discontinuance does not require an environmental review.

Issued in Washington, DC, on January 7, 2016.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0908
Petitioner: SkyPhilly, Inc.
Section(s) of 14 CFR Affected: part 21; 91.113; 91.119(c); 91.151; 91.209; 91.405(a) and (b); 91.407(a)(1); 91.409(a)(1) and (2); and 91.417(a).
Description of Relief Sought: SkyPhilly, Inc. petitions to operate a small unmanned aircraft system (UAS) to perform roof inspections at night.

[FR Doc. 2016–00523 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0134]

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 7, 2015, the Southern California Regional Rail Authority (SCRRA) has petitioned the Federal Railroad Administration (FRA) for a modification to the conditions of the waiver granting relief from certain provisions of 49 CFR part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances, in Docket Number FRA–2008–0134.

FRA granted relief to SCRRA in a January 9, 2009, decision letter which delineated certain conditions for the waiver. This request is for the modification of the condition requiring that all passenger trains be equipped to respond to the intermittent inert Automatic Train Stop (ATS) in accordance with 49 CFR 236.566, *Locomotive of each train operating in train stop, train control or cab signal territory; equipped.*

SCRRA plans to lease a maximum of 40 freight locomotives from BNSF Railway (BNSF) which are not equipped with ATS for a period not to exceed 1 year. SCRRA operates in a push-pull mode and plans to use the GE AC4400CW leased locomotives as buffers in front of the cab cars. SCRRA is taking this step due to a fleet-wide safety issue identified with the cab cars after a collision and derailment. During the next year, each cab car will be evaluated and modified as necessary before being placed in the lead position of any consist. SCRRA currently operates all revenue trains with the Interoperable Electronic Train Management System (I–ETMS) on all subdivisions owned and dispatched by SCRRA. The locomotives leased to SCRRA from BNSF are equipped with fully functional I–ETMS which was tested and found to be compatible with the SCRRA I–ETMS, as well as SCRRA rail equipment.

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 February 12, 2016 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.

Robert C. Lauby,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2016–00525 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2016–0002–N–1]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the renewal Information Collection Requests (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on October 19, 2015.

DATES: Comments must be submitted on or before February 12, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Safety, Safety Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its

implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On October 19, 2015, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency is seeking OMB approval. *See* 80 FR 63272. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requests (ICRs) and their expected burdens. The renewal requests are being submitted for clearance by OMB as required by the PRA.

Title: Secretary of Transportation Emergency Order Docket No. DOT–OST–2014–0067.

OMB Control Number: 2130–0604.

Abstract: As noted in the summary above, on May 7, 2014, the Secretary of Transportation issued Emergency Order (EO) Docket No. DOT–OST–2014–0067 requiring affected railroad carriers to provide certain information to the State Emergency Response Commissions (SERCs) for each State in which their trains carrying 1 million gallons or more of Bakken crude oil travel. This EO is available through the Department's public docket system at *www.regulations.gov,* under Docket No. DOT–OST–2014–0067. The EO took effect immediately upon issuance, although affected railroads were permitted 30 days to provide the required information to the SERCs. The EO is the Department's direct and proactive response to a recent series of train accidents involving the transportation of petroleum crude oil, a hazardous material the transportation of which is regulated by the Department. The most recent accident occurred on April 30, 2014, when a train transporting petroleum crude oil derailed in Lynchburg, Virginia and released approximately 30,000 gallons of its contents into the James River. Further, the EO explains that, with the rising demand for rail transportation of petroleum crude oil throughout the United States, the risk of rail incidents has increased commensurate with the increase in the volume of the material shipped and that there have been several significant derailments in both the U.S. and Canada over the last several months causing deaths and property and environmental damage that involved petroleum crude oil. DOT emergency orders are rare and the EO itself describes the most recent accidents and circumstances leading the agency to issue the EO. The collection of information included under this EO is aimed at ensuring that railroads that transport in a single train a large quantity of petroleum crude oil (1 million gallons or more), particularly crude oil from the Bakken shale formation in the Williston Basin, provide certain information to the relevant SERCs in each State in which the railroad operates such trains. Ensuring that railroads provide this information to SERCs is critical to ensuring that local and State emergency responders are aware of the large quantities of crude oil that are being transported through their jurisdictions and are prepared to respond to accidents involving such trains should they occur.

Type of Request: Extension without change of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form(s): N/A.

Total Annual Estimated Responses: 229.

Total Annual Estimated Burden: 3,773 hours.

Title: Ballast Defects and Conditions—Importance of Identification and Repair in Preventing Development of Unsafe Combinations of Track Conditions.

OMB Control Number: 2130–0614.

Abstract: FRA issued Safety Advisory 2015–04 on August 20, 2015, to emphasize the importance of timely repairing ballast defects and conditions on main tracks. FRA published Safety Advisory 2015–04 in the **Federal Register** on August 26, 2015. *See* 80 FR 51868. In the Safety Advisory, FRA noted that ballast defects and ballast conditions that are not repaired in a timely manner can lead to future defects. FRA believes it is important for track inspectors to be aware that ballast defects and conditions can cause track components to deteriorate rapidly and compromise the stability of the track structure, and that inspectors are trained to identify and repair ballast defects and conditions. This safety advisory recommends that track owners and railroads: (1) Assess current engineering instructions on ballast safety and update them to provide specific guidance to track inspectors (designated personnel that are qualified to inspect and repair track) on how to identify and initiate remedial action under 49 CFR 213.233(d) for ballast defects and conditions, as well as on the appropriate remedial action to implement, particularly in areas with one or more additional track conditions; (2) train track inspectors on the updated engineering instructions and this safety advisory to ensure they understand how to identify and initiate remedial action for ballast defects and conditions in a timely manner, and understand the importance of such remedial action in preventing the development of unsafe combinations of track conditions; and (3) ensure that supervisors provide adequate oversight of track inspectors to achieve identification and remediation of ballast defects and other track conditions.

FRA is seeking regular Clearance of this information collection request that was previously approved under Emergency Processing procedures on September 9, 2015.

Type of Request: Extension without change of a currently approved information collection.

Form(s): N/A.

Total Annual Estimated Responses: 10,200.

Total Annual Estimated Burden: 10,200 hours.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring: (i) A railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the

individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Type of Request: Extension without change of a currently approved information collection.

Affected Public: Businesses (Railroads).

Form(s): N/A.

Total Annual Estimated Responses: 3.

Total Annual Estimated Burden: 5 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov*.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 7, 2016.

Corey Hill,

Acting Executive Director.

[FR Doc. 2016–00491 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2013–0143; Notice 2]

General Motors LLC (GM), Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of Petition.

SUMMARY: General Motors LLC (GM) has determined that certain model year (MY) 2010–2014 Cadillac SRX multipurpose passenger vehicles (MPVs) do not fully comply with paragraphs S4.4.1(a) and S4.4.2(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* GM filed a report dated November 27, 2013 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* GM then petitioned NHTSA in accordance with 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Amina Fisher, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5307, facsimile (202) 366–5930.

SUPPLEMENTARY INFORMATION:

I. GM's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, GM submitted a petition dated December 5, 2013, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of GM's petition was published, with a 30-Day public comment period, on June 6, 2014 in the **Federal Register** (79 FR 32813). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2013–0143.''

II. Vehicles Involved: Affected are approximately 51,704 MY 2010–2014 GM Cadillac SRX MPVs manufactured between June 18, 2009, and October 31, 2013.

III. Noncompliance: GM explains that the affected vehicles were offered for sale with spare tires whose rims were marked with a ''T'' to indicate the source of the rim's published nominal dimensions as the Tire and Rim Association, rather than the correct ''E'' to indicate the European Tyre and Rim Technical Organization (ETRTO). Additionally, the ETRTO does not identify the 18 inch rim utilized as a suitable match for the T135/70R18 spare tire. Since all vehicles sold in the U.S. must be marked with a reference designation that indicates the source of the rim's published nominal dimensions, and the indicated source must list suitable rim sizes for each tire size listed, these vehicles fail to fully meet the requirements set forth in paragraph S4.4.1(a) and S4.4.2(a) of FMVSS No. 110.

IV. Rule Text: Paragraph S4.4 of FMVSS No. 110 requires in pertinent part:

. . .

S4.4.1 *Requirements.* Each rim shall:

(a) Be constructed to the dimensions of a rim that is listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4 of § 571.139.

. . .

S4.4.2 *Rim markings for vehicles other than passenger cars.* Each rim or, at the option of the manufacturer in the case of a single-piece wheel, each wheel dish shall be marked with the information listed in S4.4.2 (a) through (e) . . .

(a) A designation that indicates the source of the rim's published nominal dimensions, as follows:

(1) ''T'' indicates The Tire and Rim Association.

(2) ''E'' indicates The European Tyre and Rim Technical Organization.

. . .

V. Summary of GM's Analyses: GM stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. The tire and rim of the affected spare wheels are properly matched and are appropriate for the load-carrying characteristics of the subject vehicles.

2. The incorrect reference document marking has no effect on the performance of the tire/rim combination.

3. The subject tire/rim assembly meets the S4.4.1(b) rapid air loss requirement for FMVSS No. 110. The subject vehicles also meet GM's internal ride and handling guidelines with the subject spare tire/rim assembly installed.

4. All other rim marking information required by S4.4.2 of FMVSS No. 110 on

the subject rims is correct. The rims are marked with the rim size designation as required by S4.4.2(b); the DOT symbol as required by S4.4.2(c); manufacturer identification as required by S4.4.2(d); and the month and year of manufacture as required by S4.4.2(e).

5. The rim is marked correctly with the size designation of 18 x 4.5B, the correct tire size information is listed on the Tire and Loading Information placard, and the tire size (T135/70R18) is marked on the tire sidewall. The vehicles' Certification label also contains the correct tire and rim sizes. There is little likelihood of a tire and rim mismatch as a result of the incorrect marking of the source of the published rim dimensions.

6. Very few of these spare wheels will ever need to be replaced over the lifetime of the vehicle. If a spare wheel needs to be replaced, however, there is a section of the owner's manual provided on ''Wheel Replacement.'' It is stated here that ''Your dealer will know the kind of wheel that is needed. Each new wheel should have the same load-carrying capacity, diameter, width, offset, and be mounted the same way as the one it replaces.''

7. If a spare wheel needs to be replaced, it is likely that the customer would go to a GM dealer or a tire/wheel retailer. These facilities would know to look at the original spare wheel, the tire, the Tire and Loading Information placard, or the Certification label to determine the correct spare wheel size for the replacement.

8. NHTSA has previously granted several inconsequential petitions with similar FMVSS No. 110 rim noncompliances.

9. GM is not aware of any crashes, injuries or customer complaints associated with this condition.

GM has additionally informed NHTSA that it has corrected the noncompliance so that all future production of the subject vehicles will comply with all applicable requirements of FMVSS No. 110.

In summation, GM believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA's Decision

NHTSA's Analysis: GM stated its belief that the combination of the subject spare tire and rim is a proper match and appropriate for the load-carrying characteristics of the subject vehicles. GM also stated its belief that the incorrect marking of the nominal rim dimension source designation on the rim has no effect on the performance of the tire/rim combination. In addition, GM mentioned that the subject vehicles meet the S4.4.1(b) rapid air loss requirement for FMVSS No. 110.

The agency agrees with GM that the subject vehicles are equipped with an appropriately matched spare tire and rim combination that when properly mounted on the subject vehicles would allow the vehicles to be operated safely within the manufacturer's specified performance and loading limits. We note that the main purpose of FMVSS No. 110 is to require vehicles be equipped with tires and rims appropriate for the safe operation and loading of applicable vehicles. It appears the spare tire and rim combination provided with the subject vehicles will meet all applicable FMVSS No. 110 performance requirements.

GM also explained its belief that all other markings required by paragraph S4.4.2 of FMVSS No. 110 are on the subject rims and meet the applicable requirements of the standard. Those markings include; the rim size designation required by S4.4.2(b); the DOT symbol as required by S4.4.2(c); the manufacturer identification as required by S4.4.2(d); and the month and year of manufacture as required by S4.4.2(e). GM also stated that the correct tire size information is listed on the Certification label as well as the Tire and Loading Information placard affixed to each vehicle, and that the tire sizes are marked on the sidewalls of the tires.

While NHTSA requires manufacturers to include the reference document designation symbol to be marked on the rim, its mislabeling in this case does not prevent the proper matching of tires and rims. We agree with GM that sufficient information about rim size is available from other markings on the rims as well as information available from the Certification label required by 49 CFR part 567, and the Tire and Loading Information placard required by FMVSS No. 110. In addition, the mislabeling does not affect the ability to identify the rims in the event of recall. NHTSA believes that due to the convenient availability of tire and rim size designation information there is little likelihood of a tire and rim mismatch as a result of the subject rim marking noncompliance.

GM stated its belief that very few spare wheels need to be replaced during the life of the vehicle. If, however, wheel replacement is required, there is a section of the owner's manual provided with each vehicle titled ''Wheel Replacement.'' This section of the owner's manual states, ''Your dealer will know the kind of wheel that is needed. Each new wheel should have the same load-carrying capacity, diameter, width, offset, and be mounted the same way as the one it replaces.'' In addition, it is likely that the customer would go to a GM dealer or a tire/wheel retailer to obtain a replacement.

NHTSA agrees with GM that if a vehicle owner or operator must replace one of the subject rims that they would most likely go to a GM dealer or a tire/wheel retailer. As professionals, technicians at either type of facility would know to look at the original spare wheel, the tire, the Tire and Loading Information placard, or the Certification label to determine the correct spare wheel size for the replacement.

GM cited five petitions that the agency granted regarding wheels that omit the designation symbol that indicates the source of the rim's published nominal dimensions. All five cited petitions were granted because the agency determined that there was no consequence to motor vehicle safety due to the omission of the designation symbol required by either FMVSS No. 110 S4.4.2(a) or FMVSS No. 120 S5.2. As in the case of the subject spare tire and rim combinations, sufficient information about rim size was available from other markings on the rims as well as the information from the Certification label and Tire and Loading Information placards present on the affected vehicles.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that GM has met its burden of persuasion that the subject noncompliances with paragraph S4.4 FMVSS No. 110 are inconsequential to motor vehicle safety. Accordingly, GM's petition is hereby granted and GM is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject noncompliant vehicles that GM no longer controlled at the time it determined that the noncompliance existed. However, the granting of this

petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after GM notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–00449 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0034; Notice 2]

Maserati S.p.A and Maserati North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Maserati S.p.A and Maserati North America, Inc. (collectively ''MNA'') have determined that certain model year (MY) 2011–2014 MNA passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* MNA has filed a report dated March 3, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA then petitioned NHTSA under 49 CFR part 556 requesting a decision that the subject noncompliance is inconsequential to motor vehicle safety.

ADDRESSES: For further information on this decision contact Kerrin Bressant, Office of Vehicles Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–1110, facsimile (202) 366–3081.

SUPPLEMENTARY INFORMATION:

I. *MNA's Petition:* Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, MNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 8, 2015 in the **Federal Register** (80 FR 53912). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2014–0034.''

II. *Vehicles Involved:* Affected are approximately 8,789 MY 2011–2013 Maserati Quattroporte and MY 2011–2014 Maserati Granturismo and Granturismo Convertible passenger vehicles.

III. *Noncompliance:* MNA explains that after the car's ignition is switched to the ON position, the Tire Pressure Monitoring System (TPMS) immediately seeks to confirm if all wheel sensors are present. When the TPMS first detects a sensor is missing, it illuminates the malfunction indicator as required by FMVSS No. 138. Upon subsequent ignition cycles, if the sensor detected as missing during the previous ignition cycle is still missing, the TPMS malfunction indicator will again illuminate as required and stay illuminated until the vehicle begins to move, at which time the indicator will extinguish. The extinguishment of the malfunction indicator while the malfunction still exists is in violation to paragraph S4.4(c)(2) of FMVSS No. 138. The malfunction indicator must illuminate when a malfunction is identified and remain illuminated as long as the condition exists.

IV. *Rule Text:* Paragraph S4.4(c)(2) of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS Malfunction.

* * * * *

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected.

. . .

V. *Summary of MNA's Analyses:* MNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) MNA states that after the car's ignition is switched to the ON position, the TPMS immediately seeks to confirm if all wheel sensors are present. If the TPMS detects a sensor is not present, an internal timer is started. If the sensor detected as missing was also detected as missing during the previous ignition cycle, the TPMS malfunction indicator will illuminate as required to indicate a hardware fault is still present. If the engine is subsequently started again and left in its steady state (engine not cold) idle, the warning lamp will continue to remain illuminated as required. However, if the car is then driven, the warning lamp will extinguish. Once the vehicle has been moving above 22 mph for a period of 15 seconds, the TPMS will seek to confirm that all wheel sensors are fitted to the vehicle. If the internal timer reaches 160 seconds, and the vehicle has been moving above 22 mph for 15 seconds, the TPMS malfunction indicator will illuminate correctly. Once the malfunction indicator is illuminated, it remains so throughout that ignition cycle, regardless of the vehicle's speed.

(B) MNA explained that if the TPMS fails to detect the wheel sensors, the TPMS will display no value on the TPMS pressures screen for the tire pressure, indicating that the status of the wheel sensor is unconfirmed.

(C) MNA said that the noncompliance is confined to one particular aspect of the functionality of the otherwise compliant TPMS malfunction indicator. All other aspects of the low-pressure monitoring system functionality are fully compliant with the requirements of FMVSS No. 138. Also MNA stated that NHTSA had previously published a rule (April 8, 2005) that said a malfunction, in and of itself, does not represent a safety risk to vehicle occupants and that the chances of having a TPMS malfunction and a significantly under-inflated tire at the same time are unlikely.

(D) MNA said that NHTSA has previously granted petitions for inconsequential noncompliances related to the TPMS malfunction indicator not illuminating in the manner required by FMVSS No. 138 due to a software malfunction. MNA mentioned a grant to a petition submitted by Volkswagen Group of America, Inc. for Audi vehicles.[1] MNA explained that in the Volkswagen case, the TPMS would initially display the required warning, but the telltale light would not stay illuminated in the manner required by FMVSS No. 138 in that the warning light would be extinguished on

[1] 76 FR 30239 (May 24, 2011).

subsequent drive cycles if the vehicle speed was maintained below 12.5 mph.

(E) MNA stated that it is not aware of any customer complaints, field communications, incidents or injuries related to this condition.

(F) MNA explained that it provides additional warnings through tire inflation and usage fitment information provided in the subject vehicles owner's manuals. In addition, customer calls into the Roadside Assistance and Customer Care department can also help provide specific wheel and tire fitment information to MNA customers. The Maserati Authorized Dealer network can also address this issue with Maserati customers.

In summation, MNA believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt MNA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA'S Decision

NHTSA's Analysis: MNA explained that although the malfunction indicator extinguishes once the car starts moving, it will illuminate shortly thereafter—within 160 seconds of ignition start and after the vehicle speed exceeds 22 mph for 15 seconds.

NHTSA agrees with MNA that the malfunction indicator will not illuminate as required only during very short periods of time when the vehicle is traveling at low speeds and thus poses little risk to vehicle safety. Under normal driving conditions, a driver will begin a trip by accelerating moderately beyond 22 mph, and as explained by MNA, once the vehicle accelerates above 22 mph (combined with the Ignition-On internal clock reaching 160 seconds), the malfunction indicator re-illuminates and then it will remain illuminated for the entire ignition cycle, regardless of vehicle speed. The telltale fails to re-illuminate only in the very rare case when the driver begins a trip and never exceeds the 22 mph threshold, the speed required to re-activate the malfunction indicator. No real safety risk exists because at such low speeds there is little risk of vehicle loss of control due to underinflated tires. Furthermore, the possibility that the vehicle will experience both a low inflation pressure condition and a malfunction simultaneously is highly unlikely.

MNA stated that if the TPMS fails to detect the wheel sensors, the TPMS will display no value on the vehicle's central digital cluster for the associated tire pressure, indicating that the status of the wheel sensor is unconfirmed for a given wheel.

The agency evaluated the displays MNA uses in the noncompliant vehicles. In addition to the combination low inflation pressure and malfunction telltale indicator lamp, the subject vehicles are equipped with a ''plan view'' icon which displays the pressures for all four wheels individually. If any wheel has a malfunctioning pressure sensor the indicator for that wheel displays several dashes ''—'' indicating the there is a problem with that respective wheel. The additional information is not required by the safety standard, but can be used as an aid to the driver to determine the status of a vehicle's tires.

MNA discussed that the noncompliance only involves one specific aspect of the malfunction functionality and that the primary function of the TPMS, identification of other malfunctions and identification of low inflation pressure scenarios, is not affected.

The agency agrees with MNA's reasoning that the primary function of the TPMS is to identify low inflation pressure conditions which MNA's system does as required by FMVSS No. 138.

There are also a variety of other malfunctions that can occur in addition to the delayed re-illumination malfunction identified in this petition. NHTSA understands from MNA that its TPMS will perform as required during all other type system malfunctions.

MNA additionally mentioned that NHTSA had previously granted petitions for inconsequential noncompliances pertaining to FMVSS No. 138 and specifically mentioned Volkswagen's (VW) Audi petition.[2] In the case of that petition, the Audi vehicle's TPMS would initially display the required warning, but the telltale would not stay illuminated in the manner required by FMVSS No. 138. The telltale light would extinguish on subsequent drive cycles if the vehicle speed was maintained below 12.5 mph. The MNA condition is similar to the VW condition because the malfunction telltales in both cases illuminate upon subsequent ignition cycles, but then extinguish at low speeds after the vehicles begin to move. Both conditions happen at relatively low speeds and for short durations of time. The VW petition was granted due to the fact that the noncompliance took place at relatively low speeds and for a short duration of time.

MNA added that it also provides several warnings via the owner's manual text with regards to the TPMS and its proper usage. Specifically, tire inflation and usage fitment information is provided. A Roadside Assistance and a Customer Care department are additionally mentioned as resources for an owner with issues or concerns about proper tire inflation and/or tire usage fitment. The additional information provided inside the owner's manual, and via telephone for Roadside Assistance and the Customer Care Department offers the MNA owner ample opportunity to ensure their vehicle operates as designed.

MNA also stated that they have not received or are aware of any consumer complaints, field communications, incidences or injuries related to this noncompliance.

In addition to the analysis done by MNA that looked at customer complaints, field communications, incidents or injuries related to this condition, NHTSA also conducted checks of NHTSA's Office of Defects Investigations consumer complaint database and found no related complaints.

NHTSA's Decision: In consideration of the foregoing analysis, NHTSA has decided that MNA has met its burden of demonstrating that the FMVSS No. 138 noncompliance is inconsequential to motor vehicle safety. Accordingly, MNA's petition is hereby granted and MNA is exempted from the obligation of providing notification of, and a free remedy for, the subject noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after MNA notified them that the subject noncompliance existed.

[2] 76 FR 30239 (May 24, 2011).

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–00448 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2015–0016, Notice 2]

Decision That Nonconforming Model Year 2009 Ford F–150 Trucks Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: This document announces a decision by the National Highway Traffic Safety Administration that certain model year (MY) 2009 Ford F–150 trucks that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S. certified version of the MY 2009 Ford F–150 trucks) and they are capable of being readily altered to conform to the standards.

DATES: This decision became effective on January 7, 2016.

ADDRESSES: For further information contact George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified as required under 49 U.S.C. 30115, of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories (WETL), Inc., of Houston, Texas (Registered Importer R–90–005) petitioned NHTSA to decide whether certain model year (MY) 2009 Ford F–150 trucks are eligible for importation into the United States. NHTSA published a notice of the petition on November 5, 2015 (80 FR 68603) to afford an opportunity for public comment. No comments were received in response to the notice of petition. The reader is referred to that notice for a thorough description of the petition.

To view the petition, and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2015–0016.''

Conclusions and Conditions

NHTSA has reviewed the petition and has concluded that the vehicles covered by the petition are capable of being readily altered to comply with all applicable FMVSS. However, NHTSA has also decided that an RI who imports or modifies one of these vehicles must include in each statement of conformity and associated documents (referred to as a ''conformity package'') it submits to NHTSA under 49 CFR 592.6(d) specific proof to confirm that the vehicle was manufactured to conform to, or was successfully altered to conform to, each of the following standards:

Standard No. 101 Controls and Displays: The petition stated that the vehicles could be conformed to the standard through replacement of the speedometer with the U.S.-model part, which includes the BRAKE telltale, and reprogramming of the speedometer software.

NHTSA has decided that a description of how the programming changes were completed, and how compliance with the standard was verified after reprogramming, must be included in each conformity package. Photographs, printouts, and/or images of the installation computer's monitor (''screenshots''), as practicable, must be submitted as part of the proof that the reprogramming was carried out successfully.

Standard No. 138 Tire Pressure Monitoring Systems: The petition stated that the vehicles meet the requirements of the standard and are equipped with hardware and software that is identical to that installed in the U.S.-model vehicles.

NHTSA has decided that a description of how compliance was verified must accompany each conformity package. Photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that compliance verification (including substantiation that hardware and software installed in the vehicle is identical to that installed in the U.S.-model vehicles) was carried out successfully.

Standard No. 208 Occupant Crash Protection: The petition stated that a U.S.-version of the owner's manual must be provided with the vehicle to meet the information requirements of the standard.

NHTSA has decided that each conformity package must include a detailed description of the occupant protection system, including photographs of all required labeling, and a description of how compliance was verified. Photographs, printouts, and/or screenshots, as practicable, must be submitted as proof that compliance verification (including substantiation that hardware and software installed in the vehicle is identical to that installed in the U.S.-model vehicles) was carried out successfully.

NHTSA has also determined that each conformity package must include evidence showing how the RI verified that the changes it made in loading or reprograming vehicle software to achieve conformity with each separate FMVSS, did not also cause the vehicle to fall out of compliance with any other applicable FMVSS.

Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 2009 Ford F–150 trucks that were not originally manufactured to comply with all applicable FMVSS, are substantially similar to MY 2009 Ford F–150 trucks manufactured for sale in the United States, and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable FMVSS.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate

on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–575 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–00446 Filed 1–12–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

[Docket No. TTB–2016–0001]

Proposed Information Collections; Comment Request (No. 57)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB); Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before March 14, 2016.

ADDRESSES: As described below, you may send comments on the information collections listed in this document using the ''Regulations.gov'' online comment form for this document, or you may send written comments via U.S. mail or hand delivery. TTB no longer accepts public comments via email or fax.

- *http://www.regulations.gov:* Use the comment form for this document posted within Docket No. TTB–2015–0001 on ''Regulations.gov,'' the Federal e-rulemaking portal, to submit comments via the Internet;
- *U.S. Mail:* Michael Hoover, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005.
- *Hand Delivery/Courier in Lieu of Mail:* Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 400, Washington, DC 20005.

Please submit separate comments for each specific information collection listed in this document. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment.

You may view copies of this document, the information collections listed in it and any associated instructions, and all comments received in response to this document within Docket No. TTB–2015–0001 at *http://www.regulations.gov.* A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/forms/comment-on-form.shtml.* You may also obtain paper copies of this document, the information collections described in it and any associated instructions, and any comments received in response to this document by contacting Michael Hoover at the addresses or telephone number shown below.

FOR FURTHER INFORMATION CONTACT: Michael Hoover, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 135; or email *informationcollections@ttb.gov* (please *do not* submit comments on this notice to this email address).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms, recordkeeping requirements, or questionnaires:

Title: Personnel Questionnaire—Alcohol and Tobacco Products.

OMB Number: 1513–0002.

TTB Form Number: F 5000.9.

Abstract: The information collected on TTB F 5000.9 enables TTB to determine whether or not an applicant for a Federal alcohol or tobacco permit, notice, or registration, or certain other personnel, such as officers or directors, of the business applied for, meet the minimum qualifications for that permit, notice, or registration. TTB F 5000.9 is required in certain circumstances in which the information is deemed necessary, and includes such information as the individual's residence, business background, financial sources for the business, and criminal record.

Current Actions: TTB is submitting this collection as a revision. TTB is revising TTB F 5000.9 to reduce to the amount of requested information, which will reduce the estimated per-respondent burden and total annual burden hours associated with this information collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Total Annual Burden Hours: 6,250.

Title: Application to Establish and Operate Wine Premises, and Wine Bond.

OMB Number: 1513–0009.

TTB Form Numbers: F 5120.25 and F 5120.36.

Abstract: TTB uses the TTB F 5120.25, Application to Establish and Operate Wine Premises, to collect information used to determine the qualifications of an applicant applying to establish and operate a new wine premises. TTB F 5120.25 is also used by proprietors of established wine premises to report changes to required information such as location and ownership. TTB F 5120.36, Wine Bond, is used by new wine premises applicants or established proprietors and a surety company as a contract to ensure the payment of the Federal excise tax on wine.

Current Actions: TTB is submitting this collection as a revision. The two

forms associated with this collection remain the same. However, TTB is decreasing the estimated number of respondents and the resulting total annual burden hours associated with this information collection due to a decrease in the number of new wine premises applicants.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 2,500.

Estimated Total Annual Burden Hours: 2,500.

Title: Formula and/or Process for Article Made With Specially Denatured Spirits.

OMB Number: 1513–0011.

TTB Form Number: F 5150.19.

Abstract: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to ensure that the manufacturing formulas and processes for an article conform to the requirements of 26 U.S.C. 5273 regarding the sale, use, and recovery of denatured distilled spirits.

Current Actions: TTB is submitting this collection as a revision. The form remain unchanged. However, TTB is decreasing the estimated number of respondents and the resulting total annual burden hours associated with this information collection due to a decrease in the number of specially denatured spirits users filing formulas on TTB F 5150.19.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 1,132.

Estimated Total Annual Burden Hours: 1,019.

Title: User's Report on Denatured Spirits.

OMB Number: 1513–0012.

TTB Form Number: F 5150.18.

Abstract: The information collected on TTB F 5150.18 summarizes the activities of a permit holder regarding the use of denatured spirits. In order to protect the revenue and ensure that permit holders lawfully operate, TTB examines and verifies the information collected on this report to identify unusual activities, errors, and omissions regarding the use of denatured spirits.

Current Actions: TTB is submitting this collection as a revision. The form remains unchanged. However, TTB is decreasing the estimated number of respondents and the resulting total annual burden hours associated with this information collection due to a decrease in the number of permitted denatured spirits users.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 3,577.

Estimated Total Annual Burden Hours: 1,073.

Title: Report—Proprietor of Export Warehouse.

OMB Number: 1513–0024.

TTB Form Number: F 5220.4.

Abstract: Using TTB F 5220.4, export warehouse proprietors account for receipt, storage, and disposition of processed tobacco and taxable tobacco products, cigarette papers, and cigarette tubes. TTB uses this information to protect the revenue by detecting and preventing diversion of products intended for export and to ensure compliance with Federal laws and regulations relating to the removal of tobacco products, cigarette papers, and cigarette tubes for export, which is tax-exempt.

Current Actions: TTB is submitting this collection as a revision. The form and the estimated number of respondents remains unchanged. However, TTB is decreasing the estimated total annual burden hours associated with this information collection due to a decrease in the Bureau's estimate of the time it takes a respondent to complete the form.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 960.

Title: Certificate of Tax Determination—Wine.

OMB Number: 1513–0029.

TTB Form Number: F 5120.20.

Abstract: The information collected on TTB F 5120.20 supports an exporter's claim for drawback of the Federal excise tax on wine by requiring the exporter to certify that the tax has been paid or determined on a specified amount and type of wine that contains a specified amount of alcohol by volume.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 500.

Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1513–0038.

TTB Form Number: F 5100.16.

Abstract: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. The proprietor of the receiving distilled spirits plant becomes liable for the Federal excise tax on the spirits received in bond from another plant. In order to protect the revenue, TTB uses the information collected on this form to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 500.

Title: Distilled Spirits Plants Warehousing Records (TTB REC 5110/02), and Monthly Report of Storage Operations.

OMB Number: 1513–0039.

TTB Form Number: F 5110.11.

TTB Recordkeeping Requirement Number: REC 5110/02.

Abstract: The Internal Revenue Code at 26 U.S.C. 5005(c) provides that the proprietor of a distilled spirits plant is liable for the Federal excise taxes on all spirits stored on the plant's premises, and the records and reports required under this information collection are used by TTB to protect that revenue. TTB uses the collected information to account for a proprietor's tax liability, to verify the quantity and kind of distilled spirits and wine in storage, and to determine the adequacy of a proprietor's bond coverage. TTB also uses this information to monitor industry activities and compliance.

Current Actions: TTB is submitting this collection as a revision. The information collection remains unchanged. However, TTB is increasing the estimated number of respondents

and the resulting total annual burden hours associated with this information collection due to an increase in the number of distilled spirits plants regulated by TTB.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 2,198.

Estimated Total Annual Burden Hours: 52,752.

Title: Distilled Spirits Plants—Excise Taxes (TTB REC 5110/06).

OMB Number: 1513–0045.

TTB Recordkeeping Requirement Number: REC 5110/06.

Abstract: This collection of information is necessary to account for and verify taxable removals of distilled spirits. Under the TTB regulations, industry members must keep records of spirits removed and the applicable tax rates, and must keep records to account for and verify nontaxable removals. TTB uses the data collected to audit tax returns and payments, verify claims for refunds or remission of tax, and account for cover over of taxes to Puerto Rico and the U.S. Virgin Islands.

Current Actions: TTB is submitting this collection as a revision. The information collection remains unchanged. However, TTB is increasing the estimated number of respondents and the resulting total annual burden hours associated with this information collection due to an increase in the number of distilled spirits plants regulated by TTB.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 2,198.

Estimated Total Annual Burden Hours: 57,148.

Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act.

OMB Number: 1513–0046.

TTB Form Number: F 5110.38.

Abstract: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and is also used for consumer protection. The form collects information regarding the person filing the formula, the type of product to be made, and the formulation for the product, including ingredients used such as the flavoring and blending materials and coloring agents.

Current Actions: TTB is submitting this collection as a revision. TTB F 5110.38 remains unchanged. However, TTB is decreasing the estimated number of respondents and the resulting annual burden hours due to a decrease in the number of respondents using this form, which TTB is phasing out in favor of TTB F 5100.51, Formula and Process for Domestic and Imported Alcohol Beverages, approved under OMB control number 1513–0122.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 2,000.

Title: Distilled Spirits Plant Denaturation Records (TTB REC 5110/04), and Monthly Report of Processing (Denaturing) Operations.

OMB Number: 1513–0049.

TTB Form Number: F 5110.43.

TTB Recordkeeping Requirement Number: REC 5110/04.

Abstract: The information collected is necessary to account for and to verify the denaturation of distilled spirits. A tax is imposed on distilled spirits other than those used for certain authorized nonbeverage purposes. Denatured spirits are normally not taxed and, as a result, a full accounting of those spirits is necessary to ensure that they have not been unlawfully diverted for beverage use. TTB uses the information collected under this information collection to protect the revenue.

Current Actions: TTB is submitting this collection as a revision. The form and recordkeeping requirement associated with this information collection remain unchanged. However, TTB is increasing the collection's estimated number of respondents and the resulting total annual burden hours due to an increase in the number of distilled spirits plants regulated by TTB that engage in denaturing operations.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 365.

Estimated Total Annual Burden Hours: 4,380.

Title: Distilled Spirits Plants—Transaction and Supporting Records (TTB REC 5110/5).

OMB Number: 1513–0056.

TTB Recordkeeping Requirement Number: REC 5110/5.

Abstract: A tax is imposed on distilled spirits other than those used for certain authorized nonbeverage purposes. The Internal Revenue Code at 26 U.S.C. 5207 provides that the proprietor of a distilled spirits plant (DSP) must maintain records of production activities, storage activities, denaturing activities, and processing activities, and must render reports covering those activities. This collection of information are those transaction records which a DSP proprietor must maintain as source documents for each of the activities listed above. The information contained in these records are used by distilled spirits plant proprietors to account for spirits and by TTB to verify those accounts and consequent tax liabilities. These records also account for spirits eligible for credit or drawback of Federal excise tax.

Current Actions: TTB is submitting this collection as a revision. The recordkeeping requirement associated with this information collection remains unchanged. However, TTB is increasing the collection's estimated number of respondents and the resulting total annual burden hours due to an increase in the number of distilled spirits plants regulated by TTB.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 2,198.

Estimated Total Annual Burden Hours: 47,916.

Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol (TTB REC 5150/4).

OMB Number: 1513–0060.

TTB Recordkeeping Requirement Number: REC 5150/4.

Abstract: Tax-free alcohol is used for nonbeverage purposes in scientific research, for medicinal uses, and for other purposes by educational organizations, hospitals, clinics, laboratories, and similar institutions, and by State, local, and tribal governments. Use of tax-free alcohol is regulated to prevent illegal diversion to beverage use and for public safety. The applications, notices, and source records required by this information collection protect the revenue, help prevent and detect diversion, and ensure lawful use of tax-free alcohol.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, Local, and Tribal Governments.

Estimated Number of Respondents: 3,333.

Estimated Total Annual Burden Hours: 1,667.

Title: Retail Liquor Dealers' Records of Receipts of Alcohol Beverages and Commercial Invoices (TTB REC 5170/3).

OMB Number: 1513–0066.

TTB Recordkeeping Requirement Number: REC 5170/3.

Abstract: The Internal Revenue Code at 26 U.S.C. 5122 requires retail liquor dealers to keep records of all alcohol beverages received and to keep records of the disposition of alcohol beverages as may be prescribed by regulation. The TTB regulations at 27 CFR 31.181 require retail dealers to keep receipt invoices (or a separate record book) of all alcohol beverages received and to keep records of any sales of alcohol beverages of over 20 wine gallons to the same person at the same time. Under 27 CFR 31.191, these records must be maintained for at least three years. The information contained in these retail dealer records fulfills the statutory requirement.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits; State, Local, and Tribal Governments.

Estimated Number of Respondents: 455,000.

Estimated Total Annual Burden Hours: 1 (one).

Title: Wholesale Liquor and Beer Dealer Applications, Letterheads, and Notices Relating to Operations (Variations in Format or Preparation of Records), TTB REC 5170/6.

OMB Number: 1513–0067.

TTB Recordkeeping Requirement Number: REC 5170/6.

Abstract: Under the authority of the Internal Revenue Code at 26 U.S.C. 5121, the TTB regulations in 27 CFR part 31 require wholesale dealers to keep records of the receipt and disposition of distilled spirits. As authorized at 27 CFR 31.159, wholesale dealers may submit letterhead applications to the appropriate TTB officer for approval of variations in the type and format of such records, and, as authorized at 27 CFR 31.172, for variations in the place of retention for those records. This information collection consists of the records related to such variance requests, including variance applications and notices of TTB approval of requested variances. TTB review of these variance applications is necessary in order to determine that the variance would not unduly hinder the effective administration of 27 CFR part 31, jeopardize the revenue, or be contrary to any provisions of law.

Current Actions: TTB is submitting this collection as a revision. The recordkeeping requirement remains unchanged. However, TTB is decreasing the estimated number of respondents and the resulting total annual burden hours associated with this information collection due to a decrease in the number of recordkeeping variance requests it receives from wholesale dealers.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 100.

Estimated Total Annual Burden Hours: 50.

Title: Alternate Methods or Procedures and Emergency Variations from Requirements for Exports of Liquors (TTB REC 5170/7).

OMB Number: 1513–0082.

TTB Recordkeeping Requirement Number: REC 5170/7.

Abstract: Under the TTB regulations in 27 CFR part 28, exporters of alcohol may file letterhead applications requesting approval of alternate methods or procedures or emergency variations from the requirements of that part. TTB uses such applications to determine if the requested method, procedure, or emergency variation will protect the revenue and will not pose a burden to TTB in administering part 28, while allowing exporters the maximum operational flexibility.

Current Actions: TTB is submitting this collection as a revision. This recordkeeping requirement remains unchanged. However, TTB is decreasing the estimated number of respondents and the annual burden hours associated with this information collection due to a decrease in the number of exporters applying for alternate methods or procedures and emergency variances.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 270.

Estimated Total Annual Burden Hours: 108.

Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.

OMB Number: 1513–0097.

TTB Form or Recordkeeping Number: None.

Abstract: Federal excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers, and producers. Taxpayers who elect to pay these excise taxes by electronic fund transfer (EFT) must furnish a written notice to TTB when they elect to use or discontinue tax payment by EFT. TTB uses this information to anticipate and monitor taxpayer methods of payment and to ensure that taxes are remitted in the appropriate form, as chosen by the taxpayer.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated number of burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 1 (one).

Title: Applications, Notices, and Permits Relative to Importation and Exportation of Distilled Spirits, Wine, and Beer, Including Puerto Rico and Virgin Islands.

OMB Number: 1513–0100.

TTB Form or Recordkeeping Number: None.

Abstract: Distilled spirits, industrial alcohol, beer and wine are taxed when imported into the United States, but the Federal excise taxes collected on these commodities brought into the United States from Puerto Rico and the U.S. Virgin Islands are largely returned to their respective governments. Exports are generally tax free. The documents required under this information collection ensure that the proper taxes are collected and returned according to law.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Total Annual Burden Hours: 180.

Title: Information Collected in Support of Small Producers Wine Tax Credit, TTB REC 5120/11.

OMB Number: 1513–0104.

TTB Recordkeeping Requirement Number: REC 5120/11.

Abstract: Certain small wine producers are eligible for a tax credit which may be taken to reduce the Federal excise tax they pay on wines removed from their premises. In addition, small producers can transfer their tax credit to bonded warehouses, which store their wine and ship it on their instructions. Under TTB regulations, the transferee uses information provided by the small producer to take the appropriate credit on behalf of the small producer, and the producer will use the information to monitor its own tax payments to ensure it does not exceed the authorized annual credit. The information is used by taxpayers in preparing their returns and by TTB to verify tax computation.

Current Actions: TTB is submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 280.

Estimated Total Annual Burden Hours: 2,800.

Dated: January 7, 2016.

Amy R. Greenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2016–00484 Filed 1–12–16; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of individuals and entities whose property and interests in property have been unblocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers''. Additionally, OFAC is publishing an update to the identifying information of three individuals currently included in the list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: The unblocking and removal from the SDN List of the 5 individuals and 17 entities and the update of three individuals identified in this notice whose property and interests in property were blocked pursuant to Executive Order 12978 of October 21, 1995, is effective on January 7, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the Order). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The foreign persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State: (a) To play a significant role in international narcotics trafficking centered in Colombia; or (b) to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On January 7, 2016 the Associate Director of the Office of Global Targeting removed from the SDN List the individuals and entities listed below, whose property and interests in property were blocked pursuant to the Order:

Individuals

1. CARDONA OCHOA, Carlos Julio, c/o GRUPO SANTA LTDA., Cali, Colombia; c/o AUREAL INMOBILIARIA LTDA., Bogota, Colombia; DOB 22 Sep 1954; Cedula No. 7524996 (Colombia) (individual) [SDNT].

2. ESTRADA URIBE, Octavio, c/o GRUPO SANTA LTDA., Cali, Colombia; c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; DOB 07 Oct 1954; Cedula No. 19258562 (Colombia) (individual) [SDNT].

3. LOPERA BARBOSA, Adriana, c/o ASESORIA Y SOLUCIONES GRUPO CONSULTOR S.A., Cali, Colombia; c/o CONSULTORIA INTEGRAL Y ASESORIA EMPRESARIAL S.A., Cali, Colombia; c/o INVERSIONES EPOCA S.A., Cali, Colombia; c/o J.A.J. BARBOSA Y CIA. S.C.S., Cali, Colombia; Calle 1A No. 60–61 apto. 205B, Cali, Colombia; DOB 21 Jun 1965; POB Cali, Colombia; Cedula No. 31930002 (Colombia); Passport AG820191 (Colombia) (individual) [SDNT].

4. TORRES CORTES, Joselin, c/o AUREAL INMOBILIARIA LTDA., Bogota, Colombia; DOB 26 Jul 1957; Cedula No. 19482747 (Colombia) (individual) [SDNT].

5. TREJOS AGUILAR, Melba, Calle 25 No. 35–66, Tulua, Valle, Colombia; Cedula No. 29991503 (Colombia) (individual) [SDNT].

Entities

1. CIDCA (a.k.a. CENTRO INVESTIGACION DOCENCIA Y CONSULTORIA ADMINISTRATIVA), Calle 61 No. 11–09 Chapinero, Bogota, Colombia; Carrera 5 No. 23–16, Bogota, Colombia; NIT #860404579–7 (Colombia) [SDNT].

2. AUREAL INMOBILIARIA LTDA., Avenida 7 No. 112–38 of. 104, Bogota, Colombia [SDNT].

3. CARS & CARS LTDA. (a.k.a. CARS AND CARS LTDA.; a.k.a. CENTRO COMERCIAL DEL AUTOMOVIL; a.k.a. COMERCIALIZADORA INTEGRAL LTDA.; a.k.a. PROYECTO CARS & CARS; a.k.a. PROYECTO CARS AND CARS), Avenida Roosevelt entre carreras 38 y 38A esquinas, Cali, Colombia [SDNT].

4. CAUCALITO LTDA. (f.k.a. GANADERA; f.k.a. GANADERIA LTDA.), Apartado Aereo 10077, Cali, Colombia; Carrera 4 12–41 of. 1403, Edificio Seguros Bolivar, Cali, Colombia; NIT #800029160–9 (Colombia) [SDNT].

5. CONSTRUCCIONES ASTRO S.A. (f.k.a. CONSTRUCTORA CASCADA; f.k.a. SOCIEDAD CONSTRUCTORA LA CASCADA S.A.), Carrera 4 No. 12–41 of.

1402, Edificio Seguros Bolivar, Cali, Colombia; Calle 1A 62A–120 2305, Cali, Colombia; Apartado Aereo 10077, Cali, Colombia; Calle 1A 62A–120 4114, Cali, Colombia; Calle 1A 62A–120 2418, Cali, Colombia; Carrera 64 1B–83, Cali, Colombia; Carrera 4 No. 12–41 of. 1401, Cali, Colombia; Carrera 4 No. 12–41 of. 1403, Cali, Colombia; Carrera 64 1C–63, Cali, Colombia; Calle 13 3–22 piso 12 y piso 14, Cali, Colombia; Calle 1A 62A–120 6245, Cali, Colombia; Calle 1A 62A–120, Cali, Colombia; Calle 1A 62A–120 B2 108, Cali, Colombia; NIT #890307311–4 (Colombia) [SDNT].

6. GRUPO SANTA LTDA., Carrera 4 12–41 piso 14 y 15, Edificio Seguros Bolivar, Cali, Colombia; Calle 18 106–98 of. 201/202, Cali, Colombia; Carrera 84 17–29, Cali, Colombia [SDNT].

7. HACIENDA LA NOVILLERA (a.k.a. NOVILLERA; a.k.a. NOVILLERA GANADERA), Carrera 4 12–41 piso 15, Edificio Seguros Bolivar, Cali, Colombia; Paso de la Bolsa, Jamundi, Valle del Cauca, Cali, Colombia [SDNT].

8. HACIENDA SANDRANA (a.k.a. SANDRANA GANADERA; a.k.a. SANDRANDA), Carrera 4 12–41 piso 15, Edificio Seguros Bolivar, Cali, Colombia; San Pedro, Valle del Cauca, Colombia [SDNT].

9. INMOBILIARIA AURORA LTDA., Carrera 24F Oeste 3–70, Cali, Colombia; Avenida Canasgordas con Avenida Guali Casa 35, Cali, Colombia; Carrera 4 12–41 piso 15, Edificio Seguros Bolivar, Cali, Colombia; Carrera 38A No. 5E–31, Edificio Conquistadores, Cali, Colombia [SDNT].

10. INTERCREDITOS S.A. (a.k.a. INTERCREDITOS BOGOTA; a.k.a. INTERCREDITOS CALI), Bogota, Colombia; Avenida Roosevelt No. 38–32, piso 2, Cali, Colombia [SDNT].

11. INVERSIONES INTEGRAL Y CIA., Calle 16B No. 114–80 Casa 2, Cali, Colombia; Carrera 2 Oeste 5–46 apt/of 503, Cali, Colombia [SDNT].

12. INVERSIONES SANTA LTDA. (f.k.a. INVERSIONES Y CONSTRUCCIONES SANTA LIMITADA), Calle 5 66B–49 piso 3, Cali, Colombia; Calle 13 3–32 piso 14, Cali, Colombia; Calle 5 Oeste 3A–26 apt/of 103, 301, 404, 502, 503, Cali, Colombia; Calle 7 Oeste 25–48, Cali, Colombia; Calle 9 No. 46–69 Of. 302, Cali, Colombia; Carrera 4 12–41 piso 14, Edificio Seguros Bolivar, Cali, Colombia; Carrera 2 Oeste 5–46 of 502, Cali, Colombia; Carrera 4 12–41 piso 15, Edificio Seguros Bolivar, Cali, Colombia [SDNT].

13. PREVIA S.A. (a.k.a. PREVENCION Y ANALISIS DE RIESGOS), Carrera 3 No. 12–40 of. 504, Cali, Colombia; Carrera 3 No. 10–20 of. 202, Cali, Colombia [SDNT].

14. SAMARIA ARRENDAMIENT, Cali, Colombia [SDNT].

15. SAMARIA CANAS, Cali, Colombia [SDNT].

16. SAMARIA INTERESES, Cali, Colombia [SDNT].

17. SAMARIA TIERRAS, Cali, Colombia [SDNT].

18. SANDRANA CANAS, Cali, Colombia [SDNT].

Additionally, on January 7, 2016, the Associate Director of the Office of Global Targeting updated the SDN record for three individuals listed below, whose property and interests in property continue to be blocked pursuant to the Order:

Individuals

1. BARRERA MARIN, Alvaro, c/o APVA S.A., Cali, Colombia; c/o BARRERA RIOS NEGOCIOS INMOBILIARIOS E.U., Cali, Colombia; c/o CECEP EDITORES S.A., Cali, Colombia; c/o CECEP S.A., Cali, Colombia; c/o CIDCA, Bogota, Colombia; c/o COMERCIALIZADORA DE BIENES Y SERVICIOS ADMINISTRATIVOS Y FINANCIEROS S.A., Cali, Colombia; c/o ENSAMBLADORA COLOMBIANA AUTOMOTRIZ S.A., Barranquilla, Colombia; c/o NEGOCIOS Y CAPITALES S.A., Pereira, Colombia; c/o WORLD LINE SYSTEM S.A., Palmira, Valle, Colombia; Calle 56D No. 28B–73, Barrio Las Mercedes, Palmira, Valle, Colombia; DOB 21 Nov 1940; POB Sevilla, Valle, Colombia; Cedula No. 6451857 (Colombia); Passport AG003135 (Colombia) (individual) [SDNT].

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BARRERA MARIN, Alvaro, c/o APVA S.A., Cali, Colombia; c/o BARRERA RIOS NEGOCIOS INMOBILIARIOS E.U., Cali, Colombia; c/o CECEP EDITORES S.A., Cali, Colombia; c/o CECEP S.A., Cali, Colombia; c/o COMERCIALIZADORA DE BIENES Y SERVICIOS ADMINISTRATIVOS Y FINANCIEROS S.A., Cali, Colombia; c/o ENSAMBLADORA COLOMBIANA AUTOMOTRIZ S.A., Barranquilla, Colombia; c/o NEGOCIOS Y CAPITALES S.A., Pereira, Colombia; c/o WORLD LINE SYSTEM S.A., Palmira, Valle, Colombia; Calle 56D No. 28B–73, Barrio Las Mercedes, Palmira, Valle, Colombia; DOB 21 Nov 1940; POB Sevilla, Valle, Colombia; Cedula No. 6451857 (Colombia); Passport AG003135 (Colombia) (individual) [SDNT].

2. CAVIEDES CRUZ, Leonardo, c/o INVERSIONES SANTA LTDA., Cali, Colombia; Calle 21 Norte No. 3N–84, Cali, Colombia; c/o CAVIEDES DILEO Y CIA S.C.S., Cali, Colombia; DOB 23 Nov 1952; Cedula No. 16593470 (Colombia); Passport AB151486 (Colombia); alt. Passport AC444270 (Colombia); alt. Passport OC444290 (Colombia) (individual) [SDNT].

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CAVIEDES CRUZ, Leonardo, Calle 21 Norte No. 3N–84, Cali, Colombia; c/o CAVIEDES DILEO Y CIA S.C.S., Cali, Colombia; DOB 23 Nov 1952; Cedula No. 16593470 (Colombia); Passport AB151486 (Colombia); alt. Passport AC444270 (Colombia); alt. Passport OC444290 (Colombia) (individual) [SDNT].

3. SANTACRUZ CASTRO, Ana Milena, c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; c/o AUREAL INMOBILIARIA LTDA., Bogota, Colombia; c/o INMOBILIARIA SAMARIA LTDA., Cali, Colombia; c/o SAMARIA LTDA., Cali, Colombia; c/o INVERSIONES SANTA LTDA., Cali, Colombia; c/o COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A., Cali, Colombia; c/o INVERSIONES INTEGRAL LTDA., Cali, Colombia; c/o MIRALUNA LTDA., Cali, Colombia; c/o URBANIZACIONES Y CONSTRUCCIONES LTDA., DE CALI, Cali, Colombia; DOB 31 Mar 1965; Cedula No. 31929808 (Colombia); Passport 31929808 (Colombia); alt. Passport AB151189 (Colombia) (individual) [SDNT].

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SANTACRUZ CASTRO, Ana Milena, c/o SOCIEDAD CONSTRUCTORA LA CASCADA S.A., Cali, Colombia; c/o COMERCIALIZACION Y FINANCIACION DE AUTOMOTORES S.A., Cali, Colombia; c/o INVERSIONES INTEGRAL LTDA., Cali, Colombia; c/o MIRALUNA LTDA., Cali, Colombia; c/o URBANIZACIONES Y CONSTRUCCIONES LTDA., DE CALI, Cali, Colombia; DOB 31 Mar 1965; Cedula No. 31929808 (Colombia); Passport 31929808 (Colombia); alt. Passport AB151189 (Colombia) (individual) [SDNT].

Dated: January 7, 2016.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016–00477 Filed 1–12–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to the Foreign Narcotics Kingpin Designation Act

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of two individuals and one entity whose property and interests in property have been unblocked pursuant to the Foreign Narcotics Kingpin Designation Act (Kingpin Act) (21 U.S.C. Sections 1901–1908, 8 U.S.C. Section 1182). Additionally, OFAC is publishing an update to the identifying information of one individual currently included in the list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: The unblocking and removal from the SDN List of the 2 individuals and 1 entity and the update of two individuals identified in this notice whose property and interests in property were blocked pursuant to the Kingpin Act, is effective on January 7, 2016.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance & Evaluation, Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, Tel: (202) 622–2420.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site at *www.treasury.gov/ofac* or via facsimile through a 24-hour fax-on demand service at (202) 622–0077.

Background

On December 3, 1999, the Kingpin Act was signed into law by the President of the United States. The Kingpin Act provides a statutory framework for the President to impose sanctions against significant foreign narcotics traffickers and their organizations on a worldwide basis, with the objective of denying their businesses and agents access to the U.S. financial system and to the benefits of trade and transactions involving U.S. persons and entities.

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Secretary of the Treasury consults with the Attorney General, the Director of the Central Intelligence Agency, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of State, and the Secretary of Homeland Security when designating and blocking the property or interests in property, subject to U.S. jurisdiction, of persons or entities found to be: (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned, controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; and/or (3) playing a significant role in international narcotics trafficking.

On January 7, 2016, the Associate Director of the Office of Global Targeting removed from the SDN List the individuals and entity listed below, whose property and interests in property were blocked pursuant to the Kingpin Act:

Individuals

1. AMARILLAS LOPEZ, Gabriela, Av. de la Mancha #738 A, Col. Lomas de Zapopan, Zapopan, Jalisco 45130, Mexico; Av. Rio Choix 824, Culiacan, Sinaloa, Mexico; DOB 21 Sep 1979; POB Culiacan, Sinaloa, Mexico; C.U.R.P. AALG790921MSLMPB09 (Mexico) (individual) [SDNTK] (Linked To: CASA DE EMPENO GUADALAJARA, S.A. DE C.V.).

2. RESTREPO ZAPATA, Milvia Yaneth (a.k.a. RESTREPO ZAPATA, Milvia Janeth), c/o BIO FORESTAL S.A., Medellin, Colombia; c/o C.I. OKCOFFEE COLOMBIA S.A., Bogota, Colombia; c/o C.I. OKCOFFEE INTERNATIONAL S.A., Bogota, Colombia; c/o FUNDACION OKCOFFEE COLOMBIA, Bogota, Colombia; c/o FUNDACION PARA EL BIENESTAR Y EL PORVENIR, Medellin, Colombia; c/o HOTELES Y BIENES S.A., Bogota, Colombia; c/o INVERPUNTO DEL VALLE S.A., Cali, Colombia; c/o PROMO RAIZ S.A., Medellin, Colombia; c/o UNION DE CONSTRUCTORES CONUSA S.A., Bogota, Colombia; Carrera 112 GT No. 86B–60, Bogota, Colombia; c/o R D I S.A., Bogota, Colombia; DOB 13 Dec 1973; Cedula No. 43825354 (Colombia) (individual) [SDNTK].

Entity

1. CASA DE EMPENO GUADALAJARA, S.A. DE C.V. (a.k.a. EMPENOS PRESTAFACIL), Av. Lopez Cotilla No. 100, Col. Centro, Guadalajara, Jalisco C.P. 44100, Mexico; Av. De La Mancha No. 738, Col. Lomas de Zapopan, Zapopan, Jalisco C.P. 45130, Mexico; R.F.C. CEG–000629–9H7 (Mexico); Folio Mercantil No. 4243–1 (Mexico) [SDNTK].

Additionally, on January 7, 2016, the Associate Director of the Office of Global Targeting updated the SDN record for two individuals listed below, whose property and interests in property continue to be blocked pursuant to the Order:

Individuals

1. CUELLAR SILVA, John Fredy, Calle Paseo Royal Country 5598–23, Fraccionamiento Royal Country, Zapopan, Jalisco, Mexico; Lopez Cotilla 100 Centro, Guadalajara, Jalisco C.P. 44100, Mexico; DOB 17 May 1976; POB Florencia, Caqueta, Colombia; Cedula No. 79904164 (Colombia); R.F.C. CUSJ760517HNE (Mexico) (individual) [SDNTK] (Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: INVERSIONES HUNEL LTDA.; Linked To: CASA COMERCIAL ORO RAPIDO; Linked To: CASA DE EMPENO GUADALAJARA, S.A. DE C.V.; Linked To: PRENDA TODO, S.A. DE C.V.).

-to-

CUELLAR SILVA, John Fredy, Calle Paseo Royal Country 5598–23, Fraccionamiento Royal Country, Zapopan, Jalisco, Mexico; Lopez Cotilla 100 Centro, Guadalajara, Jalisco C.P. 44100, Mexico; DOB 17 May 1976; POB Florencia, Caqueta, Colombia; Cedula No. 79904164 (Colombia); R.F.C. CUSJ760517HNE (Mexico) (individual) [SDNTK] (Linked To: AGRO Y COMERCIO DE SANTA BARBARA LAGROMER S. EN C.; Linked To: COMPANIA AGRO COMERCIAL CUETA S. EN C.; Linked To: INVERSIONES HUNEL LTDA.; Linked To: CASA COMERCIAL ORO RAPIDO; Linked To: PRENDA TODO, S.A. DE C.V.).

2. GAXIOLA MEDINA, Rigoberto (a.k.a. MEDINA SAENZ, Enrique; a.k.a. MORALES GUERRERO, Juan Antonio; a.k.a. SAENZ MEDINA, Enrique), Calle Clavel No. 1406, Colonia Margarita, Culiacan, Sinaloa, Mexico; Hermosillo, Sonora, Mexico; DOB 27 Sep 1950; POB Sinaloa, Mexico; citizen Mexico; nationality Mexico; R.F.C. GAMR–501027 (Mexico) (individual) [SDNTK].

-to-

GAXIOLA MEDINA, Rigoberto (a.k.a. MEDINA SAENZ, Enrique; a.k.a.

MORALES GUERRERO, Juan Antonio; a.k.a. SAENZ MEDINA, Enrique), Calle Clavel No. 1406, Colonia Margarita, Culiacan, Sinaloa, Mexico; Hermosillo, Sonora, Mexico; DOB 27 Sep 1950; alt. DOB 27 Oct 1950; POB Sinaloa, Mexico; citizen Mexico; nationality Mexico; R.F.C. GAMR–501027 (Mexico); C.U.R.P. GAMR501027HSLXDG00 (Mexico) (individual) [SDNTK].

Dated: January 7, 2016.

Gregory T. Gatjanis,

Associate Director, Office of Global Targeting, Office of Foreign Assets Control.

[FR Doc. 2016–00476 Filed 1–12–16; 8:45 am]

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Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Ceiling Fans; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2012–BT–STD–0045]

RIN 1904–AD28

Energy Conservation Program: Energy Conservation Standards for Ceiling Fans

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking (NOPR) and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including ceiling fans. EPCA also requires the U.S. Department of Energy (DOE) to periodically determine whether more-stringent, amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this notice, DOE proposes amended energy conservation standards for ceiling fans, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: *Comments:* DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than March 14, 2016. See section VII, ''Public Participation,'' for details.

Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section before February 12, 2016.

Meeting: DOE will hold a public meeting on Wednesday, Feburary 3, 2016 from 9:00 a.m. to 4:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585.

Instructions: Any comments submitted must identify the NOPR on Energy Conservation Standards for ceiling fans and provide docket number EE–2012–BT–STD–0045 and/or regulatory information number (RIN) 1904–AD28. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: CeilingFan2012STD0045@ee.doe.gov*. Include the docket number and/or RIN in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@atr.usdoj.gov* before February 12, 2016. Please indicate in the ''Subject'' line of your email the title and Docket Number of this rulemaking notice.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VII of this document (''Public Participation'').

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index may not be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/65*. This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section VII, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition (42 U.S.C. 6295(o)(2)(B)(i)(V). The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *Atr.ops-energystandards@usdoj.gov* before February 12, 2016. Please indicate in the ''Subject'' line of your email the title and Docket Number of this rulemaking notice.

FOR FURTHER INFORMATION CONTACT: Lucy DeButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *ceiling_fans@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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I. Synopsis of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291, *et seq.*), established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These products include ceiling fans, which are the subject of this document. (42 U.S.C. 6295(ff))

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards. (42 U.S.C. 6295(m)(1))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for ceiling fans. The proposed standards, which are expressed for each product class as the maximum allowable airflow efficiency in terms of cubic feet per minute per watt (CFM/W), as a function of ceiling fan diameter in inches, are shown in Table I–1. These proposed standards, if adopted, would apply to all ceiling fans listed in Table I–1 and manufactured in, or imported into, the United States on and after the date 3 years after the publication of the final rule for this rulemaking.

TABLE I–1—PROPOSED ENERGY CONSERVATION STANDARDS FOR CEILING FANS

Product class	Maximum airflow efficiency equation *CFM/W**
Very Small-Diameter (VSD)	3.17D − 16.75
Hugger	0.05D + 56.41
Standard	0.30D + 60.61
High-Speed Small-Diameter (HSSD).	4.22D + 0.02
Large Diameter	1.16D − 24.38

* D is the ceiling fan diameter, in inches.

A. Benefits and Costs to Consumers

Table I–2 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of ceiling fans, as measured by the average life-cycle cost (LCC) savings and the simple payback period (PBP).[3] The average LCC savings are positive for each product class, and the PBP is less than the average lifetime of ceiling fans, which is estimated to be 13.8 years for all product classes (see section IV.F).

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the Energy Efficiency Improvement Act of 2015, Public Law 114–11 (Apr. 30, 2015).

[3] The average LCC savings are measured relative to the no-standards case efficiency distribution, which depicts the market in the compliance year in the absence of standards (see section IV.F.7). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline model (see section IV.F), which corresponds to the least efficient model available to purchase.

TABLE I–2—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF CEILING FANS

Product class	Average LCC savings (*2014$*)	Simple payback period (*years*)
Standard	8.47	1.5
Hugger	5.59	1.6
Very Small-Diameter	3.01	7.7
High-Speed Small-Diameter	27.63	5.2
Large-Diameter	27.26	4.4

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this notice.

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2015 to 2048). Using a real discount rate of 7.4 percent, DOE estimates that the INPV for manufacturers of CFs in the no-standards case is $1,308.7 million in 2014$. Under the proposed standards, DOE expects that manufacturers may lose up to 12.7 percent of this INPV, which is approximately $166.3 million. Additionally, based on DOE's interviews with the ceiling fan manufacturers, DOE does not expect significant impacts on manufacturing capacity or loss of employment for the industry as a whole to result from enacting the proposed standards for ceiling fans.

DOE's analysis of the impacts of the amended standards on manufacturers is described in section IV.J of this notice.

C. National Benefits and Costs [4]

DOE's analyses indicate that the proposed energy conservation standards for ceiling fans would save a significant amount of energy. Relative to the case where no energy efficiency performance standard is set (the ''no-standards case''), the lifetime energy savings for ceiling fans purchased in the 30-year period that begins in the anticipated year of compliance with any amended standards (2019–2048) amount to 0.758 quadrillion Btu (quads).[5] This represents an energy savings of 10.9 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-standards case'').

The cumulative net present value (NPV) of total consumer costs and savings of the proposed standards for ceiling fans ranges from $0.813 billion (at a 7-percent discount rate) to $2.760 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for ceiling fans purchased in 2019–2048.

In addition, the proposed standards for ceiling fans would have significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions of 45.7 million metric tons (Mt) [6] of carbon dioxide (CO_2), 24.5 thousand tons of sulfur dioxide (SO_2), 84.2 thousand tons of nitrogen oxides (NO_X), 199.6 thousand tons of methane (CH_4), 0.51 thousand tons of nitrous oxide (N_2O), and 0.09 tons of mercury (Hg).[7] The cumulative reduction in CO_2 emissions through 2030 amounts to 8.53 Mt, which is equivalent to the emissions resulting from the annual electricity use of almost 778,000 homes.[8]

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent federal interagency process.[9] The derivation of the SCC values is discussed in section IV.L. Using discount rates appropriate for each set of SCC values (see Table I–3), DOE estimates the present monetary value of the CO_2 emissions reduction (not including CO_2 equivalent emissions of other gases with global warming potential) is between $0.3 billion and $4.4 billion, with a value of $1.4 billion using the central SCC case represented by $40.0/t in 2015. DOE also estimates the present monetary value of the NO_X emissions reduction to be $0.11 billion at a 7-percent discount rate and $0.27 billion at a 3-percent discount rate.[10]

Table I–3 summarizes the national economic benefits and costs expected to result from the proposed standards for ceiling fans.

TABLE I–3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CEILING FANS (TSL 4) *

Category	Present value *Billion 2014$*	Discount rate (%)
Benefits		
Consumer Operating Cost Savings	2.2	7
	5.2	3
CO_2 Reduction Monetized Value ($12.2/t case) **	0.31	5
CO_2 Reduction Monetized Value ($40.0/t case) **	1.4	3
CO_2 Reduction Monetized Value ($62.3/t case) **	2.3	2.5

[4] All monetary values in this section are expressed in 2014 dollars and, where appropriate, are discounted to 2015 unless explicitly stated otherwise. Energy savings in this section refer to the full-fuel-cycle savings (see section IV.H for discussion).

[5] A quad is equal to 10^{15} British thermal units (Btu).

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-standards case, which reflects key assumptions in the *Annual Energy Outlook 2015* (*AEO 2015*) Reference case. *AEO 2015* generally represents current legislation and environmental regulations for which implementing regulations were available as of October 31, 2014.

[8] The conversion from cumulative CO_2 emissions reductions to electricity use emissions from homes is based on the U.S. Environmental Protection Agency's Greenhouse Gas Equivalencies Calculator: *http://www.epa.gov/cleanenergy/energy-resources/calculator.html#results.*

[9] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

[10] DOE estimated the monetized value of NOx emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electricity Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule. Note that DOE is currently investigating valuation of avoided SO_2 and Hg emissions.

TABLE I–3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CEILING FANS (TSL 4) *—Continued

Category	Present value *Billion 2014$*	Discount rate (%)
CO_2 Reduction Monetized Value ($117/t case) **	4.4	3
NO_X Reduction Monetized Value †	0.11	7
	0.27	3
Total Benefits††	3.8	7
	6.9	3
Costs		
Consumer Incremental Installed Costs	1.4	7%
	2.4	3%
Total Net Benefits		
Including Emissions Reduction Monetized Value†	2.3	7%
	4.5	3%

* This table presents the costs and benefits associated with ceiling fans shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 for further discussion. Note that the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), the values would be nearly two-and-a-half times larger. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emissions, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to average SCC with 3-percent discount rate ($40.0/t case).

The benefits and costs of the proposed standards, for ceiling fans sold in 2019–2048, can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) The annualized national economic value of the benefits from consumer operation of products that meet the new or amended standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase prices and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including NO_X and CO_2 emission reductions.[11]

Although combining the values of operating savings and CO_2 emission reductions is relevant to DOE's determination, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, whereas the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of ceiling fans shipped in 2019–2048. Because CO_2 emissions have a very long residence time in the atmosphere,[12] the SCC values after 2050 reflect future climate-related impacts resulting from the emission of CO_2 that continue beyond 2100.

Estimates of annualized benefits and costs of the proposed standards are shown in Table I–4. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0/t in 2015), the estimated annualized cost of the standards proposed in this rule is $140 million per year in increased equipment costs, while the estimated annualized benefits are $220 million in reduced equipment operating costs, $80 million in CO_2 reductions, and $10 million in reduced NO_X emissions. In this case, the annualized net benefit amounts to $170 million per year. Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0/t in 2015, the estimated annualized cost of the proposed ceiling fans standards is $136 million per year in increased equipment costs, while the estimated annualized benefits are $290 million in reduced operating costs, $80 million in CO_2 reductions, and $15 million in reduced NO_X emissions. In this case, the annualized net benefit amounts to $248 million per year.

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2015, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2020 or 2030), and then discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates, as shown in Table I–4. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

[12] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ (2005), ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,''' *J. Geophys. Res.* 110. pp. D14105.

TABLE I–4—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR CEILING FANS (TSL 4)

	Discount rate (%)	(Million 2014$/year)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7	220	195	253.
	3	290	255	341.
CO_2 Reduction Monetized Value ($12.2/t case)**	5	23	21	26.
CO_2 Reduction Monetized Value ($40.0/t case)**	3	80	71	90.
CO_2 Reduction Monetized Value ($62.3/t case)**	2.5	117	105	132.
CO_2 Reduction Monetized Value ($117/t case)**	3	243	217	274.
NO_X Reduction Monetized Value†	7	10	9	26.
	3	15	13	37.
Total Benefits ††	7 plus CO_2 range	254 to 473	225 to 421	305 to 553.
	7	310	275	369.
	3 plus CO_2 range	328 to 547	289 to 485	404 to 652.
	3	384	340	467.
Costs				
Consumer Incremental Installed Product Costs	7	140	177	155.
	3	136	182	152.
Net Benefits				
Total †	7 plus CO_2 range	114 to 333	47 to 243	150 to 398.
	7	170	98	214.
	3 plus CO_2 range	192 to 411	107 to 303	251 to 499.
	3	248	157	315.

* This table presents the annualized costs and benefits associated with ceiling fans shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary Estimate assumes the Reference case electricity prices and housing starts from AEO 2015 and decreasing product prices for ceiling fans with DC motors, due to price trend on the electronics components. The Low Benefits Estimate uses the Low Economic Growth electricity prices and housing starts from AEO 2015 and no price trend for ceiling fans with DC motors. The High Benefits Estimate uses the High Economic Growth electricity prices and housing starts from AEO 2015 and the same product price decrease for ceiling fans with DC motors as in the Primary Estimate.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NOx emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 I.A.2 for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emission, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K and IV.L of this notice. DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product classes covered by this proposal. Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more- and less-stringent energy efficiency levels as potential standards, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy efficiency levels would outweigh the projected benefits and that the proposed standard achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well

as some of the relevant historical background related to the establishment of standards for ceiling fans.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291, *et seq.*) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances (collectively referred to as ''covered products''), which includes the ceiling fans that are the subject of this rulemaking. (42 U.S.C. 6295(ff)) EPCA, as amended, prescribed energy conservation standards for these products and authorized DOE to consider energy efficiency or energy use standards for the electricity used by ceiling fans to circulate air in a room. *Id.*

Under 42 U.S.C. 6295(m), DOE must periodically review its already established energy conservation standards for a covered product. Under this requirement, the next review that DOE would need to conduct must occur no later than 6 years from the issuance of any final rule establishing or amending a standard for a covered product.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293, 6295(o)(3)(A)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)) The DOE test procedures for ceiling fans appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix U.

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including ceiling fans. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and (3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including ceiling fans, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (Secretary) considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if

justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) In this rulemaking, DOE proposes to incorporate such energy use into any amended energy conservation standards it adopts in the final rule.

B. Background

1. Current Standards

The Energy Policy and Conservation Act of 1975 (EPCA) defined and established design standards for ceiling fans. EPCA defined a ''ceiling fan'' as ''a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.'' (42 U.S.C. 6291(49)) In a final rule technical amendment published in the **Federal Register** (FR) on October 18, 2005, DOE codified the statutorily-prescribed design standards for ceiling fans. 70 FR 60407, 60413. These standards are set forth in DOE's regulations at 10 CFR 430.32(s), and require all ceiling fans manufactured on or after January 1, 2007, to have the following features:

(i) Fan speed controls separate from any lighting controls;

(ii) adjustable speed controls (either more than one speed or variable speed); and

(iii) the capability for reverse action (other than fans sold for industrial or outdoor application or where safety would be an issue)).

(42 U.S.C. 6295(ff)(1)(A) and (6))

2. History of Standards Rulemaking for Ceiling Fans

EPCA established energy conservation standards for ceiling fans as described in Section II.B.1 and authorized DOE to consider, subject to the requirements of 42 U.S.C. 6295(o) and (p), establishing energy efficiency or energy use standards for the electricity used by ceiling fans to circulate air in a room. (42 U.S.C. 6295(ff))

As noted in section II.B.1, DOE codified the statutorily-prescribed design standards for ceiling fans in the CFR at 10 CFR 430.32(s). 70 FR 60407, 60413 (Oct. 18, 2005). DOE also adopted test procedures for ceiling fans at 10 CFR part 430, subpart B, appendix U. 71 FR 71340, 71366–67 (Dec. 8, 2006).

On March 15, 2013, DOE published a notice announcing the availability of the framework document, ''Energy Conservation Standards Rulemaking Framework Document for Ceiling Fans and Ceiling Fan Light Kits,'' and a public meeting to discuss the proposed analytical framework for the energy conservation standards rulemaking. 76 FR 56678. DOE also posted the framework document on its Web site, in which it described the procedural and analytical approaches it anticipated using to evaluate amended energy conservation standards for ceiling fans and ceiling fan light kits.

DOE held the public meeting for the framework document on March 22, 2013,[13] to present the framework document, describe the analyses DOE planned to conduct during the rulemaking, seek comments from interested parties on these subjects, and inform them about and facilitate their involvement in the rulemaking. At the public meeting, and during the comment period, DOE received many comments that both addressed issues raised in the framework document and identified additional issues relevant to this rulemaking.

DOE published the preliminary analysis for the ceiling fan energy conservation standards rulemaking on September 29, 2014. 79 FR 58290. DOE posted the preliminary analysis, as well as the complete preliminary technical support document (TSD), on its Web site.[14] The preliminary TSD includes the results of the following DOE preliminary analyses: (1) Market and technology assessment; (2) screening analysis; (3) engineering analysis; (4) markups analysis; (5) energy use analysis; (6) LCC and PBP analyses; (7) shipments analysis; (8) national impact analysis (NIA); and (9) preliminary manufacturer impact analysis (MIA).

DOE held a public meeting on November 19, 2014, to present the preliminary analysis, which included presenting preliminary results for the engineering and downstream economic analyses, seek comments from interested parties on these subjects, and facilitate interested parties' involvement in the rulemaking. At the public meeting, and during the comment period, DOE received comments that addressed issues raised in the preliminary analysis and identified additional issues relevant to this rulemaking.

III. General Discussion

DOE developed this proposal after considering comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

1. Scope of Coverage

EPCA defines a ''ceiling fan'' as ''a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.'' (42 U.S.C. 6291(49))

In the ceiling fan light kit test procedure final rule published on December 24, 2015. 80 FR 80209, DOE reinterpreted the statutory definition of a ceiling fan to include hugger fans, which are fans that are mounted close to the ceiling, and are safe to use in environments with low ceilings, and also clarify that ceiling fans that produce large volume of airflow also meet the definition. DOE research indicates that all ceiling fans currently on the market, including hugger ceiling fans and ceiling fans that produce a large volume of airflow, appear to meet the EPCA design standards.

The changes in interpretation of the ceiling fan definition discussed above result in the applicability of the design standards set forth in EPCA at 42 U.S.C. 6295(ff)(1) to these fan types 30 days after the publication of the ceiling fan light kit final rule test procedure. DOE is also proposing efficiency standards for these fan types in this ceiling fan NOPR.

During the preliminary analysis public meeting, Southern Company expressed concern over including larger ceiling fans, generally used in commercial and industrial settings under 10 CFR 430. Southern Company suggested that it would be more appropriate for larger ceiling fans to be considered as an ASHRAE product, and not subject to standards established in this rulemaking. (Southern Company, Public Meeting Transcript, No. 83 at p. 188) [15] DOE interprets Southern Company's comments to recommend that DOE exclude larger ceiling fans from this rulemaking and allow ASHRAE to include efficiency requirements for these products in ASHRAE 90.1 standard.

Pursuant to EPCA, ceiling fans are defined as a nonportable device that is

[13] The framework document and public meeting information are available at regulations.gov under docket number EERE–2012–BT–STD–0045–0001.

[14] The preliminary analysis, preliminary TSD, and preliminary analysis public meeting information are available at regulations.gov under docket number EERE–2012–BT–STD–0045–0066

[15] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans (Docket No. EERE–2012–BT–STD–0045), which is maintained at *www.regulations.gov*. This notation indicates that the statement preceding the reference is document number 83 in the docket for the ceiling fan energy conservation standards rulemaking, and appears at page 188 of that document.

suspended from a ceiling for circulating air via the rotation of fan blades. (42 U.S.C. 6291(49)) EPCA also defines a ''consumer product'', which includes ceiling fans, as any article of a type that consumes energy and, ''to any significant extent, is ''distributed in commerce for personal use or consumption by individuals.'' Because ceiling fans are considered a consumer product under this definition, and because the definition of ceiling fan does not have a threshold for size, DOE's authority to consider energy conservation standards for ceiling fans includes the larger ceiling fans generally used in commercial and industrial settings referred to by Southern Company. In a separate rulemaking proceeding, DOE is currently negotiating energy conservation standards for commercial and industrial fans and blowers.[16] DOE encourages Southern Company and other interested parties to comment on any proposed standards for this equipment as well, to ensure that DOE's standards for ceiling fans and for commercial and industrial fans and blowers do not overlap.

2. Product Classes

When establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Currently there are no product classes for ceiling fans, because the previous final rule for ceiling fans published on October 18, 2005 set design standards, but did not establish product classes. 70 FR 60407. In this NOPR, DOE is proposing six product classes, which include highly-decorative, very small-diameter, hugger, standard, high-speed small-diameter and large-diameter product classes. For further details on product classes, see section IV.A.1 of this notice.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. Similarly, DOE must use these test procedures to determine compliance with its energy conservation standards. (42 U.S.C. 6295(s)) As noted, the test procedures for ceiling fans are provided in appendix U. DOE published a NOPR to amend these test procedures on October 17, 2014. 79 FR 62521, and published a supplemental NOPR (SNOPR) to provide further amendments to the published NOPR on June 3, 2015. 80 FR 31487.

Currently no energy efficiency performance standards exist for ceiling fans. DOE proposes to set energy efficiency performance standards in terms of an airflow efficiency equation as proposed in the test procedure NOPR and subsequent SNOPR. 79 FR 62521 (Oct. 17, 2014); 80 FR 31487 (June 3, 2015). The metric used to evaluate performance in this NOPR calculates ceiling fan efficiency as the average of airflows and power consumption at different speeds weighted by hours of operation in each speed, including standby power.

In the test procedure SNOPR, DOE proposed to test all ceiling fans with blade spans less than or equal to 7 feet according to a modified version of the ENERGY STAR® ''Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans,'' version 1.1 test procedure, for any representations with respect to energy use or efficiency of these ceiling fans. DOE also proposed to test all ceiling fans with blade spans less than or equal to 7 feet mounted to the real ceiling. Additionally, DOE proposed to test all ceiling fans with blade spans less than or equal to 7 feet at high and low speeds, with the exception that high-volume small-diameter ceiling fans, which would only be tested at high speed. 80 FR 31489–31490.

In the test procedure NOPR, DOE proposed to test all high-volume ceiling fans according to a modified version of the test procedure in American National Standards Institute/Air Movement and Control Association International, Inc. (ANSI/AMCA) Standard 230–12, ''Laboratory Methods of Testing Air Circulating Fans for Rating and Certification'' (AMCA 230[17]). DOE also proposed that these ceiling fans be tested only at high speed. 79 FR 62532. However, in the test procedure SNOPR, DOE modified the proposed test methods for high-volume ceiling fans. Specifically, instead of testing at only high speed, DOE proposed to test all ceiling fans with blade spans greater than 7 feet at five speeds spaced equally over the range of available speeds: 20%, 40%, 60%, 80%, and 100%. 80 FR 31490.

Additionally, in the test procedure NOPR, DOE also proposed to reinterpret the statutory definition of a ceiling fan to include hugger ceiling fans. DOE also proposed to clarify that multi-mount ceiling fans meet the statutory definition of a ceiling fan. During the public meeting, several manufacturers commented on how the requirements proposed in the ceiling fan test procedure NOPR would affect how they represent the performance of their ceiling fans in the market. DOE also received comments regarding the test procedure and metric in response to the Preliminary Analysis technical support document. DOE will respond to all comments on the proposed test procedure, ceiling fan representations and the proposed metric in the concurrent test procedure rulemaking.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those technology options for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i))

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)(ii)–(iv)) Additionally, it is DOE

[16] All information for this rulemaking is available at regulations.gov, under docket number EERE–2013–BT–STD–0006 (*http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-STD-0006*).

[17] Air Movement and Control Association International, Inc. *ANSI/AMCA Standard 230–12: Laboratory Methods of Testing Air Circulating Fans for Rating and Certification.* 2010. Arlington Heights, IL. (Last accessed February 24, 2014) *https://www.amca.org/store/item.aspx?ItemId=37.*

policy not to include in its analysis any proprietary technology that is a unique pathway to achieving a certain efficiency level. Section IV.B of this notice discusses the results of the screening analysis for ceiling fans, particularly the designs DOE considered, those it eliminated (screened out), and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see section IV.B of this notice and chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for ceiling fans, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this rulemaking are described in section IV.C.1 of this proposed rule and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from the ceiling fans that are the subject of this rulemaking purchased in the 30-year period that begins in the year of compliance with any amended standards (2019–2048).[18] The savings are measured over the entire lifetime of ceiling fans purchased in this 30-year period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-standards case. The no-standards case represents a projection of energy consumption in the absence of amended energy conservation standards, and it considers market forces and policies that may affect future demand for more-efficient products.

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from potential amended standards for ceiling fans. The NIA spreadsheet model (described in section IV.H of this notice) calculates energy savings in site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE calculates national energy savings on an annual basis in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. To calculate primary energy savings from site electricity savings, DOE derives annual conversion factors from data provided in the Energy Information Administration's (EIA) most recent *Annual Energy Outlook* (*AEO*).

In addition to primary energy savings, DOE also calculates full-fuel-cycle (FFC) energy savings. As discussed in DOE's statement of policy, the FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards. 76 FR 51282 (August 18, 2011), as amended at 77 FR 49701 (August 17, 2012). DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For ceiling fans, the primary fuel is electricity. For more information on FFC multipliers, see section IV.H.1.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in ''significant'' energy savings. (42 U.S.C. 6295(o)(3)(B)) Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals for the District of Columbia Circuit, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), opined that Congress intended ''significant'' energy savings in the context of EPCA to be savings that were not ''genuinely trivial.'' The energy savings for all of the TSLs considered in this rulemaking, including the proposed standards (presented in section IV.H.1), are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

E. Economic Justification

1. Specific Criteria

EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts a manufacturer impact analysis (MIA), as discussed in section IV.J. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include: (1) INPV, which values the industry on the basis of expected future cash flows; (2) cash flows by year; (3) changes in revenue and income; and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analyses.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over

[18] DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and consumer discount rates. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analyses, DOE assumes that consumers will purchase the covered products in the first year of compliance with amended standards. The LCC savings for the considered efficiency levels are calculated relative to a no-standards case that reflects projected market trends in the absence of amended standards. DOE's LCC and PBP analyses are discussed in further detail in section IV.F.

Southern Company encouraged DOE to pursue an efficiency standard that keeps incremental fan price increases minimal while also having a small payback period. (Southern Company, Public Meeting Transcript, No. 83 at p. 271) In assessing a proposed energy conservation standard, DOE considers not only PBP, but also the other factors discussed in section III.E. Section V.B.1 contains the calculated PBPs for the proposed standard levels.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D.1, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this notice would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (DOJ) provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule.

f. Need for National Energy Conservation

DOE also considers the need for national energy conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity, as discussed in section IV.M.

The proposed standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K; the emissions impacts are reported in section V.C.2 of this notice. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent interested parties submit any relevant information regarding economic justification that does not fit into the other categories described above, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F of this proposed rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to ceiling fans. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments forecasts and calculates national energy savings and net present value resulting from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (GRIM), to assess manufacturer impacts of potential

standards. These three spreadsheet tools are available on the DOE Web site for this rulemaking: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.* Additionally, DOE used output from the latest version of EIA's *AEO,* a widely known energy forecast for the United States, for the emissions and utility impact analyses.

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. (See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.) DOE received comments regarding product classes, and the technology options DOE identified that can improve the efficiency of ceiling fans.

1. Product Classes

DOE divides covered products into classes by: (a) The type of energy used; (b) the capacity of the product; or (c) other performance-related features that justify different standard levels, considering the consumer utility of the feature and other relevant factors. (42 U.S.C. 6295(q))

In the ceiling fan test procedure NOPR, DOE proposed test methods for two major categories of ceiling fans; low-volume ceiling fans and high-volume ceiling fans. 79 FR 62521. DOE defined a low-volume ceiling as a ceiling fan that: (1) Is less than or equal to 7 feet in diameter, and has a blade thickness greater than or equal to 3.2 mm at the edge and a maximum tip speed less than or equal to the limit in the Underwriters Laboratory (UL) Standard 507–1999, ''UL Standard for Safety for Electric Fans;''; or (2) has a maximum airflow volume less than or equal to 5,000 CFM. DOE defined a high-volume ceiling as a ceiling fan that: (1) is greater than 7 feet in diameter, or has a blade thickness of less than 3.2 mm at the edge or a maximum tip speed that exceeds the threshold in the UL 507 table; and (2) has a maximum airflow volume greater than 5,000 CFM. 79 FR 62526. In the test procedure NOPR, DOE also proposed definitions for hugger and standard fans. DOE proposed that a hugger ceiling fan is a ceiling fan where the lowest point on the fan blades is no more than 10 inches from the ceiling based on the distance between the lowest point of the fan blade and the ceiling. DOE proposed that a standard ceiling fan is a ceiling fan where the lowest point on the fan blades is more than ten inches from the ceiling. 79 FR 62526.

In the preliminary analysis, DOE further differentiated low-volume and high-volume ceiling fans into five ceiling fan product classes based on capacity and performance-related features that affect consumer utility. The product classes considered in the preliminary analysis were: Hugger, standard, highly-decorative, high-volume small-diameter, and high-volume large-diameter.[19] Table IV–1 provides the product class definitions considered in the preliminary analysis.

TABLE IV–1—PRELIMINARY ANALYSIS PRODUCT CLASSES

	Product class	Definition
Low-volume ...	Hugger	Lowest point on fan blades is ≤10 inches from the ceiling.
	Standard	Lowest point on fan blades >10 inches from the ceiling.
	Highly- decorative.	Rotational speed ≤90 RPM and airflow ≤2,000 CFM at high speed.
High-volume ..	Small-diameter (HVSD).	High-volume ceiling fan with diameter ≤7 feet.
	Large-diameter (HVLD).	High-volume ceiling fan with diameter >7 feet.

DOE received several comments regarding the ceiling fan categories proposed, and the product classes being considered.

Stakeholders provided a variety of recommendations on how to define ''low-volume'' and ''high-volume'' ceiling fans. MacroAir suggested that CFM be the only distinguishing factor between low-volume (max airflow is less than or equal to 5000 CFM) and high-volume (max airflow is greater than 5000 CFM) ceiling fans, and to exclude blade thickness as it may impede innovation. (MacroAir, No. 89 at p. 12) Minka Group suggested that the cutoff airflow for low-volume ceiling fans be increased to 10,000 CFM. (Minka, Public Meeting Transcript, No. 83 at p. 58)

Alternatively, manufacturers recommended differentiating fans based on blade diameter instead of air volume. BAS recommended that all fans less than or equal to 7 feet be considered small-diameter fans, and all fans greater than 7 feet be considered large-diameter fans. (BAS, No. 88 at p. 2) The American Lighting Association (ALA) echoed BAS's recommendation. ALA added that the ''low-volume'' and ''high-volume'' terms can be confusing and misleading and imply that the ''low-volume'' product classes are somehow less effective from a consumer utility perspective than the ''high-volume'' product classes. (ALA, No. 91 at p. 8)

In the test procedure NOPR, DOE proposed separate test methods for low-volume and high-volume ceiling fans because some large-diameter ceiling fans (*i.e.,* those ceiling fans with blade spans greater than 7 feet) are too large to be tested in current low-volume ceiling fan test facilities. Additionally, testing with a single load cell is more practical for large-diameter ceiling fans than testing with numerous air velocity sensors as is typically done for small-diameter ceiling fans. In the test procedure NOPR, DOE proposed to test high-volume small-diameter ceiling fans according to the same procedure as large-diameter ceiling fans (*i.e.,* using a load cell), even though they are less than 7 feet in diameter.

In response to the test procedure NOPR, several stakeholders disagreed with DOE's proposal to test high-volume small-diameter ceiling fans differently than low-volume ceiling fans. BAS stated that there may be instances in which a small-diameter ceiling fan has a large enough measured airflow under the test procedure NOPR low-volume test procedure to qualify it as a high-volume ceiling fan, but when tested according to the high-volume test procedure proposed in the NOPR, the measured airflow would be too low for the fan to qualify as a high-volume fan. (BAS, Public Meeting Transcript, No. 83 at pp. 63–64) According to ALA, manufacturers are already accustomed to testing all ceiling fans with blade spans less than or equal to 7 feet, including high-volume small-diameter fans, according to the current ENERGY STAR test procedure, regardless of airflow volume. (Docket No. EERE–2013–BT–TP–0050, ALA, No. 8 at pp. 7–8)

On June 3, 2015, DOE published a test procedure SNOPR that modified some of the proposals from the test procedure NOPR. 80 FR 31487. In the test procedure SNOPR, DOE proposes that all ceiling fans 7 feet or less in diameter be tested using version 1.1 of the ENERGY STAR test procedure, while all ceiling fans greater than 7 feet be tested using a version of the AMCA 230 test procedure. DOE proposed this change to

[19] The preliminary analysis TSD is available at regulations.gov under docket number EERE–2012–BT–STD–0045.

harmonize the DOE test procedure with accepted industry testing practices. Consequently, definitions for ''low-volume'' and ''high-volume'' ceiling fans are no longer needed, because the test methods proposed are based only on ceiling fan diameter. For this NOPR, DOE accordingly did not adopt the airflow cutoff threshold recommendations from Macro Air and Minka Group because DOE is no longer proposing an airflow volume approach to determine ceiling fan categories.

DOE proposes to define a ''small-diameter ceiling fan'' as ''a ceiling fan that is less than or equal to 7 feet in diameter'', and a ''large-diameter ceiling fan'' as ''a ceiling fan that is greater than 7 feet in diameter.'' DOE is no longer proposing definitions to differentiate product classes as ''low-volume'' and ''high-volume'' ceiling fans.

DOE also received multiple stakeholder comments regarding the product classes considered in the preliminary analysis. In the preliminary analysis, DOE presented product classes that follow the Underwriters Laboratory (UL) ceiling fan safety standards (UL Standard 507–1999, ''UL Standard for Safety for Electric Fans'' (UL 507)) to differentiate between classes. The UL 507 standard uses both blade thickness and tip speed to differentiate fans (See Table IV–3).

BAS commented that the classification of ceiling fans based on blade thickness limits innovation, and therefore recommended a tip speed of 680 feet per minute (fpm) paired with a diameter and distance from blades to ceiling to determine fan classification. (BAS, No. 88 at p. 4) BAS recommended 680 fpm assuming a 52-inch standard fan and a 50 rpm maximum speed. (BAS, No. 88, p. 12) BAS's recommended fan classification, however, defined only the standard, hugger, highly-decorative and large-diameter product classes, and eliminated the HVSD product class. (BAS, No. 88 at p. 4) MacroAir commented that blade thickness is not applicable to define low-volume and high-volume ceiling fans, because it confuses the definition and may impede innovation. (Docket No. EERE–2013–BT–TP–0050, MacroAir, No. 6 at p. 6) ALA, on the other hand, provided comments on product classes that included both blade thickness and tip speed. (ALA, No. 96, p. 8)

Neither BAS nor MacroAir provided specific examples on how incorporating blade thickness in the product class definitions would limit innovation. Additionally, BAS's recommendation on using 680 fpm tip speed to differentiate product classes eliminated the HVSD product class. Instead, HVSD ceiling fans were included as part of the standard or hugger ceiling fan class. However, DOE finds that HVSD ceiling fans provide different utility to the consumer than standard or hugger ceiling fans, and therefore warrant a separate product class. HVSD ceiling fans generally operate at much higher speeds (in terms of RPM) than standard or hugger ceiling fans. In addition, DOE observes that HVSD fans are generally applied in commercial buildings whereas standard fans are installed in residential buildings. Further discussion on the HVSD ceiling fan product class is in section IV.A.1.d.

Based on BAS and MacroAir's comments, DOE considered whether the product class structure presented in the preliminary analysis could be simplified by removing blade thickness criteria. DOE investigated differentiating standard and hugger ceiling fans from HVSD ceiling fans using tip speed, but was unable to determine an appropriate tip speed threshold. In general, DOE had limited tip speed specifications for ceiling fans on the market. However, DOE looked at a database of 1400 ceiling fans, applied three different tip speed thresholds (680, 1200 and 2400 fpm), and calculated the percent of misclassifications of standard and hugger ceiling fans as HVSD ceiling fans. DOE found that between 40 and 100 percent of models were misclassified at these tip speed thresholds. (The lower the tip speed thresholds, the higher the rate of misclassification.) Therefore, DOE proposes to continue to use blade thickness to determine ceiling fan product classes.

DOE prefers to harmonize with existing industry standards and practices to the extent possible. Using the blade thickness limits from the UL 507 standard in the product class definition allows for DOE to harmonize with existing safety standards. All manufacturers will have to comply with the existing UL 507 standard for applications in which the distance between the fan blades and the floor is 10 feet or less, regardless of whether DOE's use of blade thickness in its product class definition. Consequently, including blade thickness in the product class definitions does not introduce new constraints for these applications.[20] However, for ceiling fans in applications in which the distance between the fan blades and the floor is greater than 10 feet, DOE's product class structure allows for manufacturers to consider blade thickness and maximum tip speeds outside the range of the UL 507 standard. Additionally, for high-volume large-diameter (HVLD) ceiling fans, DOE does not include any blade thickness or maximum tip speed requirements.

In the preliminary analysis, the product class structure also incorporated a 5,000 CFM maximum airflow volume cutoff to differentiate between HVSD ceiling fans and low-volume ceiling fans, as described previously in this section. DOE found in the preliminary analysis that, without the CFM cutoff, low-volume ceiling fans were inadvertently being placed in the HVSD product class because some low-volume ceiling fans operate at high RPMs and high airflows. For this NOPR, however, DOE is proposing to analyze a separate product class for very small-diameter (VSD) ceiling fans. (See section IV.A.1.c for further discussion on the VSD product class.) VSD ceiling fans are fans with one or more heads, each of which has a blade span of 18 inches or less and operate at high RPMs (generating high volumes of airflow). VSD ceiling fans provide consumers targeted airflow that can be directed, unlike the airflow of a traditional ceiling fan. Also VSD fans can be mounted in small, awkward spaces where traditional fans will not fit. The low-volume ceiling fans that DOE had identified as being inadvertently placed in the HVSD product class in the preliminary analysis were VSD fans. As part of analyzing VSD fans as a separate product class, DOE is proposing a definition for VSD fans that will avoid misclassifying them as HVSD fans based on diameter (18 inches or less). Consequently, the 5,000 CFM cutoff is no longer necessary. DOE proposes to eliminate the 5,000 CFM cutoff from the product class definitions.

Table IV–2 provides the new product classes that DOE is proposing for all ceiling fans. DOE also proposes new product class names based on updates to the ceiling fan categories and product class definitions. Specifically, DOE is updating product class names based on the elimination of the concept of ''low-volume'' or ''high-volume'' ceiling fans. Therefore, the naming convention for HVSD ceiling fans is changed to high-speed small-diameter (HSSD) ceiling fans, and HVLD ceiling fans to large-diameter ceiling fans. In addition, all airflow criteria are as measured by the test procedure as proposed in the test procedure NOPR and modified by the test procedure SNOPR. 80 FR 31487 (June 3, 2015). DOE requests comment

[20] Underwriters Laboratories Inc. UL Standard for Safety for Electric Fans, UL 507. 1999. Northbrook, IL. (Last accessed February 24, 2014) *http://www.comm-2000.com/ProductDetail.aspx?UniqueKey=8782.*

on the product class structure proposed.
See issue 1 in section VII.E.

TABLE IV–2—PROPOSED CEILING FAN PRODUCT CLASSES

	Product classes	Product class definitions
Small-Diameter (7 feet or less).	Highly-decorative	A ceiling fan with a maximum rotational speed of 90 RPM and less than 1,840 CFM airflow at high speed.
	Belt-driven	A ceiling fan with a series of one or more fan heads, each driven by a belt connected to one or more motors.
	Very Small-Diameter (VSD)	A ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan; and has one or more fan heads, each of which has a blade span of 18 inches or less.
	Hugger	A ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is ≤10 inches from the ceiling; and has a blade thickness of ≥3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in Table IV–3.
	Standard	A ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is >10 inches from the ceiling; and has a blade thickness of ≥3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in Table IV–3.
	High-speed small-diameter (HSSD).	A ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and has a blade thickness of <3.2 mm at the edge or a maximum tip speed > the applicable limit in Table IV–3.
Large-Diameter	Large-diameter	A ceiling fan that is greater than 7 feet in diameter.

TABLE IV–3—UL 507 BLADE THICKNESS AND MAXIMUM TIP SPEED LIMITS

Airflow direction *	Thickness (t) of edges of blades		Maximum speed at tip of blades	
	Mm	(inch)	m/s	(feet per minute)
Downward-Only	4.8 > t ≥ 3.2	(3/16 > t ≥ 1/8)	16.3	(3200)
Downward-Only	t ≥ 4.8	(t ≥ 3/16)	20.3	(4000)
Reversible	4.8 > t ≥ 3.2	(3/16 > t ≥ 1/8)	12.2	(2400)
Reversible	t ≥ 4.8	(t ≥ 3/16)	16.3	(3200)

* The ''downward-only'' and ''reversible'' airflow directions are mutually exclusive; therefore, a ceiling fan that can only produce airflow in the downward direction need only meet the ''downward-only'' blade edge thickness and tip speed requirements and a ceiling fan that can produce airflow in the downward and upward directions need only meet the ''reversible'' requirements.

The following sections provide further details on each product class proposed, and the methodology DOE is using to determine these product classes.

a. Highly-Decorative Ceiling Fans

In the preliminary analysis, DOE defined highly-decorative ceiling fans as ceiling fans with a rotational speed of 90 RPM or less, and an airflow of 2,000 CFM or less at high speed, as tested using the current DOE test procedure, because the primary utility of highly-decorative ceiling fans is not airflow.[21] Consequently, highly-decorative ceiling fans typically produce less airflow.

BAS stated that using a combination of CFM and RPM to define highly-decorative ceiling fans is better than simply using RPM. BAS also commented that it would be hard to measure CFM for some of these highly-decorative ceiling fans using the ENERGY STAR test procedure. BAS recommended using tip speed as the defining characteristic for highly-decorative ceiling fans, and stated that assuming a 52-inch fan and a 50 rpm speed, a maximum tip speed of less than or equal to 680 fpm would be appropriate. (BAS, No. 79 at p. 33)

On the other hand, Matthews Fan Company suggested that CFM, possibly as a function of fan diameter, be used to define highly-decorative ceiling fans because some of their smaller fans run at higher than 90 RPM speeds and would not fall under the proposed definition. (Matthews, Public Meeting Transcript, No. 83 at p. 176) Matthews Fan Company stated that if the RPM was used to define these fans, that a 1,100 RPM minimum cutoff would be appropriate because their small-diameter fans include high-speed blower motors. Matthews added that these fans are designed to provide directional airflow into a space directly underneath or across the room. (Matthews, Public Meeting Transcript No. 83 at p. 177)

ALA recommended that within the small diameter fans, the highly-decorative product class is (i) maximum rotational speed of 90 RPM and less than 2,000 CFM airflow at high speed; or (ii) belt-driven fans. (ALA, No. 91 at p. 8)

DOE first considered using only a maximum tip speed to define highly-decorative ceiling fans. DOE investigated which ceiling fans on the market would be categorized as highly-decorative using a tip speed of 680 fpm, as suggested by BAS. BAS did not provide any supporting information as to why the suggested maximum speed is appropriate for the assumed diameter. In general, relatively few decorative ceiling fans advertise rpm or tip speed in their specifications. In addition, DOE found that relatively few ceiling fans advertise that they operate entirely below the 680 fpm threshold recommended by BAS. Therefore, DOE could not endorse BAS's tip speed recommendation. DOE also looked into tip speeds slightly higher than 680 fpm that could potentially be used to define the highly-decorative product class. DOE looked at a database of 1,400 ceiling fans, and the next tip speed closest to 680 fpm was 803 fpm.

[21] The preliminary analysis TSD is available at *regulations.gov* under docket number EERE–2012–BT–STD–0045.

However, this ceiling fan was advertised as a ''traditional'' standard ceiling fan, not a highly-decorative ceiling fan. Hence, DOE concluded that any tip speed that is 803 fpm and above could not be used to define highly-decorative ceiling fans, as this would inadvertently place traditional ceiling fans into the highly-decorative ceiling fan product class. Thus, DOE could not definitively identify a tip speed that could be used to define highly-decorative ceiling fans. Therefore, DOE does not propose to define highly-decorative ceiling fans using only tip speed, to avoid misclassifying fans based on limited tip speed data.

DOE also considered using only a maximum CFM cutoff for the highly-decorative ceiling fans, per Matthews Fan Company's comments. DOE analyzed published CFM results of ceiling fans sold in the market, and observed which ceiling fans would be classified as highly-decorative using only a maximum CFM cutoff. DOE observed that some fans advertised and designed primarily to provide directed airflow in a small space—characteristics of VSD fans for which DOE proposes to set standards—were misclassified as highly-decorative ceiling fans. Further discussion on VSD ceiling fans is provided in IV.A.1.c.

DOE also considered using only the 1,100 RPM cutoff for the highly-decorative ceiling fans suggested by Matthews Fan Company. DOE performed market research on ceiling fans specifications and identified only three ceiling fans that had RPMs greater than the 1,100 RPM suggested by Matthews Fan Company. DOE confirmed, however, that these ceiling fans would be classified as VSD ceiling fans, because they are advertised for use when air circulation needs to be directed, or if space is tight. In addition, Matthews Fan Company stated in its comments that these high RPM ceiling fan are designed to provide directional airflow into a space directly underneath. (Matthews, Public Meeting Transcript No. 83 at p. 177) Therefore, DOE does not propose to define highly-decorative ceiling fans using only RPM, to avoid misclassifying fans based on limited data.

After finding that using only tip speed, RPM, or airflow to define highly-decorative ceiling fans may result in misclassifications, DOE proposes to use a definition based on both a CFM and RPM cutoff, similar to what was analyzed and considered in the preliminary analysis. DOE expects that this approach will minimize misclassifications. DOE is proposing this definition based on both CFM and RPM because relatively low maximum RPM may indicate that a ceiling fan was not designed primarily to provide airflow, as would relatively low maximum airflow. However, criteria for a low maximum RPM by itself might misclassify some larger ceiling fans that operate at relatively low RPM, but provide high volumes of airflow, as highly decorative ceiling fans. Conversely, criteria for low maximum CFM by itself might incorrectly misclassify some VSD ceiling fans as highly decorative category. ALA supports an RPM and CFM cutoff for highly decorative ceiling fans. (ALA, No. 91 at p. 8) DOE requests comment on the approach to use both fan speed and an airflow threshold to delineate highly-decorative ceiling fans. See issue 2 in section VII.E.

In the preliminary analysis, DOE used a 2,000 CFM (as tested per the current DOE test procedure) cutoff for highly-decorative fans. For this document, DOE is updating the CFM cutoff value from 2,000 CFM to 1,840 CFM because the test procedure SNOPR updates the method of test to mounting ceiling fans directly to the real ceiling, which yields a different airflow measurement. DOE determined the percentage reduction in CFM from the current DOE test procedure to mounting directly to the ceiling by performing tests on ceiling fans in both configurations and calculating a scaling factor. Applying this scaling factor, DOE proposes that a highly-decorative ceiling fan is a ceiling fan with a maximum rotational speed of 90 RPM and less than 1,840 CFM airflow at high speed.

b. Belt-Driven Ceiling Fans

DOE did not include a separate product class for belt-driven ceiling fans in the preliminary analysis. According to ALA, a belt-driven ceiling fan is a series of one or more fan heads suspended from the ceiling, each driven by a belt connected to one or more motors that are independently suspended from the ceiling. (ALA, No. 91 at p. 11)

ALA suggested including belt-driven fans within the highly-decorative product class. (ALA, No. 91 at p. 11) ALA also commented that belt-driven ceiling fans are purchased by consumers principally for their aesthetic qualities. Typically, a belt-driven fan will use one or two motors to power multiple fan heads—up to seven or eight—that rotate at low speed. The fan heads may rotate at very slow speeds, with maximum speeds under 90 rpm, if there are many fan heads attached to the same motor. (ALA, No. 91 at p. 11)

DOE's research on belt-driven ceiling fans indicates that the market share is less than 1 percent. DOE has observed that these fans are used in bars and restaurants that have decorative ceilings with limited electrical boxes on the ceiling to mount multiple conventional ceiling fans. Belt-driven ceiling fans use one or two motors to power multiple fan heads, eliminating the need for many electrical boxes. Additionally, belt-driven ceiling fans are highly customizable, in that consumers can decide number of fan heads and the kind of fan belts to use in their belt-driven ceiling fans, for example.

ALA suggested including belt-driven ceiling fans within the highly-decorative ceiling fan product class. (ALA, No. 91 at p. 11) EPCA requires that if DOE sets energy efficiency standards for ceiling fans, it must consider ''establishing separate exempted product classes for highly decorative fans for which air movement performance is a secondary design feature.'' (42 U.S.C. 6295(ff)(6)(B)(ii)) Because belt-driven ceiling fans can have up to seven to eight fan heads, DOE has determined that the total airflow that these ceiling fan heads will provide indicates that air movement performance is not a secondary design feature for these fans.

Instead, DOE proposes to separate belt-driven ceiling fans into their own product class because they provide a distinct utility for consumers. DOE proposes to define belt-driven ceiling fans as a ceiling fan with a series of one or more fan heads, each driven by a belt connected to one or more motors.

In the NOPR, DOE agrees with manufacturers' that the market share for belt-driven ceiling fans is small. Due to the limited number of basic models for belt-driven ceiling fans, DOE did not have data to directly analyze and establish standards for this additional product classes. As a result, DOE does not propose standards for belt-driven ceiling fans in this rulemaking.

c. Very Small-Diameter Ceiling Fans

In the preliminary analysis, DOE did not have a separate product class for ceiling fans less than or equal to 18 inches in diameter. DOE received comments on the preliminary analysis that these ''very small-diameter fans'' require special consideration.

ALA expressed concerns with DOE's proposed treatment of ceiling fans with very small diameters. ALA defines a ''very small-diameter ceiling fan'' as a ceiling fan with one or more fan heads, each of which has a blade span of 18 inches or less. ALA estimated that very small-diameter fan sales represent between 0.3 and 0.5 percent of the U.S.

ceiling fan market. ALA added that these fans would be disproportionately penalized under DOE's candidate standard levels for low-volume standard and hugger ceiling fans, which do not appear to have been based on testing of any ceiling fan smaller than 44 inches in diameter. According to ALA, very small-diameter fans would be disadvantaged because very small diameter ceiling fans use high-velocity AC motors to operate at high speeds, and there is no DC motor on the market, or currently in development, that would provide an acceptable substitute for this functionality. (ALA, No. 91 at p. 9) ALA requests that DOE consider very small-diameter ceiling fans to be outside the scope of this rulemaking or otherwise exempt them from energy efficiency standards. (ALA, No. 91 at p. 9) ALA commented that if DOE does not determine that very small-diameter ceiling fans are outside the scope of the rulemaking or otherwise exempt them from standards, DOE should establish a separate product class for very small-diameter ceiling fans because of the unique utility that they provide to consumers. (ALA, No. 91 at p. 9) ALA commented that very small-diameter fans could also be multi-head or orbital fans that also provide consumers a distinct utility from traditional ceiling fans. (ALA, No. 91 at p. 10) These ceiling fans provide consumers targeted airflow that can be directed, unlike the airflow of a traditional ceiling fan. Also VSD fans can be mounted in small, awkward spaces where traditional fans will not fit. (ALA, No. 91 at p. 10) Therefore, ALA proposed to define very small-diameter fans as ''a ceiling fan with one or more fan heads, each of which has a blade span of 18 inches or less.'' (ALA, No. 8 at p. 6)

In response to the comments received on very small-diameter ceiling fans, DOE conducted testing of ceiling fans with blade spans of 18 inches or less to obtain data on their performance. DOE determined from testing that very small-diameter ceiling fans have much lower airflow capacity and airflow efficiency than standard and hugger fans. Further discussion on airflow capacity and efficiency results for VSD ceiling fans are in chapter 5 of the NOPR TSD. Additionally, very small-diameter fans provide a different utility to consumers, in that these fans can be mounted in small places where traditional ceiling fans will not fit. DOE concluded that for these reasons, a separate product class for very small-diameter ceiling fans is warranted.

Therefore, DOE proposes to adopt the very small-diameter fan definition suggested by ALA. DOE proposes that very small-diameter ceiling fans be defined as a ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan; and has one or more fan heads, each of which has a blade span of 18 inches or less.

d. Standard and Hugger Ceiling Fans

In the test procedure NOPR, DOE proposed standard and hugger ceiling fan definitions based on the distance between the lowest point of the fan blades and the ceiling. For standard ceiling fans, DOE proposed that the lowest point of the fan blades is more than 10 inches from the ceiling. For hugger ceiling fans, DOE proposed that the lowest point of the fan blades is no more than 10 inches from the ceiling. 79 FR 62526 (October 17, 2014). With the current proposal to classify fans as ''small-diameter'' and ''large-diameter'', instead of ''low-volume'' and ''high-volume'', DOE proposes to update the standard and hugger ceiling fan definitions to differentiate them from other small-diameter product classes, such as VSDs.

Several manufacturers commented on the proposed definition of hugger ceiling fans in the test procedure NOPR, and on how they characterize their own hugger ceiling fans. Emerson stated that its hugger ceiling fans are designed to be mounted 11 to 12-inches from the ceiling, instead of 9 to 10 inches to avoid turbulent air, which causes the fan to vibrate, wobble, and make noise. (Emerson, Public Meeting Transcript, No. 83 at p. 73) The Minka Group stated that it classifies hugger ceiling fans as fans that are mounted directly to the ceiling without a downrod. Minka Group added that they measure the distance between the top of the blade instead of the bottom. Minka Group also stated that there was no advantage to including tri-mount fans to this category. (Minka, Public Meeting Transcript, No. 83 at p. 74) DOE understands tri-mount to mean a fan that can be mounted flush to the ceiling, with a standard downrod, or on a slope. Hunter Fan stated that it calls a fan a hugger ceiling fan when it's directly bolted to the ceiling. (Hunter, Public Meeting Transcript, No. 83 at p. 93) BAS mentioned that defining hugger ceiling fans as just mounted to the ceiling without a downrod would be problematic because, with the exception of their multi-mount ceiling fans, all of its fans are mounted to the ceiling without a downrod but still have 16 inches between the blades and ceiling. (BAS, Public Meeting Transcript, No. 83 at p. 94)

DOE recognizes that the ceiling fan industry does not have a standardized definition for hugger ceiling fans. While some ceiling fan manufacturers define hugger ceiling fans based on how they are mounted to the ceiling, others find this definition problematic. For the purposes of promulgating standards, DOE definitions, to the extent possible, are based on product specifications to provide verifiable methods of determining product class. Consequently, DOE proposes to base the hugger ceiling fan product class definition on the distance between the lowest point of ceiling fan blade and the ceiling, as specified by the manufacturer in the product literature shipped with the product. DOE proposes that the lowest point of the fan blades is no more than 10 inches from the ceiling for hugger fans.

While BAS stated that the 10-inch height is appropriate for the hugger definition, they also stated that CFM numbers would not drop dramatically when using the 10-inch specification, so the hugger classification has the potential to be eliminated entirely. (BAS, Public Meeting Transcript, No. 83 at p. 82)

DOE tested a multi-mount fan in both standard and hugger configurations based on the test methods presented in the test procedure NOPR, which assumes testing ceiling fans to a false ceiling, to evaluate relative performance. DOE observed a 16 percent decrease in CFM for a hugger configuration compared to a standard configuration. DOE did not observe any change in power consumption. DOE assumes, based on ceiling fan testing in multiple configurations that the relative performance between standard and hugger configurations would be the same even under the test procedure SNOPR, which assumes testing ceiling fans mounted directly to ceiling. Additionally, as described in the preliminary analysis, DOE determined that hugger fans offer a different functionality to the consumer because hugger fans can be safely used in rooms with lower ceilings. DOE concludes that these reasons warrant a separate product class for hugger ceiling fans.

DOE also received comments regarding the hugger definition in response to the test procedure NOPR. (DOE used the same definition for hugger fans in the preliminary analysis and in the test procedure NOPR.) ALA requested that DOE use the term ''close to ceiling'' instead of ''hugger.'' ALA mentioned that ''hugger'' ceiling fan can cause confusion with its commonly understood meaning in the industry. ALA proposed to define close to ceiling fans as: Not VSD or highly-decorative; and the lowest point on the fan blades

is less than or equal to 10 inches from the ceiling; and has a blade thickness of greater than or equal to 3.2 millimeters at the edge, and having a maximum tip speed less than or equal to the applicable limit in the UL 507 table. (ALA, No. 96 at p. 8) BAS recommended that within the small-diameter fans (7 feet or less), hugger fans are those that have a tip speed greater than 680 fpm and have a blade to ceiling distance less than or equal to 10 inches. (BAS, No. 88 at p. 2)

DOE received no adverse comments from interested parties on its proposal to include in the definition of a hugger ceiling fan a distance of less than or equal to 10 inches from the lowest point of the fan blade to the ceiling. Thus, DOE proposes to include this criterion for the hugger fan product class in this NOPR.

DOE expects that keeping the name ''hugger'' is less costly and disruptive for manufacturers than changing to ''close to ceiling'' per ALA's suggestion. The majority of ceiling fans for which the lowest point of the fan blade is less than or equal to 10 inches from the ceiling are already referred to as ''hugger'' ceiling fans by manufacturers and no change in marketing material would likely be required. For fans where the blade is less than or equal to 10 inches from the ceiling and mounted on a downrod, some manufacturers would need to make changes to marketing material that to meet the proposed definition where the products are not already referred to as hugger ceiling fans by the industry. Based on online research on ceiling fans sold in the market, DOE estimates that these fans are in the minority. DOE proposes to continue to use the term ''hugger'' to remain consistent with the majority of the market.

After considering the elements of the hugger definition discussed above, DOE proposes that a hugger ceiling fan is a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is ≤10 inches from the ceiling; and has a blade thickness of ≥3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in Table IV–3.

DOE also received comments on the standard ceiling fan definition proposed in the test procedure NOPR. ALA suggested defining small-diameter standard ceiling fans as: Not VSD or highly decorative; and lowest point on fan blades is greater than 10 inches from the ceiling; and has a blade thickness of greater than or equal to 3.2 millimeters at the edge and a maximum tip speed less than or equal to the applicable limit in the UL 507 table. (ALA, No. 96 at p. 8) BAS recommended that within the small-diameter fans (7 feet or less), the standard fans are those that have a tip speed greater than 680 fpm, and have a blade to ceiling distance greater than 10 inches. (BAS, No. 88 at p. 2)

DOE received no adverse comments from interested parties on its proposal to include the distance from the lowest point of the fan blade to the ceiling to be greater than 10 inches in the definition of standard ceiling fans. DOE continues to include this distance in the standard ceiling fan proposal in this document. Additionally, as discussed previously, DOE proposes to adopt the UL 507 standard blade thickness and maximum tip speed limits when defining product classes, so as to not misclassify ceiling fans. Therefore, DOE proposes to use the same definition for standard ceiling fans as was used in the preliminary analysis and presented in the previous paragraph.

e. High-Speed Small-Diameter Ceiling Fans

In the preliminary analysis, DOE analyzed the HVSD product class, which included ceiling fans with a blade span less than or equal to 7 feet and an airflow greater than or equal to 5,000 CFM. As discussed in section IV.A.1, DOE proposes to classify fans as ''small-diameter'' and ''large-diameter'', instead of ''low-volume'' and ''high-volume'' for this NOPR. Consequently, DOE proposes to rename the HVSD ceiling fans product class analyzed in the preliminary analysis to high-speed small-diameter (HSSD), ceiling fans for this document. DOE also proposes to exclude the 5000 CFM cutoff from the HVSD definition in the HSSD ceiling fan definition. DOE proposes to define HSSD ceiling fans as fans that are not VSD or highly-decorative; and have a blade thickness of less than 3.2 millimeters at the edge or a maximum tip speed greater than the applicable limit in Table IV–3.

DOE received several comments on the HVSD definition presented in the preliminary analysis. BAS's suggested product class structure no longer included HVSD ceiling fans, and instead incorporates HVSD ceiling fans into standard or hugger ceiling fans. (BAS, No. 88, p. 4) ALA proposed defining industrial fans (formerly HVSD) as fans that are not VSD or highly decorative; and have a blade thickness of less than 3.2 millimeters at the edge or a maximum tip speed greater than the applicable limit in the UL 507 table. (ALA, No. 96 at p. 8)

DOE finds that HSSD ceiling fans provide different utility to the consumer than standard or hugger ceiling fans. HSSD ceiling fans generally operate at much higher speeds (in terms of RPM) than standard or hugger ceiling fans, and are installed in commercial applications. HSSD ceiling fans are available in a blade span range similar to standard and hugger ceiling fans, but an HSSD fan typically provides more airflow at a given blade span because it runs at much higher RPMs. DOE observes that HSSD fans are generally applied in commercial buildings whereas standard fans are installed in residential buildings. These factors indicate that HSSD ceiling fans provide a different utility to consumers compared to standard fans that warrants a separate product class for these ceiling fans. DOE proposes to define HSSD ceiling fans as suggested by ALA as a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and has a blade thickness of less than 3.2 mm at the edge or a maximum tip speed greater than the applicable limit in Table IV–3.

f. Large-Diameter Ceiling Fans

In the preliminary analysis, DOE defined HVLD ceiling fans as fans that have a blade span greater than 7 feet. DOE proposes to rename HVLD ceiling fans as large-diameter ceiling fans for this document to be consistent with the proposal to establish product classes for ceiling fans primarily by diameter and not airflow. All fans categorized as HVLD in the preliminary analysis will be categorized as large-diameter in this document.

DOE received no comments on the HVLD definition described in the preliminary analysis. DOE proposes to use the HVLD definition from the preliminary analysis to define large-diameter ceiling fans for this NOPR. Therefore, DOE proposes to define large-diameter ceiling fans as a ceiling fan that is greater than 7 feet in diameter.

2. Technology Options

In the preliminary analysis market and technology assessment, DOE identified and assessed several technology options that were expected to improve the efficiency of ceiling fans, as measured by the DOE test procedure. These technologies fall into three main categories: (1) More efficient motors, which included direct-drive single phase induction motors, geared motors, brushless direct current (DC) motors, and three-phase induction motors; (2) more efficient blades, which included fewer fan blades, twisted blades, airfoil blades, beveled blades, curved blades, blade attachments and blade material;

and (3) ceiling fan controls, which include occupancy sensors. DOE then evaluated these technology options in the screening analysis to determine which would be screened out, and which would be retained and incorporated as design options in the engineering analysis.

In the preliminary analysis, DOE also requested comments on technology options that it had not identified that could be incorporated into the analysis. This section provides a discussion of newly considered technology options, and a list of the technology options DOE then analyzed in the screening analysis. DOE considered capacitor start induction run (CSIR) motors, capacitor start capacitor run (CSCR) motors, startup energy, wind and temperature sensors, fan optimization and gearless direct current (DC) motors as new technology options in this section. The new technology options were provided in response to DOE's request for comments to the preliminary analysis, and DOE also conducted additional research of new technologies.

a. CSIR and CSCR Motors

In the preliminary analysis, DOE specifically requested comment on whether there are other single-phase alternating current motor options, like CSIR and CSCR motors, which can be incorporated into ceiling fans and increase ceiling fan efficiency. ALA commented that CSIR and CSCR motors have been researched for ceiling fan applications and were found to be problematic. These motors create audible noise, high blade tip speeds and excessive motor temperatures when enclosed within ceiling fan housings. (ALA, No. 91 at p. 16) DOE also did not find any CSIR or CSCR motors that are incorporated in commercial products or working prototypes. DOE did not include CSCR and CSIR motors as technology options for these reasons.

b. Startup Energy

In its written comments, MacroAir suggested that DOE consider designs that reduce startup energy. MacroAir suggested DOE study various fans comparing their moment of inertia with startup power. (MacroAir, No. 89 at p. 7)

DOE recognizes that certain fan designs that reduce ceiling fan startup energy may have energy savings potential. However, MacroAir did not provide data on the magnitude of the savings potential. In addition, DOE is not aware of any industry test methods for measuring fan startup energy. Furthermore, the industry test procedure for small-diameter and larger-diameter ceiling fans requires that the airflow or thrust (for small-diameter or large-diameter ceiling fans, respectively) be measured only after the ceiling fan reaches steady state. Therefore, startup power, or reduction of startup power, is not reflected in the proposed metric. DOE did not include designs that reduce ceiling fan startup energy in the engineering analysis for this reason.

c. Wind and Temperature Sensors

Wind and temperature sensors detect temperature changes in the surrounding space, or potential wind speed reductions below certain thresholds. Ceiling fans could potentially adjust fan speed based on the wind and temperature in the space the ceiling fan is located when coupled with these sensors. This type of modulation could enable the ceiling fan to better match demand and reduce energy consumption. DOE received several comments on this potential technology option.

BAS commented that it is the only manufacturer of a ceiling fan with a temperature sensor. (BAS, Public Meeting Transcript, No. 83 at p. 194) MacroAir stated that implementing wind and temperature sensors in ceiling fans could lead to energy savings and suggested that DOE investigate this technology further. (MacroAir, No. 89 at p. 12) However, ALA stated that it is not aware of any ceiling fans or working prototypes that include integrated wind or temperature sensors, or data that would indicate that these products could lead to energy savings in real world applications. (ALA, No. 91 at p. 15)

DOE investigated the applications of wind and temperature sensors in ceiling fans. To DOE's knowledge, only one manufacturer incorporates temperature sensors in its ceiling fans. Qualitative data on how wind and temperature sensors reduce energy consumption of a ceiling fan is not available because this technology is new. Therefore, DOE is unable to fully evaluate whether these sensors reduce energy consumption in ceiling fan applications at this time. Consequently, DOE did not consider wind and temperature sensors as technology options for this rulemaking. DOE requests data on how wind and temperature sensors could reduce energy consumption in a ceiling fan. See issue 3 in section VII.E.

d. Fans With Fewer Blades and Fan Optimization

In the preliminary analysis, DOE observed that large-diameter fans with fewer blades are generally more efficient because they are subject to less air resistance, so DOE evaluated fewer blades as a design option. DOE requested comment in the preliminary analysis on how manufacturers choose the number of blades to use for large-diameter fans and how it affects efficiency.

BAS commented that isolating the number of blades as a design option ignores many factors and that fewer fan blades by itself does not affect efficiency. BAS suggested that a combination of factors such as cord width, angle of attack, and blade attachments, paired with number of blades, are considered by manufacturers in a more holistic approach when optimizing fan designs for efficiency. (BAS, No. 79 at p. 38; BAS, Public Meeting Transcript, No. 83 at p. 211) Additionally MacroAir stated that reducing the number of fan blades from eight to six is limiting to the market and may impede future innovations. (MacroAir, No. 89 at p. 7)

After further investigation, DOE agrees with BAS and MacroAir and proposes to replace reducing the number of fan blades for large-diameter ceiling fans as a design option with a fan optimization design option. Fan optimization represents the increase in the efficiency of a fan by adjusting or optimizing the design features that already exist in the fan. These adjustments could include changing blade pitch, fine-tuning motor RPM, and changing internal motor characteristics like the diameter of the wire, number of windings, skew angle, stack height and capacitors. DOE observed that ceiling fans with the same blade span, blade material, number of blades, type of motor and size of motor have a range of performances, indicating that some ceiling fans are optimized, whereas others are not. Fan optimization provides manufacturers more flexibility in making design changes to improve ceiling fan efficiency. DOE included fan optimization as a design option for standard and hugger fans in the preliminary analysis. DOE is now considering the fan optimization technology option for all ceiling fan product classes.

e. Gearless DC Motors

MacroAir commented that direct drive by itself should be uncoupled from any motor type and included as a design feature, because any transfer of energy is a loss in efficiency. MacroAir stated that gearbox losses are between 5 percent and 35 percent. (MacroAir, No. 89 at p. 5) MacroAir specifically suggested incorporating a gearless DC motor technology option in the analysis,

which it considers max-tech. (MacroAir, No. 89 at p. 5)

DOE researched gearless ceiling fan designs in response to MacroAir's comment. DOE found several large-diameter ceiling fans on the market that use gearless DC motor designs. This indicates that the gearless DC motor technology option is technologically feasible in ceiling fans. Gearboxes have losses that may reduce overall ceiling fan efficiency, as MacroAir commented. Eliminating the gearbox and associated losses could, in turn, improve overall ceiling fan efficiency. DOE included gearless motors as a technology option for consideration in the screening analysis for these reasons. Further details on this technology option can be found in section IV.B.

DOE is no longer considering the following technology options from the preliminary analysis for this NOPR: Three-phase induction motors, twisted blades, beveled blades, and alternate blade material. DOE screened out these technology options in the preliminary analysis based on the four screening criteria, outlined in section IV.B. Additionally, DOE received no comments from interested parties about including these technology options for the NOPR. Therefore, DOE continues to screen out the above technology options.

For this NOPR, DOE proposes to analyze the technology options listed in Table IV–4. The technology options for this NOPR include a subset of the technology options from the preliminary analysis, in addition to new technology options based on interested party feedback and additional DOE research. The screening analysis provides further discussion on which of these technology options DOE retained as design options for the engineering analysis.

TABLE IV–4 TECHNOLOGY OPTIONS AND DESCRIPTIONS

Technology option	Description
Fan optimization	This represents increasing the efficiency of a fan by adjusting existing design features. These adjustments could include changing blade pitch, fine-tuning motor RPM, and changing internal motor characteristics such as the diameter of the wire, number of windings, skew angle, stack height, and capacitors.
More efficient motors:	
Larger direct drive motors.	This represents increasing the efficiency of a fan by increasing the size of (or the quality of steel used in) the stator and rotor stack, improving the lamination design, increasing the cross section of copper wiring, or operating the fan at reduced speed through capacitor speed control.
Brushless DC motor.	DC motors are permanent magnet synchronous AC motors driven by a converter plus inverter combination control system. In this configuration, the motor displays characteristics of direct current motors; thus, they are called brushless direct current motors. Because there is no electrical current flowing in the rotor of a DC motor, there are no rotor energy losses, thereby resulting in greater efficiency than standard AC motors.
Geared DC motor	DC motor fans with geared motors have fan blades attached to the motor via a geared mechanism, which allows the fan blades to rotate at a different speed from the motor.
Gearless DC motor.	Fans with a DC motor that drive the fan blades directly without the use of a geared mechanism.
More efficient blades	
Curved blades	Curved blades are blades for which the centerline of the blade cross section is cambered. Curved blades generally have uniform thickness and no significant internal volume.
Airfoil blades	Airfoil blades use curved surfaces to improve aerodynamics, but the thickness is not uniform and the top and bottom surfaces do not follow the same path from leading edge to trailing edge.
Blade attachments	Blade attachments refer to upswept blade tips or other components that can be fastened to a fan blade to potentially increase airflow or reduce drag.
Ceiling fan controls	
Occupancy sensors.	Occupancy sensors use technologies that detect the presence of people through movement, body heat, or other means. Ceiling fans used with an occupancy sensor could power down if they sense that a room is unoccupied.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

1. *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

2. *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

3. *Impacts on product utility or product availability.* If it is determined that a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products

generally available in the United States at the time, it will not be considered further.

4. *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further. (10 CFR part 430, subpart C, appendix A, 4(a)(4) and 5(b))

In sum, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the above four criteria, it will be excluded from further consideration in the engineering analysis. The reasons for excluding technology options for this NOPR are discussed below.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be screened out based on the screening criteria. DOE requests comment on the screened out and remaining technology options for each product class. See issue 4 in section VII.E.

1. Screened-Out Technologies

a. Standard and Hugger Ceiling Fans

In the preliminary analysis, DOE screened out the following technologies for standard and hugger fans: Occupancy sensors, geared motors, three-phase induction motors; and blade design elements including twisted blades, airfoil blades and beveled blades, fans with fewer blades, blade attachments, and alternative blade materials. In line with the technologies DOE screened out, Hunter Fan stated in comments on the preliminary analysis that the aesthetic appeal of ceiling fans must be considered because it can affect consumer utility. (Hunter, Public Meeting Transcript, No. 83 at p. 197)

In the preliminary analysis, DOE screened out the occupancy sensors technology option because DOE did not have enough information to determine whether occupancy sensors are technologically feasible for use in all ceiling fans. DOE requested comments on sensors as a technology option. See issue 5 in section VII.E.

In response to DOE's request for comment on sensors, ALA, Hunter, Westinghouse, and Lutron on behalf of Westinghouse commented to support DOE's decision to screen out occupancy sensors from the analysis. (Hunter, Public Meeting Transcript, No. 83 at p. 193) ALA and Westinghouse stated that occupancy sensors would be problematic for ceiling fans installed in bedrooms. Many consumers operate the ceiling fan continuously while sleeping, but the occupancy sensor would not detect the movement necessary to continuously operate through the night. (ALA, No. 91 at p. 16; Westinghouse, Public Meeting Transcript, No. 83 at p. 206) BAS, however, stated that a schedule can be included in the occupancy sensor to get around the issue of the ceiling fan turning off in the bedroom. (BAS, Public Meeting Transcript, No. 83 at p. 206)

Westinghouse also commented that occupancy sensors can be difficult to manage in a residential space. It stated that to include an occupancy sensor to the ceiling fan, the room might have to have one as well to meet local building codes. (Westinghouse, Public Meeting Transcript, No. 83 at p. 195)

Occupancy sensors have the potential to save energy by reducing the number of ceiling fan operating hours. DOE did not find or receive enough data to evaluate any potential tradeoff between consumer utility and the energy savings of reduced operating hours. DOE also researched the option of introducing occupancy sensor schedulers in ceiling fans. DOE did not find data to show that occupancy sensor schedulers can be installed reliably in all ceiling fans. At this time, DOE proposes to continue to screen out occupancy sensors because DOE cannot satisfactorily evaluate the energy savings potential, technological feasibility and impact on consumer utility of implementing sensors or schedule controls. DOE requests comment and data to evaluate these factors. See issue 5 in section VII.E.

DOE did not receive comments on the decision to screen out three-phase induction motors or blade design elements including twisted blades, airfoil blades and beveled blades, fans with fewer blades, blade attachments, and alternative blade materials for standard and hugger ceiling fans. DOE continues to screen out these technology options for this NOPR.

b. Very Small-Diameter Ceiling Fans

As discussed in section IV.A.1, DOE proposes to analyze a new product class for ceiling fans with blade spans of 18 inches or less. DOE proposes to screen out the same technologies for very small-diameter fans as for standard and hugger fans as described in section IV.B.1.a. DOE did not receive any feedback on the decision to screen out these technologies.

VSD ceiling fans are used in residential applications, similar to standard and hugger ceiling fans. Thus, as discussed for standard and hugger ceiling fans, DOE proposes to screen out blade technology options that could affect appearance of VSD ceiling fans.

During manufacturer interviews, DOE asked whether the same design options considered in the preliminary analysis for the standard and hugger fans could be considered for VSD ceiling fans. These design options included fan optimization, larger direct drive motor, and DC motors. DOE has not received any objections from manufacturers regarding its consideration of these design options for VSD ceiling fans. One manufacturer pointed out that there are no VSD ceiling fans with DC motors currently available in the market, but speculated that DC motors in VSD ceiling fans could be technologically feasible because they are used in more traditional ceiling fans (standard and hugger ceiling fans). The manufacturer also acknowledged that there is limited data on efficiency improvements of these design options specifically for VSD ceiling fans. Further discussion on how these design options were incorporated is provided in chapter 5 of the NOPR TSD.

DOE requests comment on the technologies that it screened out for VSD ceiling fans. See issue 4 in section VII.E.

c. High-Speed Small-Diameter Ceiling Fans

In the preliminary analysis, DOE screened out the following eight technologies for HVSD ceiling fans: More efficient direct-drive single-phase induction motors, geared motors, three-phase induction motors, fans with fewer blades, twisted blades, blade attachments, alternative blade materials, and occupancy sensors. In line with the technologies that DOE screened out, BAS commented that that they do not use geared motors with variable frequency drives in acoustically sensitive places. (BAS, Public Meeting Transcript, No. 83 at p. 214)

DOE received no comments objecting to screening out these technology options in the preliminary analysis. DOE does not expect that these technology options or the applicability of the screening criteria to them will be affected by the proposed change in name and definition of the HVSD product class to the HSSD product class analyzed in this document. Therefore DOE proposes to continue to screen out these technology options for HSSD fans in this NOPR.

d. Large-Diameter Ceiling Fans

In the preliminary analysis, DOE screened out the following technologies for large-diameter fans: More efficient direct-drive single-phase induction

motors, twisted blades, blade attachments, alternative blade materials and occupancy sensors.

In the preliminary analysis, DOE described blade attachments as an attachable clip that can be added to a fan blade to increase airflow or reduce drag. DOE asked for comment in the preliminary analysis about blade configurations and blade designs as technology options to improve ceiling fan efficiency.

BAS commented that more than half of the large-diameter manufacturers use some form of blade attachment and that winglets are the most common type of blade attachment. BAS stated that a properly designed winglet can increase the efficiency of a ceiling fan and provided articles to show that blade attachment are used to increase fuel efficiency in aircrafts. (BAS, No. 79 at p. 17) MacroAir stated that it does not use blade attachments and does not consider blade attachments to provide performance or efficiency gains. (MacroAir, No. 89 at p. 13)

There is disagreement in the industry whether blade attachments improve fan efficiency. Because DOE has not received sufficient information to conclude that blade attachments increase the efficiency of large-diameter fans, DOE continues to screen out blade attachments.

DOE did not receive comment on the decision to screen out more efficient direct-drive single-phase induction motors, twisted blades, alternative blade materials, and occupancy sensors for large-diameter fans. DOE continues to screen out these technology options for large-diameter fans for this NOPR.

2. Remaining Technologies

DOE tentatively concludes that the technology options not screened out meet all four screening criteria to be examined further as design options in DOE's NOPR analysis. DOE determined that these technology options are technologically feasible because they are being used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety). In summary, DOE did not screen out the following technology options:

a. Fan Optimization

In the preliminary analysis, DOE screened in fan optimization for standard and hugger ceiling fans. DOE observed that ceiling fans with the same blade span, blade material, number of blades, type of motor and size of motor have a range of performances indicating that some ceiling fans are optimized, whereas others are not. DOE research since the preliminary analysis indicated that ceiling fans in all product classes can be optimized.

Matthews Fan stated that increasing the angle of the blade causes heat rise on the motor and the fan might not continue to meet the UL safety requirements and therefore adjusting the blade pitch is not possible. (Matthews, Public Meeting Transcript, No. 83 at p. 227)

Increasing the blade pitch can increase the heat rise on the motor and that blade pitch optimizing needs to be done within the UL safety requirements. The fan optimization design option, as proposed, includes other adjustments that manufacturers can make to improve efficiency. Consequently, manufacturers do not have to adjust blade pitch, but have the flexibility to determine which adjustments to existing designs are cost-effective and comply with UL safety requirements. DOE continues to consider fan optimization as a viable technology option for improving fan efficiency that meets DOE's screening criteria. Consequently, DOE considered fan optimization in its analysis for all product classes.

b. Larger Direct-Drive Motor

DOE screened in larger-direct drive motors as a technology option in the preliminary analysis. In response, ALA commented that DOE has not accounted for the difficulties associated with motor redesign that is required for larger AC motors. ALA stated that a significant constraint on ceiling fans is the maximum internal temperature permitted by UL 507. According to ALA, using a larger AC motor could create higher internal temperature and lead to failure in UL testing. (ALA, No. 91 at p. 5)

DOE recognizes ALA's concerns but proposes to continue to screen in larger direct-drive motors for analysis in this NOPR. DOE identified several commercially-available ceiling fan model series that use larger direct-drive single-phase induction motors and still adhere to existing safety standards. For example, the 52-inch Monte Carlo Homeowner Max uses a 153 × 15 mm motor [22] and the 52-inch Monte Carlo Designer Max uses a 188 × 15 mm motor.[23] DOE conducted testing to evaluate the impact on performance of using larger direct-drive motors. DOE's internal test data shows that the efficiency of low-volume ceiling fans can be improved through the use of a larger AC direct-drive motor. Discussions with manufacturers confirmed that ceiling fan efficiency can be improved by increasing the size of the motor, but that the improvement may be small and increases production cost. Based on these findings, DOE continues to consider larger direct-drive motors as a viable technology option for improving fan efficiency that meets DOE's screening criteria. Consequently, DOE considered larger direct-drive motors in its analysis for standard and hugger fans. DOE accounts for costs associated with implementing a larger-direct drive motor in the engineering and MIA analyses. DOE also screened in larger direct-drive motors for very small-diameter ceiling fans based on information received during manufacturer interviews and requests comments on the inclusion of this design option for VSD ceiling fans. See issue 4 in section VII.E.

c. DC Motor

Brushless DC Motors in Standard, Hugger, and HSSD Product Classes

In the preliminary analysis, DOE screened in brushless DC motors for standard, hugger and HVSD ceiling fans. These ceiling fans typically use AC induction motors. In AC induction motors, current flowing through copper wire windings in the stator induce a current in the motor rotor to create a magnetic field. There are energy losses associated with this process. In DC motors, the rotor is a permanent magnet that generates a magnetic field without the need for induced current. Therefore, the energy losses associated with inducing current in the rotor in an AC motor are not present in DC motors. Consequently, DC motors are typically more efficient than AC induction motors. Another advantage of DC motors is that they tend to be smaller and make less noise than AC induction motors. However, DC motors require additional controls to enable them to function on power sources typical in a home. Implementing DC motor technology in ceiling fans may increase manufacturing and product retail cost. These cost impacts are analyzed in the engineering and downstream analyses. DOE requested comment on the motor

[22] Monte Carlo. *52″ Homeowner Max, http://www.montecarlofans.com/38090/52-Homeowner-Max-5HM52BPN.html.*

[23] Monte Carlo. *52″ Designer Max, http://www.montecarlofans.com/37831/52-Designer-Max_5DM52RZW.html.*

technology options in the preliminary analysis.

ALA commented that brushless DC motors should be screened out of DOE's analysis, because they have only been available in the market for a short time, and therefore not enough data exists to fully evaluate the long-term reliability of ceiling fans with DC motors. (ALA, No. 91 at p. 16) However, the California Investor Owned Utilities (CA IOUs) supported the inclusion of DC motors as a technology option and urged DOE to incorporate only the assumptions regarding manufacturing, warranty, maintenance, and repair costs based on recent and accurate data or research from manufacturers rather than more informal assumptions. CA IOUs recommended that DOE conduct research regarding DC motors through direct outreach with manufacturers. (CA IOUs, No. 91 at p. 2) BAS commented that the latest generation of DC motor controllers don't require a power converter and can drive the motor directly from line voltage inverter. This eliminates one power conversion stage, reducing cost, and improving efficiency and reliability. According to BAS, DC motors are manufactured using similar techniques as AC motors and share many critical components. Therefore the reliability and the control system is not different for a DC motor compared to an AC motor. (BAS, No. 79 at p. 29) Similarly, the Appliance Standards Awareness Project (ASAP) noted that it is not aware that DC motors are less reliable than AC motors. (ASAP, et al., No. 92 at p. 2) In their submitted comments, ASAP stated several instances of manufacturers indicating that there should not be any concerns related to reliability of DC motors, including manufacturer responses to the preliminary TSD, and comments during the preliminary analysis public meeting. (ASAP, et al., No. 92 at pp. 2–3)

ALA commented that quiet fan speed controls and variable speed controls are not compatible with brushless DC motors. ALA stated that requiring DC motors in small-diameter ceiling fans would lead to the elimination of existing wall-mounted controls for AC motor fans and associated light kits. (ALA, No. 91 at p. 7)

In consideration of the above comments, DOE investigated DC motor impacts on consumer utility and product availability. Through market research, DOE found that most manufacturers offer ceiling fans with DC motors. DOE is also aware of ceiling fans that use DC motors and have wall mounted controls such as the BAS Haiku models that come with optional wall controls.[24] However, DC motors are a relatively new technology and that reliability issues may become apparent as ceiling fans using these motors in the field mature. However, their availability in the market indicates to DOE that manufacturers have deemed DC motors technologically feasible, practicable to manufacture, install, and service and have acceptable impacts on utility (including reliability and product availability). Consequently, DOE screened in DC motors for this NOPR. DOE accounted for differences in reliability between DC and AC motors in downstream analyses in section IV.F.4.

Brushless DC Motors in Very Small-Diameter Ceiling Fans

For this NOPR, DOE analyzed a new product for very small-diameter ceiling fans that have blade spans of 18 inches or less. Currently there is no very small-diameter ceiling fan on the market that uses a DC motor; however conversations with one VSD manufacturer indicated that DC motors are technologically feasible in very small-diameter ceiling fans. Therefore DOE screens in the DC motor technology option for very small-diameter ceiling fans. DOE requests comment on including DC motors as a technology option. See issue 4 in section VII.E.

Geared and Gearless DC Motors for Large-Diameter Ceiling Fans

In the preliminary analysis, DOE screened in brushless DC motors for large-diameter fans. DOE requested comment on whether brushless DC motors meet the screening criteria for large-diameter ceiling fans.

In response to the preliminary analysis, MacroAir requested that DOE include gearless DC motors as a new technology option (see section IV.A.2). It stated that gearbox losses are between 5 and 35 percent. (MacroAir, No. 89 at p. 5)

DOE found two manufacturers with large-diameter ceiling fans using a gearless DC motor, including MacroAir's newly released AirVolution-D model. (MacroAir, No. 89 at p. 10) Market availability of fans using gearless DC motors indicates to DOE that this technology option is technologically feasible and meets the other three screening criteria. Thus, DOE screened in gearless DC motors for large-diameter ceiling fans for consideration in the engineering analysis.

DOE did not receive any comments objecting to the consideration of brushless DC motors as a design option analyzed in the preliminary analysis for large-diameter ceiling fans. Thus, DOE screened in this technology option for consideration in the engineering analysis for this NOPR. Note, DOE refers to this design option as a geared DC motor to make a clear distinction between fans with a gearbox and fans without a gearbox.

d. Curved Blades and Airfoil Blades

In the preliminary analysis, DOE screened in curved and airfoil blade technology options for high-speed small-diameter and large-diameter ceiling fans. DOE requested comment about the blade technology options, but did not receive any comments opposing the inclusion of curved and airfoil blades in the analyses for these fan product classes. Therefore, DOE continues to screen in curved and airfoil blades for HSSD and large-diameter ceiling fans in this NOPR.

C. Engineering Analysis

In the engineering analysis, DOE established the relationship between the manufacturer production cost (MPC) and improved ceiling fan efficiency. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. DOE typically structures the engineering analysis using one of three approaches: (1) Design option; (2) efficiency level; or (3) reverse engineering (or cost assessment). The design-option approach involves adding the estimated cost and associated efficiency of various efficiency-improving design changes to the baseline product to model different levels of efficiency. The efficiency-level approach uses estimates of costs and efficiencies of products available on the market at distinct efficiency levels to develop the cost-efficiency relationship. The reverse-engineering approach involves testing products for efficiency and determining cost from a detailed bill of materials (BOM) derived from reverse engineering representative products. The efficiency ranges from that of the least-efficient ceiling fans sold today (*i.e.*, the baseline) to the maximum technologically feasible efficiency level. At each efficiency level examined, DOE determines the MPC; this relationship is referred to as a cost-efficiency curve.

For this analysis, DOE structured its engineering analysis for ceiling fans using a combination of the design-option approach and the reverse-engineering approach. The analysis is performed in terms of incremental increases in efficiency due to the implementation of selected design

[24] Big Ass Solutions. *Haiku, http://www.bigassfans.com/for-home/haiku/.*

options, while the estimated MPCs for each successive design option are based on product teardowns and a bottom-up manufacturing cost assessment. Using this hybrid approach, DOE developed the relationship between MPC and ceiling fan efficiency. DOE welcomed comments on an alternative approach in the preliminary analysis.

DOE used the design option approach in the engineering analysis and selected representative sizes for each product class to account for differences in ceiling fan utility and efficiency based on blade diameter. DOE selected representative sizes based on the available range of sizes in each product class and based on the number of sales per size. For each representative size in each proposed product class, DOE identified a baseline efficiency as a reference point from which to measure changes resulting from each design option. Efficiency is represented in terms of the metric proposed in the test procedure NOPR (*i.e.,* aggregate airflow efficiency). The baseline represents the most common, least efficient ceiling fan in the market for each product class and representative size. DOE then developed separate cost-efficiency relationships for each product class analyzed. The following is a summary of the method DOE used to determine the cost-efficiency relationship for ceiling fans:

- Perform airflow efficiency tests on a representative sample of ceiling fans in each product class.
- Develop a detailed BOM for the tested ceiling fans through product teardowns, and construct a ceiling fan cost model.
- Use a combination of test data, data from spec sheets, the cost model, and feedback from manufacturers to calculate the incremental increase in efficiency and cost increase of adding specific design options to a baseline model.

In the 2014 test procedure NOPR, DOE proposed to test standard ceiling fans mounted to an artificial ceiling. ALA commented that the candidate standard levels in the preliminary analysis were based on airflow measurements made without an artificial ceiling. ALA recommended that DOE adjust the analysis to adhere to the final test procedure. (ALA, No. 91 at p. 2)

Since the preliminary analysis, DOE published a test procedure SNOPR on June 3, 2015, in which DOE proposes to test all ceiling fans mounted directly to the ceiling. DOE used test data for standard ceiling fans mounted directly to the ceiling to update the engineering analysis for this NOPR.

In response to the approach taken by DOE, MacroAir stated it doesn't understand why a design approach was used for the efficiency levels and a performance approach was taken in the candidate standard levels (CSL). MacroAir suggested a consistent approach should be maintained throughout the analysis process. (MacroAir, No. 89 at p. 13)

Typically, DOE structures an energy conservation standard in terms of a performance requirement, *i.e.,* a maximum level of energy consumption or a minimum level of energy efficiency, often as a function of some form of capacity or size. For this rulemaking, DOE is structuring the standard using a minimum level of airflow efficiency (CFM/W) as a function of diameter. The various levels of efficiency being considered for the standard, or candidate standard levels, were developed using efficiency levels described in the engineering analysis. See chapter five of the NOPR TSD. In the engineering analysis, DOE developed efficiency levels using design-options, which are technologies that exist in the market that have passed the screening criteria. See chapter four of the NOPR TSD. The efficiency levels examined represent a certain path, or combination of design options, that demonstrate how various levels of efficiency can be achieved. While this analysis is meant to show one way of achieving certain levels of efficiency, the actual structure of the standards (in the form of equations defining a minimum level of air flow efficiency (CFM/W) as a function of diameter) allows any design path to be used. Also, establishing standards in this manner, as opposed to requiring specific design requirements be used (*e.g.,* a standard specifying one type of motor), allows manufacturers freedom in meeting a standard and avoids limiting innovation. Manufacturers may choose to use any technologies and designs they desire to achieve the specified CFM/W standard.

In written comments, ASAP noted that DOE evaluated efficiency levels that are structured as a function of ceiling fan diameter. ASAP expressed concern that standards as a function of diameter may not be directly related to the performance of the fan. (ASAP, et al., No. 92 at p. 3)

In response to ASAP's comment, DOE examined how fan efficiency behaves as a function of both fan diameter and airflow to evaluate whether standards as a function of one or the other are more appropriate. DOE collected data for airflow, blade diameter and airflow efficiency for all the ceilings fans found on Web sites of ten retailers, including, among others, Home Depot, Lowe's, Walmart and Menards. DOE then plotted ceiling fan efficiency as a function of both diameter and airflow and compared the correlation coefficient, or R^2 value, for each relationship. DOE found that both airflow and fan diameter have similar correlation coefficients as a function of airflow efficiency and neither is statistically better than the other. Because of this, DOE next examined which characteristic could be considered a better indicator, or proxy, for utility.

DOE sets standards that are technologically feasible and economically justified without diminishing utility to consumers. Neither airflow nor diameter is a perfect proxy for utility, because consumers make purchasing decisions based on both. However, DOE believes that blade diameter is a *better* proxy for utility than airflow. The size of a fan determines the cooling area, impacts room aesthetics, and determines if a fan physically fits into a room. Literature published by manufacturers clearly indicates that blade span is an important criteria for consumer fan selection. Manufacturers include sizing guides in published product literature to instruct consumers on how to properly size a fan for a given room size. These fan sizing guides specify the affected square footage of a room based on fan blade diameter. DOE did not find such guides for other ceiling fan characteristics such as airflow. Furthermore, DOE believes that standards as a function of airflow instead of fan diameter could result in substitution issues. For example, two ceiling fans of different sizes but similar airflow might not fit into the same space, will not have airflow produced over the same area, and have different room aesthetics. However, DOE believes that standards as a function of diameter would not result in substitution issues, because the substitute fan would fit into the same space, produce airflow over the same area and the room aesthetics would not be affected. This indicates to DOE that ceiling fan blade diameter is a primary characteristic considered by consumers when selecting a fan and a better proxy for consumer utility than airflow. Consequently, DOE proposes standards as a function of fan diameter to ensure that fans at a given diameter (and, by proxy, fans that provide a similar utility to the consumer) are subject to the same standard.

ASAP also stated that two fans of the same diameter could provide different airflows. ASAP stated that

manufacturers could simply meet the standard by reducing the speed of the fan, which would reduce airflow and fan utility. (ASAP, et al., No. 92 at p. 3)

Ceiling fans of the same size can produce different airflows, and slowing down a fan can significantly reduce energy consumption. While manufacturers may opt to do so to meet the levels proposed, DOE did not include slowing down the fan as a design option; manufacturers can meet the levels proposed without reducing speed. Also, DOE expects that manufacturers will not reduce airflow to levels that are unacceptable when other cost-justified pathways to compliance are available. DOE requests comment on what an acceptable reduction of fan speed is such that it does not affect consumer utility. See issue 6 in section VII.E.

1. Baseline and Max-Tech Models

To analyze technology options for energy efficiency improvements, DOE defined a baseline and a max-tech model for each ceiling fan product class. Typically, the baseline model is a model that just meets current energy conservation standards, whereas a max-tech model is the highest efficiency model in the market. DOE set the baseline and max-tech efficiencies for each product class based on test data and certified airflow efficiency data from manufacturer Web sites and brochures. Further details can be found in chapter 5 of the TSD.

a. Standard and Hugger Ceiling Fans

In the preliminary analysis, DOE combined the cost efficiency curves of flat-blade fans and unconventional-blade fans in the standard and hugger product classes to create an aggregate curve for all standard ceiling fans and all hugger ceiling fans. DOE used the maximum efficiency of the unconventional-blade fans as the max-tech for the aggregate curve to ensure that even at max-tech, all types of ceiling fans, including designs with unconventional-blades, can achieve this level of efficiency.

In response to this approach, the CA IOUs expressed concern that the max-tech efficiency for the combined conventional and unconventional class is significantly lower than the conventional blade fan class. Therefore, the CA IOUs commented, DOE should consider conventional blade fan model efficiency for the max-tech level instead of the unconventional blade fan model. (CA IOUs, No. 91 at p. 1)

DOE appreciates the comment from the CA IOUs to use the max-tech level of the flat-blade fan for the aggregate curve instead of the max-tech level of the unconventional-blade fan. However, doing so could result in a standard that cannot be met by unconventional blade fans, eliminating them from the market. DOE considers the elimination of unconventional blade fans from the market a loss of consumer utility and a reduction in product availability because, while these fans are functionally indistinguishable from flat-blade ceiling fans, a majority of consumers purchase unconventional-blade fans because of their aesthetic appeal. Overly stringent ceiling fan standards could force manufacturers to reduce the aesthetic quality of some ceiling fans to comply with energy conservation standards, therefore reducing consumer utility. Thus, DOE continued to use the max-tech efficiency level of the unconventional-blade fans as the max-tech efficiency level for the aggregate curve in this NOPR.

b. Very Small-Diameter Ceiling Fans

After the preliminary analysis DOE decided to introduce a separate product class for very small-diameter ceiling fans based on feedback from interested parties (see section IV.A.1.c for more details on the very small-diameter product class). DOE used publicly available market data and test data to identify the baseline very small-diameter ceiling fans for all representative sizes.

c. High-Speed Small-Diameter Ceiling Fans

In the preliminary analysis, DOE chose a baseline airflow efficiency of 211 cfm/W for the 56-inch HSSD ceiling fans. DOE selected this efficiency based on information listed in manufacturer specification sheets because DOE did not have any test results for this product class.

During the preliminary analysis public meeting, Westinghouse and ALA commented that 211 cfm/W is too high for the baseline efficiency for 56 inch high-speed small-diameter fans. Westinghouse stated that the baseline 56-inch high-speed small-diameter airflow efficiency should be 95 cfm/W. (Westinghouse, Public Meeting Transcript, Public Meeting Transcript, No. 83 at p. 250) ALA provided published data to support its statement showing baseline fans with airflow efficiencies ranging between 90 and 115 cfm/W, and airflow ranging from 6,118 to 9,154 cfm. Additionally, ALA stated that it is aware that HSSD fan manufacturers list extremely high cfm levels on their manufacturer specification sheets. These models will have cfm levels similar to the baseline models recommended by ALA when tested according to the DOE test procedure. (ALA, No. 91 at p. 4)

Since the preliminary analysis, DOE tested baseline 56-inch HSSD ceiling fans. Those tests confirmed comments received from interested parties that the value used in the preliminary analysis is too high. DOE reduced the baseline airflow efficiency for a 56 inch HSSD ceiling fan from 211 cfm/W to 91 cfm/W, which corresponded to the lowest efficiency of the HSSD ceiling fans tested.

d. Large-Diameter Ceiling Fans

In the preliminary analysis DOE described the baseline for the large-diameter ceiling fan product class as having curved blades, a three-phase induction motor with a gearbox, and an exposed motor with no housing. DOE described a max-tech large-diameter ceiling fan as a ceiling fan with airfoil blades and a DC motor.

MacroAir commented on the baseline and max-tech levels for the large-diameter ceiling fan product class. MacroAir stated that geared motors are a typical component of baseline large-diameter fans. MacroAir also suggested that the max-tech unit has a brushless DC motor and a direct drive (without gears). (MacroAir, No. 89 at p. 5)

DOE agrees with MacroAir because DOE found that large-diameter ceiling fans with a brushless DC motor have the highest efficiency. Therefore, for its analysis, DOE assumes that the max-tech efficiency level for large-diameter ceiling fans includes a gearless DC motor.

2. Manufacturing Cost Analysis

DOE estimated the manufacturing costs using a reverse-engineering approach, which involves a bottom-up manufacturing cost assessment based on a detailed BOM derived from teardowns of the product being analyzed. The detailed BOM includes labor costs, depreciation costs, utilities, maintenance, tax, and insurance costs, in addition to the individual component costs. These manufacturing costs are developed to be an industry average and do not take into account how efficiently a particular manufacturing facility operates.

For the reverse-engineering approach, DOE purchased off-the-shelf ceiling fans available on the market with a range of efficiencies and dismantled them component by component to determine what technologies and designs manufacturers use to increase airflow efficiency. DOE then used independent costing methods, along with component-supplier data, to estimate

the costs of the components. DOE derived detailed manufacturing cost estimates based on its reverse engineering analysis, which include the cost of the product components, labor, purchased parts and materials, and investment. The testing and teardown results indicated that the manufacturing costs among different units from different manufacturers can vary based on the type of material, amount of material, and/or process used.

a. Standard and Hugger Ceiling Fans

In the preliminary analysis, DOE developed a single, aggregated cost-efficiency curve for unconventional-blade and flat-blade fans for both standard and hugger product classes. The MPC for the max-tech (efficiency level 4, or EL 4) reflected a shipment weighted average of: (1) The full cost of an unconventional-blade fan with a DC motor, and (2) the full cost of a flat-blade fan with an AC motor.

ALA commented that the preliminary analysis costs for the EL 4 design option for standard and hugger fans are much too low. (ALA, No. 91 at p. 6) ALA stated that the aggregate curve would effectively require DC motors for all ceiling fans. For flat-blade fans, the minimum efficiencies required to comply with DOE's EL 4 would require either DC motor technology or some combination of a larger AC motor and other technologies that DOE has already screened out from consideration. Westinghouse stated that if a DC motor with flat blade is required to achieve EL 4, then the costs should also mirror that. (Westinghouse, Public Meeting Transcript, No. 83 at p. 245)

DOE acknowledges that to comply with the EL 4 efficiency for both flat-blade fans and unconventional-blade fans, DC motors is the only remaining screened-in design option. Therefore, DOE adjusted the costs at EL 4 to represent a shipment weighted average of the full cost of an unconventional-blade fan and flat-blade fan that both use a DC motor.

b. Very Small-Diameter and High-Speed Small-Diameter Ceiling Fans

DOE used the reverse engineering approach described in section IV.C.2 to estimate the manufacturing costs of very small-diameter and HSSD ceiling fans. DOE received some feedback on the high-speed small-diameter manufacturing costs. DOE used this feedback together with the results from the reverse engineering to estimate the manufacturing costs for HSSD ceiling fans. DOE did not receive any feedback from interested parties on the manufacturing costs of very small-diameter ceiling fans. Therefore DOE relied on the manufacturing cost results from the reverse engineering approach.

c. Large-Diameter Ceiling Fans

In the preliminary analysis, DOE found that large-diameter fans have a wide variety of motor horsepower. For consistency, DOE assumed that all the large-diameter fans analyzed use a 1-horsepower motor because they are available in 8-, 12-, and 20-foot fans. DOE estimated the cost of 1-horsepower motors by evaluating the average price of a 1-horsepower motors available on the market. DOE requested comment on the assumption to use a 1-horsepower motor for all representative sizes.

BAS stated that a 1-horsepower motor is not representative of the entire large-diameter market. BAS suggested that 20-foot fans should have a 2-horsepower motor, 12-foot fans should have a 1-horsepower motor, and 8-foot fans should have a 0.5-horsepower motor. (BAS, No. 79 at p. 4) MacroAir agreed with BAS stating that the 1-horsepower motor is a poor assumption for all large-diameter fans. MacroAir provided a breakdown in the percentage of sales based on motor horsepower, which shows 36 percent of their large-diameter fans are sold with a 1-horsepower motor, 23 percent are sold with a 2-horsepower motor and 13 percent are sold with a 0.5-horsepower motor. All other motor sizes that MacroAir sells have sales of 13 percent or less. (MacroAir, No. 89 at p. 10)

Based on the feedback from BAS and MacroAir, DOE assumed that 20-foot fans use 2-horsepower motors, 12-foot fans use 1-horsepower motors, and 8-foot fans use 0.5-horsepower motors. DOE tore down two 20-foot large-diameter ceiling fans to estimate the manufacturing costs for the fans and their subassemblies, including the fan motors. DOE adjusted its assumptions regarding motor costs based on input received during manufacturer interviews and these teardowns.

Chapter 5 of the NOPR TSD discusses the baseline efficiencies for each product class, the design options DOE considered, the methodology used to develop manufacturing production costs, and the cost-efficiency curves. The LCC and PBP analyses uses the cost-efficiency relationships developed in the engineering analysis.

3. Installed Costs

During the preliminary analysis public meeting, DOE received comments on the installed costs for standard ceiling fans. The installed costs are a function of MPC, manufacturer markup and retail markup. In the preliminary analysis, DOE presented baseline and EL 4 installed costs of $107 and $149, respectively, for standard fans.

During the public meeting, Westinghouse and Fanimation stated that the installed cost for the baseline is too high and the installed costs for EL 4 is too low. (Westinghouse, Public Meeting Transcript, No. 83 at p. 242; Fanimation, Public Meeting Transcript, No. 83 at p. 243)

In response to Westinghouse and Fanimation, DOE re-evaluated its MPC estimates. As stated, MPC is one of the factors DOE used to calculate installed costs. (See sections IV.D and IV.F for discussion of the other factors). In the preliminary analysis, DOE calculated the MPC as the product of factory costs and factory markup. This approach was used to calculate MPC, because standard and hugger ceiling fans are typically outsourced by U.S. manufacturers to factories in China. DOE calculated baseline and max-tech (EL 4) MPCs for 52 inch standard ceiling fans of $41.33 and $65.56, respectively, in the preliminary analysis.[25]

DOE revisited all the assumptions in the cost model from the preliminary analysis and updated all the inputs to the cost model to reflect the costs in 2015$. Additionally, DOE increased the manufacturing purchase volume to reflect manufacturers' comments. DOE presented the updated factory costs to manufacturers during interviews, who generally agreed with the updated costs.

During manufacturer interviews, DOE also received feedback that the overhead burden, shipping costs and tariffs should be included in the MPC. In this NOPR, DOE included these costs in the MPC to be more representative of the manufacturer cost structure described by manufacturers.

During the interviews, DOE attempted to gather more information about the factors it used to derive the MPC. Manufacturers generally agreed with the factory markup of 1.2 used in the preliminary analysis. Manufacturers also agreed with the overhead burden of $2.50 per unit and the shipping tariff of 4.7 percent. DOE increased the shipping costs from China from $2.50 per unit to $3.60 per unit based on feedback received during interviews.

After reevaluating its installed costs and considering manufacturer feedback, DOE increased the baseline MPC from $41.33 to $54.93. DOE increased the

[25] In the preliminary analysis, DOE presented MSPs instead of MPCs. The MPCs were marked up to the MSP using the distribution channel markups. The MSP for the baseline 52-inch ceiling fan was $56.62 and for the MSP for the max-tech 52-inch ceiling fan was $89.82.

costs for the 52-inch standard ceiling fan for EL 4 from $65.56 to $90.93. More details about the factory costs and the MPC can be found in chapter 5 of the NOPR TSD. DOE requests comments on the new baseline MPC of $54.93 for 52-inch standard ceiling fans. See issue 7 in section VII.E.

DOE did not receive any comments about the installed costs that were presented in the preliminary analysis for all the other product classes. However the installed costs for these product classes changed with updates in manufacturing costs and the distribution channel.

D. Markups Analysis

DOE uses distribution channel markups and sales taxes (where appropriate) to convert the manufacturer production cost estimates from the engineering analysis to consumer prices, which are then used in the LCC, PBP, and the manufacturer impact analyses. The markups are multipliers that are applied to the purchase cost at each stage in the distribution channel.

DOE characterized four distribution channels to describe how standard, hugger and VSD ceiling fans pass from manufacturers to consumers. These four distribution channels can be characterized as follows:

Manufacturer → Home Improvement Center → Consumer
Manufacturer/Home Improvement Center (in-store label) → Consumer
Manufacturer → Wholesaler → Contractor → Consumer
Manufacturer → Showroom → Consumer

DOE developed separate markups for home improvement centers that have their in-store label ceiling fans and for those that sell independent-label ceiling fans. As indicated in the market assessment, Hampton Bay and Harbor Breeze ceiling fans, which are two of the top three ceiling fan brands in the market, are the in-store brands for Home Depot and Lowe's, respectively. In this case, Home Depot and Lowe's serve as both in-store brand manufacturer and home improvement center that carry both store-brand and independent-brand ceiling fans. For in-store label ceiling fans, DOE developed an overall markup that encompasses the margins for manufacturing as well as selling the product. For the independent-label ceiling fans sold through home centers, separate markups were developed for the brand manufacturer and for the home improvement centers which serve only as a retailer.

For large-diameter and HSSD ceiling fans, the two distribution channels that DOE considered can be characterized as follows:

Manufacturer → Dealer → Customer
Manufacturer → In-house Dealer → Customer

The second distribution channel for large-diameter and HSSD ceiling fans is a direct sale channel where the manufacturer sells the product directly to a customer through its in-house dealer. DOE is assuming the markup for in-house dealers is the same as the conventional dealer markup; therefore, the overall markup for these two distribution channels is the same.

To account for manufacturers' non-production costs and profit margin, DOE applies the manufacturer markup to the full MPC derived in the engineering analysis. The resulting manufacturing selling price (MSP) is the price at which the manufacturer can recover all production and non-production costs and earn a profit. To meet new or amended energy conservation standards, manufacturers typically introduce design changes to their product lines, which increases manufacturer production costs. As production costs increase, manufacturers typically incur additional overhead.

To calculate the manufacturer markups, DOE reviewed 10–K reports [26] submitted to the U.S. Securities and Exchange Commission (SEC) by publicly-owned ceiling fan companies. The financial figures necessary for calculating the manufacturer markup are net sales, costs of sales, and gross profit. Few ceiling fan manufacturing companies are publicly owned, and most of the publicly-owned ceiling fan manufacturing companies are subsidiaries of more diversified parent companies, so the financial information summarized may not be exclusively for the ceiling fan portion of their business and can also include financial information from other product sectors. DOE discussed the manufacturer markup with manufacturers during interviews, and used product specific feedback on market share, markups and cost structure from manufacturers to adjust the manufacturer markup calculated through review of SEC 10–K reports.

To develop markups for the market participants involved in the distribution of ceiling fans, DOE utilized several sources, including: (1) The SEC 10–K reports and U.S. Census Bureau's annual retail trade survey for building material and supplier dealer industry [27] (to develop home improvement center markups); (2) the U.S. Census Bureau's annual wholesale trade report for electrical and electronic appliance, television, and radio set merchant wholesaler industry [28] (to develop wholesaler markups); (3) 2014 RSMeans Electrical Cost Data [29] (to develop contractor markups); and (4) the SEC 10–K reports (to develop dealer markups).

To develop the markups when home centers serve as both brand manufacturer and retailer, DOE relied upon input from an industry expert.[30]

For each of the market participants, DOE developed baseline and incremental markups based on the product markups at each step in the distribution chain. The baseline markup relates the change in the MSP of baseline models to the change in the consumer purchase price. The incremental markup relates the change in the MSP of higher-efficiency models (the incremental cost increase) to the change in the consumer purchase price.

In addition to the markups, DOE derived state and local taxes from data provided by the Sales Tax Clearinghouse.[31] These data represent weighted average taxes that include county and city rates. DOE derived shipment-weighted average tax values for each region considered in the analysis.

Chapter 6 of the NOPR TSD provides further detail on the estimation of markups.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of ceiling fans at different efficiency levels in representative U.S. homes and commercial buildings, and to assess the energy savings potential of increased ceiling fan efficiency. To develop annual energy use estimates, DOE multiplied ceiling fan input power by the number of hours of use (HOU) per

[26] U.S. Securities and Exchange Commission, Annual 10–K Reports (various years between 2007 and 2013), available at *http://sec.gov.*

[27] U.S. Census Bureau. *2012 Annual Retail Trade Survey.* Building Material and Supplier Dealer. 2012 (Last Accessed April 22, 2015) *http://www.census.gov/retail/arts/historic_releases.html.*

[28] U.S. Bureau of the Census. *2012 Annual Wholesale Trade Report, NAICS 423620: Electrical and Electronic Appliance, Television and Radio Set Merchant Wholesaler.* 2012. Washington, DC. (Last Accessed April 22, 2015) *http://www.census.gov/wholesale/index.html.*

[29] RS Means Company Inc. *Electrical Cost Data: 36th Annual Edition.* 2014. Kingston, MA.

[30] Mehta, V. Personal communication. Email to Colleen Kantner, LBNL. November 24, 2013.

[31] Sales Tax Clearinghouse Inc., State Sales Tax Rates Along with Combined Average City and County Rates (2014) available at *http://thestc.com/STrates.stm* (last accessed May 27, 2014).

year. The energy use analysis estimates the range of operating hours of ceiling fans in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses that DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended standards.

1. Inputs for Standard, Hugger, and VSD Ceiling Fans

a. Sample of Purchasers

As in the preliminary analysis, DOE has included only residential applications in the energy use analysis of standard, hugger, and VSD ceiling fans. DOE used the Energy Information Administration (EIA) 2009 Residential Energy Consumption Survey (RECS) [32] to choose a random sample of households in which new ceiling fans could be installed. RECS is a national sample survey of housing units that collects statistical information on the consumption of, and expenditures for, energy in housing units, along with data on energy-related characteristics of the housing units and occupants. RECS collected data on 12,083 housing units, and was constructed by EIA to be a national representation of the household population in the United States.

In creating the sample of RECS households, DOE used the subset of RECS records that met the criterion that the household had at least one ceiling fan. DOE chose a sample of 10,000 households from RECS to estimate annual energy use for standard, hugger, and VSD ceiling fans. Because RECS provides no means of determining the type of ceiling fan in a given household, DOE used the same sample for the standard, hugger, and VSD product classes.

b. Operating Hours

As in the preliminary analysis, DOE used data from a study [33] that surveyed ceiling fan owners to estimate the operating hours for each sampled RECS household. In that study, the authors asked a nationally representative sample of more than 2,500 ceiling fan users to report their ceiling fan operating hours for high, medium, and low speeds. The LBNL study reported a distribution of operating hours, with an average of 6.45 hours of operation per day. The operating hour for each sample used is drawn from the distribution of operating hours reported in the LBNL study, and further apportioned into operating hours at different fan speeds.

In the preliminary analysis, DOE used the results from the LBNL study to estimate that consumers run their standard, hugger, and VSD ceiling fans at high speed 41 percent of the time, at medium speed 37 percent of the time, and low speed 22 percent of the time. ALA submitted the results of an AcuPOLL survey [34] showing that consumers most often operate their standard, hugger, and VSD ceiling fans on medium speed, not high speed, and asked DOE to adjust its assumptions regarding hours of use at low, medium, and high speeds in light of these results. (ALA, No. 8 at p. 6) Hunter Fan Company also asked DOE to review the standard, hugger, and VSD ceiling fan hours of use assumptions in light of the AcuPOLL survey results, especially because energy consumption at medium speed is typically less than the mid-point in energy consumption between high and low speeds. (Hunter Fan Company, Public Meeting Transcript, Public Meeting Transcript, No. 83 at pp. 15, 104)

In light of ALA's and Hunter's comments and the AcuPOLL survey results, DOE compared the LBNL and AcuPOLL survey results and takes both into account in determining the fraction of time spent at each fan speed. In the NOPR analyses, DOE estimated that the fraction of time that standard, hugger, and VSD ceiling fans were operated at each speed was equal to the simple average of the fractions reported by the LBNL and AcuPOLL surveys: 33 percent on high speed, 38 percent on medium speed, and 29 percent on low speed. DOE then used these fractions were used to apportion the total hours of use into hours of use at high, medium and low speeds.

c. Power Consumption at Each Speed and Standby

DOE determined the power consumption at high, medium, and low speed for each representative fan size in the engineering analysis. These values are shown in chapter 5 of the NOPR TSD. DOE estimated that all ceiling fans with DC motors expend standby power, and that 7 percent of standard, hugger, and VSD ceiling fans with AC motors come with a remote, and therefore consume power while in standby mode. DOE further estimated 0.7 watts as the power consumption value for standby for all representative fans belonging to the standard, hugger, and VSD product classes, based on testing conducted in association with developing the engineering analysis.

2. Inputs for Large-Diameter and High-Speed Small-Diameter Ceiling Fans

a. Sample of Purchasers

As in the preliminary analysis, DOE has included only commercial and industrial applications in the energy use analysis of large-diameter and HSSD ceiling fans. Although some large-diameter and HSSD fans are used in residential applications, they represent a very small portion of the total market for large-diameter and HSSD ceiling fans. Similar to standard, hugger, and VSD ceiling fans, DOE developed a sample of 10,000 fans to represent the range of large-diameter and HSSD ceiling fan energy use. The sample captured variations in operating hours.

b. Operating Hours

In the preliminary analysis, DOE used feedback from manufacturers to estimate total hours of operation for large-diameter and HSSD ceiling fans. Manufacturers suggested a range of possible hours of operation, depending on industry and application, with 12 hours per day as a representative value. To represent a range of possible operating hours around this representative value, DOE drew 10,000 samples from a uniform distribution between 6 hours per day and 18 hours per day when calculating the energy use of large-diameter and HSSD fans. DOE also used manufacturer feedback to determine the proportion of operating time spent at each speed, estimating that, on average, large-diameter and HSSD fans spend approximately 10 percent of the time at high or low speed, and the rest of their time (approximately 80 percent) at a medium speed.

BAS used DOE's preliminary analysis assumptions to conduct an analysis of large-diameter ceiling fan operation by month for a specific consumer in the sample of consumers used in DOE's LCC analysis. (BAS, No. 88 at pp. 37–38) BAS ultimately concluded that DOE must have assumed the consumer operated the fan in reverse during the winter months; or else, the consumer would have experienced a draft by operating the ceiling fan in the forward direction at medium speed. (BAS, No. 88 at p. 38) BAS suggested that DOE assume a 7 percent increase in energy consumption for all hours (if any) that

[32] U.S. Department of Energy–Energy Information Administration. *2009 RECS Survey Data.* (Last accessed October 10, 2014.) *http://www.eia.gov/consumption/residential/data/2009/.*

[33] Kantner, C. L. S., S. J. Young, S. M. Donovan, and K. Garbesi. *Ceiling Fan and Ceiling Fan Light Kit Use in the U.S.—Results of a Survey on Amazon Mechanical Turk.* 2013. Lawrence Berkeley National Laboratory: Berkeley, CA. Report No. LBNL–6332E. *http://www.escholarship.org/uc/item/3r67c1f9.*

[34] AcuPOLL® Precision Research, Inc. *Survey of Consumer Ceiling Fan Usage and Operations.* 2013.

a large-diameter ceiling fan is assumed to be operating in reverse, because an airfoil operating in reverse does not move as efficiently through the air. BAS also recommended conducting the analysis assuming a large-diameter ceiling fan operates slowly in the forward direction during the winter (heating) months, which will prevent the consumer from experiencing a draft and also reduce overall energy consumption relative to operating the ceiling fan at medium speed in reverse. (BAS, No. 88 at p. 39) The analysis proposed by BAS—which used DOE's assumption of 12 hours per day in active mode and assumes the fan operates very slowly in the forward direction during the heating months—resulted in the following hours of use per day by speed setting: 0.6 hours per day at max speed, three hours at 80 percent of max speed, 1.2 hours at 60 percent of max speed, 7.2 hours at 25 percent of max speed, and 12 hours in standby mode. (BAS, No. 88 at pp. 45, 47) MacroAir also provided suggested hours of use for large-diameter ceiling fans at different settings: three hours per day at max speed, four hours at 80 percent of max speed, six hours at 60% percent max speed four hours at 40 percent max speed, one hour at 20 percent max speed, and six hours in standby mode. (MacroAir, No. 89 at pp. 9–10)

To clarify, in the energy use analysis from the preliminary analysis, DOE did not consider any direction of rotation other that the forward direction. The analysis assumed that once a large-diameter ceiling fan's hours of use were sampled from the distribution, that ceiling fan operated in the forward direction over three speeds every day for that many hours. DOE assumed that 80 percent of that time the fan operated at medium speed (intermediate RPM), 10 percent of the time at low speed (at or near minimum RPM) and 10 percent at high speed (at or near maximum RPM).

DOE appreciates BAS' comment regarding the induced draft from operating a large-diameter ceiling fan at medium speed during the winter (heating) months. For the NOPR analyses, DOE continued to assume that large-diameter ceiling fans only operated in the forward direction.[35] However, DOE assumed different hours of use by setting than in the preliminary analysis. DOE calculated the hours of use at each speed using a simple average of the values provided by BAS and MacroAir, resulting in: 1.8 hours at max speed, 3.5 hours at 80 percent speed, 3.6 hours at 60 percent speed, 2 hours at 40 percent speed, and 4.1 hours at 20 percent speed.[36] Modeling large-diameter ceiling fan operating hours based on fraction of time spent at each of five speeds aligns with the ceiling fans test procedure SNOPR, which proposes to test all large-diameter ceiling fans at max speed, 80 percent speed, 60 percent speed, 40 percent speed, and 20 percent speed. 80 FR 31487 (June 3, 2015).

DOE did not receive any comments in response to the operating hours distribution for HSSD fans in the preliminary analysis, and has therefore maintained the same approach. This approach assumes a uniform distribution for daily operating hours of between 6 and 18 hours per day and that such fans spend approximately 10 percent of the time at each of high and low speed, and approximately 80 percent of the time at a medium speed. DOE requests data on operating hours for HSSD ceiling fans. See issue 8 in section VII.E.

c. Power Consumption at Each Speed and Standby

For the large-diameter ceiling fan product class, the power consumption for a given representative fan was determined by the weighted average of power consumption at the five speeds discussed previously, where each speed was weighted by the fraction of time spent at that speed.

For the HSSD ceiling fan product class, as in the preliminary analysis, DOE determined power consumption at high speed for each representative fan in the engineering analysis. To estimate the power consumption at medium speed, DOE multiplied the high-speed power by the average ratio between high-speed power and medium-speed power in the standard, hugger, and VSD fans engineering analysis. DOE used the same approach for low-speed power, using the average ratio between high-speed power and low-speed power from the standard, hugger, and VSD fans engineering analysis.

In the preliminary analysis, DOE considered all HSSD fans at the efficiency levels with a DC motor to have standby power, assuming a remote control was included for all such fans. DOE estimated 0.7 watts as the standby power value for all representative fans in the HSSD product class. Because these fans also have standby power as a result of a remote control receiver, this is the same value used for standard, hugger and VSD fans, as discussed in section IV.E.1.c. DOE also considered all large-diameter fans to have standby power, because available information indicated that all large-diameter ceiling fans in the market use a variable-frequency drive that consumes standby power. BAS indicated that there are a number of large-diameter ceiling fans without variable-frequency drives (VFDs) that have standby power consumption. (BAS, Public Meeting Transcript, No. 83 at p. 285) DOE appreciates this clarification and has not made the assumption in the NOPR analyses that all large-diameter ceiling fans have VFDs, but retains the assumption from the preliminary analysis that all large-diameter ceiling fans have standby power. For HSSD and large-diameter ceiling fans with standby power consumption, DOE calculated the number of standby hours as the total annual hours not spent in active mode. The standby power for large-diameter ceiling fans (with fan blades exceeding 7 feet in diameter) was estimated to be 7 watts in the engineering analysis (see chapter 5 of the NOPR TSD).

3. Impact on Air Conditioning or Heating Equipment Use

In response to comments on the framework document, DOE issued a Request for Information (RFI) regarding the potential interaction between ceiling fans and air conditioning usage. 78 FR 62494. While RFI commenters were generally in agreement on the theoretical energy savings potential from substituting ceiling fan usage for air conditioning usage, no clear evidence was presented indicating that ceiling fans are actually used in this manner. Therefore, DOE did not account for any impact on air conditioning or heating equipment use in response to an amended ceiling fan energy conservation standard in the preliminary analysis.

In response, MacroAir commented that DOE should consider several possible sources of savings in air conditioning use in its analyses, including: savings from air conditioning usage being displaced by ceiling fan use, savings from reduction in the required size of air conditioning units, and savings related to consumers using their ceiling fan rather than air conditioning

[35] DOE is not aware of any information on how frequently these fans might be used in reverse, nor did it have any data to support a different energy consumption when operating in reverse, compared to the energy consumption in the forward direction, for an equivalent speed.

[36] In calculating the average, DOE assumed that the 7.2 hours attributed by BAS to 25% speed correspond to the 20% speed setting. In addition, BAS assumed large-diameter ceiling fans are operated 12 hours per day, whereas MacroAir assumed large-diameter ceiling fans are operated 18 hours per day. The calculation of the average hours of use at each setting therefore results in large-diameter ceiling fans operating for 15 hours per day.

unit (as a result of increased future electricity prices combined with changing consumer behavior to save money). (MacroAir, No. 89 at pp. 8–9) BAS agreed, indicating that air conditioning units use more power than ceiling fans for the same level of perceived cooling. (BAS, No. 88 at p. 42) ALA added that the LBNL study cited by DOE in the preliminary analysis shows that approximately 25 percent of ceiling fan owners reduce their air conditioning usage when using a ceiling fan; therefore, ALA requested DOE conduct a sensitivity analysis to understand how a ceiling fan price increase would affect air conditioning usage. (ALA, No. 90 at p. 13) Other interested parties—including Hunter Fan Company, Southern Company, Moshe Pardo, and Norman Kennedy—cited the likelihood of increased air conditioning use from an energy conservation standard for ceiling fans. (Hunter Fan Company, Public Meeting Transcript, No. 83 at p. 256; Southern Company, Public Meeting Transcript, No. 83 at pp. 263–264; Moshe Pardo, No. 85 at p. 1; Norman Kennedy, No. 87 at p. 1)

DOE agrees that ceiling fans can be an inexpensive and effective replacement for air conditioning use. The savings identified by MacroAir are associated with ceiling fans in general. It seems unlikely that consumers would substantially increase air conditioning use, or forego purchasing a ceiling fan in lieu of an air conditioning unit, due to a modest increase in the initial cost of a ceiling fan due to an amended energy conservation standard. Because the interaction between ceiling fan use and air conditioning use is unlikely to be different in the case of amended standards than it would be in the no-standards case, DOE did not account for such interaction for the NOPR analyses. DOE requests specific information and any relevant data on how the proposed standards could affect the operation of air conditioners. See issue 9 in section VII.E.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducts LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE uses the following two metrics to measure consumer impacts:

- The LCC (life-cycle cost) is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP (payback period) is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more-efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of ceiling fans in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

DOE calculated the LCC and PBP for each considered efficiency level for a nationally representative consumer sample for each of the product classes. DOE developed consumer samples that account for variation in factors such as geographic location. Two types of consumer samples were created: one for the standard, hugger and VSD group of fans and another for the HSSD and large-diameter group. This was done to capture the variability in energy consumption, discount rates and energy prices associated with the different groups of ceiling fans.

For VSD, hugger, and standard ceiling fans, DOE created a sample in a manner similar to that outlined in section IV.E.1. Due to a lack of data on the location of HSSD and large- diameter fans, DOE assumed that the geographic distribution of HSSD and large-diameter fan purchasers is similar to that of standard, hugger, and VSD ceiling fan purchasers. Therefore, DOE chose the location of HSSD and large-diameter fan purchasers according to the geographic distribution of households in RECS. For each consumer in the sample used for HSSD and large-diameter fans, DOE determined the energy consumption of ceiling fans and the appropriate electricity price for the location and sector.

The calculation of the total installed cost includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes. Installation costs were assumed not to vary by efficiency level, and therefore were not considered in the analysis. DOE welcomes comments on this assumption. See issue 10 in section VII.E.

Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates.

DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and ceiling fan user samples. The model calculated the LCC and PBP for products at each efficiency level for a sample of 10,000 consumers per simulation run.

DOE calculated the LCC and PBP for all consumers as if each were to purchase a new product in the expected year of compliance with amended standards. For this NOPR, DOE estimated publication of a final rule in the first half of 2016. For purposes of its analysis, DOE assumed a compliance date three years after publication of any final amended standard (*i.e.,* 2019), consistent with the approach taken in the concurrent ceiling fan light kits energy conservation standards rulemaking.

Table IV–5 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and its appendices of the NOPR TSD. DOE requests comments on the methodology of the LCC and PBP analyses for ceiling fans. See issue 11 in section VII.E.

TABLE IV–5—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSES*

Inputs	Source/Method
Purchase Price	DOE estimated the purchase price of ceiling fans (CF) by combining the different cost components along the production, import, distribution and retail chain. DOE further used a price trend to project prices of CF with DC motors to the compliance year.
Sales Tax	Derived 2019 population-weighted-average tax values for each reportable domain based on Census population projections and sales tax data from Sales Tax Clearinghouse.
Energy Use	Derived in the energy use analysis, and takes into account variations in factors such as operating hours. Variation in geographic location is taken into account for certain product classes.
Energy Prices	Electricity: Based on 2014 marginal electricity price data from the Edison Electric Institute. Variability: Electricity prices vary by season, U.S. region, and baseline electricity consumption level.
Energy Price Trends	Based on *AEO 2015* price forecasts.
Product Lifetime	Derived a mean ceiling fan life time of 13.8 years from a best-fit model based on the Weibull distribution.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Efficiency Distribution	Current efficiency distribution is based on in-store and online model counts. Efficiency distribution for the compliance year is estimated by the market-share module of shipments model. See chapter 9 of the NOPR TSD for details.
Assumed Compliance Date	2019.

* References for the data sources mentioned in this table are provided in the sections following the table and in chapter 8 of the NOPR TSD.

1. Purchase Price

DOE estimates the purchase price by combining manufacturing and production cost, manufacturer markups, tariffs, import costs, retail markups, and sales tax. Section IV.D provides the details of the markups analysis.

DOE used a price trend to account for changes in the incremental DC motor price that are expected to occur between the time for which DOE has data for DC motor prices (2014) and the assumed compliance date of the rulemaking (2019). DOE estimated a 6 percent price decline rate associated with the electronics used to control DC motor fans based on an analysis of the Producer Price Index (PPI) of semiconductor components.[37] This rate is only applied to the incremental cost between a DC motor and an AC motor and not to the price of the entire ceiling fan. For details on the price trend analysis, see section IV.G.

DOE applied sales tax, which varies by geographic location, to the total product cost. DOE collected sales tax data from the Sales Tax Clearinghouse [38] and used population projections from the Census bureau [39] to develop population-weighted-average sales tax values for each state in 2019.

Southern Company suggested DOE allow for some percentage of low-income consumers to have zero installation cost, as they would install the ceiling fan themselves. (Southern Company, Public Meeting Transcript, No. 83 at p. 296) DOE notes that in the NOPR analyses, as in the preliminary analysis, DOE assumed that installation costs are the same regardless of efficiency level and do not affect the LCC or PBP.

2. Electricity Prices

In the preliminary analysis, DOE used average retail electricity prices to conduct its analyses. In response to this methodology, ALA suggested DOE use marginal electricity prices, rather than average electricity prices, for its LCC and PBP analyses in order to remove fixed monthly charges and demand charges from the analysis. (ALA, No. 90 at p. 12) Because marginal electricity price captures more accurately the small, incremental cost or savings associated with a change in energy use relative to the consumer's bill in the reference case, it may provide a better representation of consumer costs than average electricity prices. Therefore, DOE used average electricity prices to characterize the baseline efficiency level and marginal electricity prices to characterize incremental energy costs associated with the other efficiency levels considered. In the LCC analysis, the marginal electricity prices vary by season, region, and baseline household electricity consumption level. DOE estimated these prices using data published with the Edison Electric Institute (EEI) Typical Bills and Average Rates reports for summer and winter 2014.[40] DOE assigned seasonal marginal prices to each LCC sample based on the location and the baseline monthly electricity consumption for an average summer or winter month associated with that sample. DOE approximated the electricity prices for the industrial sector using the commercial sector prices. This approximation was made as the type of industrial facility that uses ceiling fans typically occupies a regular building, rather than a heavy industrial complex. For a detailed discussion of the development of electricity prices, see appendix 8B of the NOPR TSD.

3. Electricity Price Trends

To arrive at average and marginal electricity prices in future years, DOE multiplied the average and marginal electricity prices in the reference year (2014) by the forecast of annual residential or commercial electricity price changes for each Census division from EIA's *AEO 2015,* which has an end year of 2040.[41] To estimate the trends after 2040, DOE used the average rate of change during 2025–2040.

For each fan purchase sampled, DOE applied the projection for the Census division in which the purchase was located. The AEO electricity price trends do not distinguish between marginal and average prices, so DOE used the *AEO 2015* trends for the marginal prices. DOE reviewed the EEI data for the years 2007 to 2014 and determined that there is no systematic

[37] PCU334413334413

[38] *https://thestc.com/STRates.stm.* Last accessed April 27th 2015.

[39] U.S. Census Bureau, Population Division, Interim State Population Projections, 2005. Table A1: Interim Projections of the Total Population for the United States and States: April 1, 2000 to July 1, 2030.

[40] Edison Electric Institute. *Typical Bills and Average Rates Report.* Winter 2014 published April 2014, Summer 2014 published October 2014. See *http://www.eei.org/resourcesandmedia/products/Pages/Products.aspx.*

[41] U.S. Department of Energy-Energy Information Administration, *Annual Energy Outlook 2015 with Projections to 2040* (Available at: *http://www.eia.gov/forecasts/aeo/*).

difference in the trends for marginal vs. average electricity prices in the data.

DOE used the electricity price trends associated with the AEO Reference case scenarios for the nine Census divisions. The Reference case is a business-as-usual estimate, given expected market, demographic, and technological trends. DOE also included prices from AEO high-growth and AEO low-growth scenarios in the analysis. The high- and low-growth cases show the projected effects of alternative economic growth assumptions on energy markets.

4. Repair Costs

In the preliminary analysis, DOE used information on repairs and installation from manufacturer interviews to estimate the cost to consumers of repairing a ceiling fan. DOE also assumed that 2.5 percent and 9 percent of AC-motor and DC-motor ceiling fans incurred repair costs, respectively. DOE based these assumptions on repair rate estimates provided by a ceiling fan technical expert.[42] Westinghouse Lighting stated that low-price ceiling fans are more likely to be replaced by consumers rather than repaired; therefore, Westinghouse Lighting suggested DOE only include a replacement cost and not a repair cost. (Westinghouse Lighting, Public Meeting Transcript, No. 83 at p. 299) While DOE understands Westinghouse's point that many consumers of low-cost ceiling fans will not find it economically justified to repair their ceiling fan, DOE does not have data to support revising the assumptions used in the preliminary analysis, and DOE has continued to use the same assumptions in the NOPR analyses.

ASAP requested DOE use the same repair costs and assumptions for both AC and DC motors, because ASAP is unaware of any data supporting an increased repair rate for DC motors, and because ASAP projects that any reliability issues that manufacturers are currently experiencing with DC motors will be eliminated by 2019 as more ceiling fans with DC motors are sold and the technology matures. (ASAP, *et al.*, No. 92 at pp. 1–2) BAS agrees with ASAP, and the CA IOUs encouraged DOE to research specific DC motor issues to determine the magnitude of reliability issues and whether these issues are prevalent currently. (BAS, No. 88 at p. 27; CA IOUs, No. 91 at pp. 2–3) On the other hand, ALA commented that the intensity of use can be a limiting factor for the lifetime of ceiling fans with DC motors, which is not the case for fans with AC motors. (ALA, No. 90 at p. 14)

As mentioned previously, in the preliminary analysis, DOE assumed a higher repair rate for ceiling fans with DC motors (9 percent) as compared to ceiling fans with AC motors (2.5 percent). This assumption was based on an estimate provided by a ceiling fan technical expert.[42] DOE appreciates the feedback provided on the prevalence of repairs for ceiling fans with DC motors; however, DOE has looked into the issue further and has found no suitable data with which to update its assumption that the excess rate of failure for DC motors, above the repair rate for AC motors, is 6.5 percent of purchases. While DOE is unaware of any data illuminating the magnitude of the excess repair rate for DC motors, because DC motors incorporate electronics that AC motors do not have, the reliability of AC motors is likely to exceed DC motors. DOE invites comment, input, and data that can improve the estimate of repair costs, particularly repair costs associated with DC motors. See issue 12 in section VII.E.

5. Product Lifetime

DOE estimated ceiling fan lifetimes by fitting a survival probability function to data of historical shipments and the 2012 age distributions of installed stock. Data on the age distribution for the installed standard, hugger, and VSD ceiling fan stock in 2012 was available from the LBNL study.[43] By combining data from the LBNL study with historic data on standard, hugger, and VSD ceiling fan shipments from NPD, ENERGY STAR and Appliance Magazine (see chapter 3 for more information on historical shipments), DOE estimated the percentage of appliances of a given age that are still in operation. This survival function, which DOE assumed has the form of a cumulative Weibull distribution,[44] provides a mean of 13.8 years and a median of 13.0 years for ceiling fan lifetime and is the same distribution employed in the preliminary analysis. DOE welcomes comment on these estimates. See issue 13 in section VII.E.

Shipment data were only available for standard, hugger, and VSD ceiling fans, so DOE assumed the survival probability function of large-diameter and HSSD ceiling fans is the same as that for standard, hugger, and VSD ceiling fans. DOE requests comments and data on product lifetimes of large-diameter and HSSD ceiling fans. See issue 14 in section VII.E.

Hunter Fan Company agreed with DOE's assumed standard, hugger, and VSD ceiling fan life of 13.8 years, and ALA agreed with DOE's lifetime assumptions for all ceiling fan types. (Hunter Fan Company, Public Meeting Transcript, No. 83 at p. 301; ALA, No. 90 at p. 14) MacroAir reports that large-diameter ceiling fans typically have longer lifetimes than standard, hugger, and VSD ceiling fans, but it cannot provide data to support this as large-diameter fans have only been manufactured and sold in the United States for about 13 years. MacroAir did cite its warranties for two product lines—12 years (prorated) for their AC motor line and 50,000 hours of operation for its DC motor line—as evidence of lifetimes longer than the 13.8 years DOE assumed in its analyses. (MacroAir, No. 89 at p. 11)

While the warranty information provided by MacroAir is informative, it does not provide a representative basis for modifying DOE's assumption on lifetime of large-diameter ceiling fans. Thus, DOE has maintained an average lifetime of 13.8 years in the NOPR analyses for all ceiling fan product classes.

6. Discount Rates

In calculating the LCC, DOE applies discount rates appropriate to consumers to estimate the present value of future operating costs. To identify appropriate discount rates for purchasers, DOE estimated the percentage of HSSD and large-diameter fan purchasers in the commercial and industrial sectors. For HSSD fans, DOE estimated the ratio in floor space between likely building types where a fan would be installed in commercial settings to that in industrial settings. Manufacturer interviews informed DOE of the likely locations of CF installations. Floor space estimates by building type were taken from the 2010 U.S. Lighting Market Characterization,[45] which extrapolates estimates for commercial floor space from the 2003 Commercial Buildings Energy Consumption Survey (CBECS) and industrial floor space from the 2006 Manufacturing Energy Consumption Survey (MECS) to 2010 values using measured growth trends. The ratio suggests that 80 percent of HSSD installations are in the commercial sector and 20 percent are in the industrial sector. For large-diameter

[42] Mehta, V. Personal communication. Email to Mohan Ganeshalingam, LBNL. January 14, 2014.

[43] Kantner, *et al.* (2013), *op. cit.*

[44] Weibull distributions are commonly used to model appliance lifetimes.

[45] Navigant Consulting, Inc. *Final Report: 2010 U.S. Lighting Market Characterization.* January 2012. (Last Accessed March 27, 2014.) *http://apps1.eere.energy.gov/buildings/publications/pdfs/ssl/2010-lmc-final-jan-2012.pdf.*

fans, DOE used manufacturer feedback about common applications for these fans. DOE estimated that 20 percent of large-diameter ceiling fan installations are in the commercial sector and 80 percent are in the industrial sector.

For residential consumers, DOE estimated a distribution of discount rates for ceiling fans based on consumer financing costs and opportunity cost of funds related to appliance energy cost savings and maintenance costs. First, DOE identified all relevant household debt or asset classes to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances [46] (SCF) for 1995, 1998, 2001, 2004, 2007, and 2010. Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.4 percent. See chapter 8 of the NOPR TSD for further details on the development of residential discount rates.

To establish discount rates for commercial and industrial users, DOE estimated the cost of capital for companies that purchase ceiling fans. The weighted average cost of capital is commonly used to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so their cost of capital is the weighted average of the cost to the firm of equity and debt financing, as estimated from financial data for publicly traded firms in the sectors that purchase ceiling fans. For this analysis, DOE used Damodaran online [47] as the source of information about company debt and equity financing. The average rate across all types of companies, weighted by the shares of each type, is 5.0 percent. See chapter 8 of the NOPR TSD for further details on the development of commercial and industrial sector discount rates.

7. Efficiency and Blade Span Distribution in the No-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies in the no-standards case (*i.e.,* the case without new efficiency performance standards).

For standard, hugger, and VSD ceiling fans, DOE developed the current efficiency market share distributions by product class using online data from Hansen Wholesale [48] and data obtained from in-store visits of major retailers. Ceiling fan models were binned according to their efficiency to arrive at the current distributions. To estimate the efficiency distributions in 2019, DOE applied a consumer-choice model sensitive only to the first cost of options representative of each efficiency level given by the engineering analysis. The consumer-choice model is discussed in detail in section IV.G.1.

For HSSD and large-diameter ceiling fans, DOE developed the current efficiency distributions using model counts available on HSSD and large-diameter fan manufacturer Web sites. DOE assumed the current distribution observed in 2015 would also be representative of the efficiency distribution in 2019.

The estimated market shares for the no-standards case for all ceiling fans are shown in Table IV–6. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

Table IV-6. Market Efficiency Distribution for the No-Standards Case in 2019

Product Class	EL 0 %	EL 1 %	EL 2 %	EL 3 %	EL 4 %	Total* %
Standard	3.1	4.7	28.1	55.4	8.7	100
Hugger	3.1	4.7	27.9	55.1	9.2	100
VSD	4.1	0.0	96.0	0.0		100
HSSD	44.7	44.7	0.0	2.7	8.0	100
Large-Diameter	5.3	5.3	71.3	0.0	18.0	100

* Rows may not sum to 100% due to rounding.

Westinghouse Lighting suggested that EL 0 and EL 1 in the no-standards case should have larger market shares compared to higher efficiency levels due to the lower price point associated with these levels. (Westinghouse Lighting, Public Meeting Transcript, No. 83 at pp. 293–294, 310) As discussed in section IV.G.1, DOE investigated the effect of prices on the efficiency distribution, and did not find a basis to modify the distribution based on model counts.

DOE also developed size distributions within each product class to determine the likelihood that a given purchaser would select each of the representative fan sizes from the engineering analysis. In the preliminary analysis, DOE assumed that the current market share for 56-inch HSSD ceiling fans is 66.7 percent. Westinghouse Lighting and BAS indicated that the current market share for 56-inch HSSD ceiling fans is likely higher—potentially closer to 85 percent—than DOE assumed in the preliminary analysis. (Westinghouse Lighting, Public Meeting Transcript, No. 83 at p. 290; BAS, Public Meeting Transcript, No. 83 at p. 290)

For the NOPR, DOE estimated the distribution of diameters for standard, hugger, HSSD and large-diameter ceiling

[46] Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, and 2010. (Last accessed October 10, 2014.) *http://www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[47] Damodaran, A. *Cost of Capital by Sector.* January 2014. (Last accessed September 25, 2014.) *http://people.stern.nyu.edu/adamodar/New_Home_Page/datafile/wacc.htm*

[48] *http://www.hansenwholesale.com/.*

fans using the distribution of models currently seen on the market. A limited pool of available VSD fan models indicated a rough split of market share between the two representative blade spans, so DOE assumed that the VSD market was evenly split between the two blade spans. Table IV–7 presents the blade span distribution of each of the product classes. DOE's updated model count data show that 7.0 percent of HSSD models are 36-inch and the other 93.0 percent of models are 48-inch or larger (these were assigned to the 56-inch category). (For the NIA, DOE assumed that blade size distribution remains constant over the years considered in the analysis.)

TABLE IV–7—BLADE SPAN DISTRIBUTION

Product class	Standard			Hugger		VSD		HSSD		Large-Diameter		
Blade Span inches	44	52	60	44	52	13	16	36	56	96	144	240
Market Share %	21.1	72.5	6.5	46.2	53.8	50.0	50.0	7.0	93.0	23.0	27.0	49.0

8. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

Westinghouse Lighting found the PBP estimated for standard ceiling fans from DOE's preliminary analysis to be reasonable, but pointed out that the underlying first cost assumptions need to be updated to obtain a more accurate PBP. (Westinghouse Lighting, Public Meeting Transcript, No. 83 at pp. 272–273) Discussion of updates to the first cost can be found in section IV.F.7. Updated PBP results can be found in section V.B.1.

EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price forecast for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of product shipments to calculate the national impacts of potential amended energy conservation standards on energy use, NPV, and future manufacturer cash flows. Historical shipments data are used to build up an equipment stock, and to calibrate the shipments model to project shipments over the course of the analysis period based on the estimated future demand for ceiling fans. Details of the shipments analysis are described in chapter 9 of the NOPR TSD.

The shipments model projects total shipments and market-share efficiency distributions in each year of the 30-year analysis period (2019–2048) for the no-standards case and each of the standards cases calibrated using historical shipments. The shipments model consists of three main components: (1) A shipments demand model that determines the total demand for new ceiling fans in each year of the analysis period, (2) a stock model that tracks the age distribution of the stock over the analysis period, and (3) a model that determines the market shares of purchased ceiling fans across efficiency levels. For standard, hugger, and VSD ceiling fans, DOE used a consumer-choice model sensitive to ceiling fan first cost to estimate market shares across efficiency level. For HSSD and large-diameter ceiling fans, DOE used a roll-up approach to estimate the efficiency distribution in each standards case.

1. Shipments Demand Model

DOE used historical shipment data of hugger, standard, and VSD fans from Appliance Magazine's Statistical Review from 1991 to 2006,[49] data from ENERGY STAR annual reports from 2003 to 2013,[50] and data purchased from NPD Research group from 2007–2011.[51] Figure 9.3.1 in Chapter 9 of this NOPR TSD displays the historical time series used for DOE's shipments analysis.

As the data were not disaggregated by product class, DOE estimated the relative split between standard, hugger, and VSD product classes. In the preliminary analysis, DOE used model counts of ceiling fans available in-store and online to estimate the market share split between hugger and standard ceiling fans. DOE estimated that hugger ceiling fans constitute 21 percent of the standard, hugger, and VSD ceiling fan market, with standard (26 percent) and multi-mount (53 percent) ceiling fans making up the rest of the market. Furthermore, DOE assumed 27 percent of multi-mount ceiling fans are installed in the hugger configuration, with the remaining 73 percent installed in the standard configuration.[52] This resulted in market shares of 35 percent and 65 percent for hugger and standard fans, respectively.

Westinghouse Lighting and Hunter Fan Company indicated that the distribution for standard, hugger, and VSD ceiling fans used in the preliminary analysis should be more heavily weighted toward hugger ceiling fans, because hugger fans are generally less expensive than standard fans. (Westinghouse Lighting, Public Meeting Transcript, No. 83 at pp. 291–292; Hunter Fan Company, Public Meeting Transcript, No. 83 at p. 292)

For the NOPR analyses, DOE used updated online and in-store ceiling fan data, and applied a price-weighting approach based on market share data as a function of retail price for ceiling fans collected by the NPD Group from 2007 to 2011. These data inform the price-weighting scheme, which apportions more market share to ceiling fans with lower first costs. Using the updated, price-weighted data, DOE calculated 48.7 percent and 51.3 percent current

[49] Appliance® Statistical Review, Annual Report, *Appliance Magazine* (1991–2006).

[50] United States Environmental Protection Agency, *ENERGY STAR® and Other Climate Protection Partnerships: Annual Report* (2003–2013).

[51] NPD Group, 2007–2011.

[52] AcuPOLL® Precision Research, Inc. *Survey of Consumer Ceiling Fan Usage and Operations.* 2013.

market shares for hugger and standard ceiling fans, respectively. (This calculation retained the 27 percent/73 percent installation split used in the preliminary analysis for multi-mount fans.) Using these same data, DOE found that price-weighting did not significantly affect the relative market shares at each EL for hugger and standard ceiling fans. Therefore, DOE did not take price into account in developing these estimates. DOE welcomes comment, data, or information on its estimates for the relative split between hugger, standard, and VSD product classes. See issue 15 in section VII.E.

DOE was unable to obtain historical shipment data for HSSD and large-diameter ceiling fans. DOE's estimate for HSSD historical shipments is based on scaling historical shipments of standard, hugger, and VSD ceiling fans using a scaling factor estimated from feedback from manufacturer interviews. DOE's estimate for large-diameter fans is based on matching a linear shipments trend to an estimate of 2013 installed stock assuming large-diameter fans were introduced to the market in 2000. DOE requests data and information on current and historical shipments for HSSD and large-diameter ceiling fans. See issue 16 in section VII.E.

Shipments for standard, hugger, and VSD ceiling fans are calculated for the residential sector. Shipments for HSSD and large-diameter fans are calculated for the commercial and industrial sectors. As all of the inputs used in the downstream analyses are the same for both sectors, DOE does not distinguish between shipments to the commercial or industrial sector. DOE requests comments on the assumed ceiling fan usage by sector for all product classes. See issue 17 in section VII.E.

The ceiling fan shipments demand model considers four market segments that affect the net demand for total shipments: replacements for retired stock, additions due to new building construction, additions due to expanding demand in existing buildings, and reductions due to building demolitions, which erodes demand from replacements and existing buildings.

2. Stock-Accounting Model

The stock accounting model tracks the age (vintage) distribution of the installed ceiling fan stock. The age distribution of the stock impacts both the national energy savings (NES) and NPV calculations, because the operating costs for any year depend on the age distribution of the stock. Older, less efficient units may have higher operating costs, while newer, more efficient units have lower operating costs. The stock accounting model is initialized using historical shipments data and accounts for additions to the stock (*i.e.,* shipments) and retirements. The age distribution of the stock in 2012 is estimated using results from the LBNL survey of ceiling fan owners.[53] The stock age distribution is updated for subsequent years using projected shipments and retirements determined by the stock age distribution and a product retirement function.

3. Market-Share Projections

The consumer-choice model used for standard, hugger, and VSD ceiling fans estimates the market shares of purchases in each year in the analysis period for each efficiency level presented in the engineering analysis. DOE assumed that each of these product classes provides a specific utility and consumers do not choose between options in different product classes. The consumer-choice module selects which ceiling fans are purchased within a product class in any given year based on consumer sensitivity to first cost, as well as on the ceiling fan options available, which were determined in the engineering analysis. Deviations from purely cost-driven behavior are accounted for using factors found by calibrating the model to observed historical data. DOE requests comments on its approach for estimating the market share distribution by efficiency level using a consumer-choice model sensitive to first cost for standard, hugger, and VSD ceiling fans. See issue 18 in section VII.E.

For HSSD and large-diameter ceiling fans, in the no-standards case the efficiency distribution over the shipments analysis period is assumed to remain fixed to the current distribution estimated for 2015. In the standards cases, market shares for those levels that do not meet the standard roll-up to the standard level, and shares above the standard level are unchanged. As in the preliminary analysis, DOE assumed no product class switching between the HSSD and large-diameter product classes. DOE welcomes comments on its use of the roll-up approach to estimate market-shares by efficiency levels for HSSD and large-diameter ceiling fans. See issue 19 in section VII.E.

In the preliminary analysis, DOE assumed no product class switching between standard and hugger ceiling fans. Hunter Fan Company suggested that some fraction of consumers may switch among product classes; however, Hunter did not expect the overall market share of standard and hugger ceiling fans to change substantially. (Hunter Fan Company, Public Meeting Transcript, No. 83 at pp. 318–320) Westinghouse Lighting agreed with the possibility of product class switching, because first cost is the main consumer choice point, not whether the fan is standard or hugger. (Westinghouse Lighting, Public Meeting Transcript, No. 83 at p. 320) ALA added that because the ceiling fan market is highly dependent on aesthetics, consumers may choose to switch between product classes. (ALA, No. 90 at p. 18)

Although DOE agrees that consumers are primarily sensitive to first cost when purchasing a ceiling fan, the difference in retail price between comparable efficiency levels in each product classes is relatively small and unlikely to drive a significant fraction of the market to switch product classes. There will be some fraction of consumers that cannot switch product classes due to room-size constraints. For example, only hugger fans can adequately fit in rooms with low ceilings. Therefore, for the NOPR analysis, DOE assumed no product class switching between standard and hugger ceiling fans. Thus, the relative fraction of standard and hugger ceiling fans remains fixed in the no-standards case shipments. In a standards case, the relative fraction of hugger and standard fans could potentially change because standards-case shipments for each product class are calculated based on the change in price relative to the no-standards case shipments for that product class using a relative price elasticity (see discussion below).

4. Price Trend

The consumer-choice model uses ceiling fan prices, which change over time in some cases. There is considerable evidence of learning-by-doing lowering the cost of new technologies along with increases in production of the new technology. The concept behind this empirical phenomenon is that as the new technology is produced in greater numbers, employees and firms will find ways to lower costs. Brushless DC motors are a relatively new technology for use in ceiling fans, and thus DOE expects comparable price declines. Given the absence of data on shipments of DC motors, DOE models learning lowering costs, and thus prices, with time. In the preliminary analysis, DOE adopted a price decline rate of 6 percent applied to the incremental (not total) cost associated with a brushless DC motor, based on information from a technical expert for standard, hugger, and VSD ceiling fans.[42] ASAP

[53] Kantner, *et al.* (2013), *op. cit.*

supported DOE's use of a price trend for DC motor components, and believes that the price of DC motors and their controls will decline more quickly than the total price of ceiling fans. (ASAP, et al., No. 92 at p. 2) ALA also agrees with DOE's price trend approach, but ALA states that this price decline will cease at some point during the analysis period and requested that DOE identify the year at which the price decline would cease to occur. (ALA, No. 90 at p. 18)

In the NOPR analyses, DOE continued to use the 6 percent price decline rate assumption. DOE is not able to specify a year at which the price decline would cease for DC motors; instead, DOE's approach resulted in the cost of DC motors asymptotically approaching the cost of AC motors. DOE requests input on the validity of its price trend methodology as applied to the incremental cost of a DC motor. See issue 20 in section VII.E.

In the preliminary analysis, DOE's application of a price trend to DC motor ceiling fans in its reference case was independent of the composition of the magnet used in DC motors over the course of the analysis period. This assumption is predicated on the magnets used in DC motor ceiling fans being easily available to manufacturers and not subject to price fluctuations based on limited supply, as in the case of rare-earth materials. DOE requested comment from manufacturers on the composition and price of magnets used in DC motor fans to assess whether rare-earth materials are used to construct DC motor magnets.

BAS provided a table comparing the relative performance and relative price of the three main types of magnets used in DC ceiling fan motors (ferrite, bonded neodymium, and sintered neodymium) and also provided a table of information showing that bonded neodymium and sintered neodymium magnets are approximately 3.5 and 10 times more expensive than ferrite magnets, respectively. (BAS, No. 88 at p. 26) Hunter Fan Company stated that it mainly uses ferrite magnets in its DC motor fans, MacroAir noted that they use sintered neodymium magnets in its new DC motor ceiling fan, and BAS indicated that neodymium magnets are not used in their residential fans. (Hunter Fan Company, Public Meeting Transcript, No. 83 at p. 317; MacroAir, No. 89 at p. 10; BAS, No. 88 at pp. 26–27) BAS indicated that the price of a ferrite magnet manufactured to fit within the frame size of an existing AC motor may only cost $1-$2 per motor, and also suggested that as more DC ceiling fans enter the market, ferrite magnets will be used more commonly. (BAS, No. 88 at pp. 26–27)

The price of the permanent magnet may fluctuate based on the pricing of the raw material used to construct the magnet. As a sensitivity scenario in the NOPR analysis, DOE also analyzed the case in which the cost of a DC motor does not undergo price decline and remains fixed at its 2014 price over the course of the analysis period.

5. Impact of a Standard on Shipments

To estimate the impacts of potential standards on shipments, in the preliminary analysis, DOE used a relative price elasticity of demand of −0.34, which is the value DOE has typically used for residential appliances. Because it is relatively easy to replace the cooling provided by ceiling fans with other means, ALA requested DOE use a higher relative price elasticity of demand for ceiling fans in its analyses. (ALA, No. 90 at pp. 12–13) Hunter Fan Company also expressed concern that DOE's analysis did not show a significant drop in shipments resulting from moving from a no-standards case to efficiency level 1. (Hunter Fan Company, Public Meeting Transcript, No. 83 at p. 256)

In the absence of data necessary to estimate a price elasticity specific to ceiling fans, DOE continued to use a relative price elasticity of −0.34 in its NOPR analysis. In addition, DOE notes that a standard at EL 1, EL 2, or EL 3 would affect a relatively small portion of the ceiling fan market, as a majority of the hugger and standard ceiling fan market is at EL 3 or above. The incremental cost associated with EL 1, EL 2, and EL 3 compared to the baseline is relatively small in relation to the total price of the ceiling fan. For example, the installed cost of EL 1 and EL 2 is the same as that of the baseline for hugger and standard ceiling fans. Thus, even if DOE were to use a higher price elasticity, the shipments model would project only a modest decrease in shipments relative to the no-standards case in the event of an efficiency standard set at EL 1, EL 2, or EL 3. DOE requests data to more accurately estimate a price elasticity of demand specific to ceiling fans. Specifically, DOE requests concurrent data on industry-wide shipments-weighted retail price and efficiency and average household income. See issue 21 in section VII.E.

As was noted in the preliminary analysis, an increase in the price of ceiling fan light kits due to a ceiling fan light kit standard will also impact the shipments of ceiling fans sold with ceiling fan light kits. The ceiling fan NOPR analysis includes the impact on ceiling fan shipments from the ceiling fan light kit price change due to the proposed ceiling fan light kit standard [CITATION to be added]. The impact from a ceiling fan light kit standard to ceiling fan shipments is applied to both the no ceiling fan standards case and the ceiling fan standards case shipments.

H. National Impact Analysis

The NIA assesses the national energy savings (NES) and the net present value (NPV) from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual product shipments, along with the annual energy consumption, total installed cost, and repair costs. For the NOPR analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of ceiling fans shipped from 2019 through 2048.

DOE evaluates the impacts of potential standards by comparing a no-standards case projection with standards-case projections. The no-standards case projection characterizes energy use and consumer costs in the absence of amended energy conservation standards. The standards-case projections characterize energy use and consumer cost for the market distribution where ceiling fans that do not meet the TSL being analyzed are excluded as options available to the consumer. As described in section IV.G of this notice, DOE developed market share distributions for ceiling fans at each EL in the no-standards case and each of the standards cases in its shipments analysis.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV–8 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV–8—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Assumed Compliance Date of Standard	2019.
No Standard-Case Forecasted Efficacies	Estimated by market-share module of shipments model.
Standards-Case Forecasted Efficacies	Estimated by market-share module of shipments model.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each EL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each EL.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	DC motor fans have a 6.5% higher failure rate compared to AC motor fans.
Energy Prices	*AEO 2015* forecasts (to 2040) and extrapolation thereafter.
Energy Site-to-Primary Conversion	A time-series conversion factor based on *AEO 2015.*
Discount Rate	Three and seven percent.
Present Year	2015.

1. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products in each potential standards case (TSL) with consumption in the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-standards case and for the case where a standard is set at each TSL. Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2015.*

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use full-fuel-cycle (FFC) measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (August 18, 2011). After evaluating the approaches discussed in the August 18, 2011 notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (NEMS) is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (August 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector that EIA uses to prepare its *Annual Energy Outlook.*[54] The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

The rebound effect accounts for increased usage of an appliance by consumers after the implementation of a standard, reducing the energy savings attributed to a standard. DOE generally accounts for the direct rebound effect in its estimates of the national energy savings. In principle, the rebound effect can reduce expected savings in energy costs to consumers in the standards case. However, the take-back in energy consumption associated with the rebound effect can also be expected to provide benefits to consumers. These benefits from an incremental increase in appliance usage are challenging to monetize, but by definition must be similar to the costs. Therefore, DOE assumed that if it were able to monetize the increased value to consumers of the rebound effect, this value would be similar in value to the forgone energy savings. Accordingly, the economic impacts on consumers with or without the rebound effect are approximately the same, so DOE does not adjust operating cost savings in the NIA based on rebound. Nevertheless, DOE performed a sensitivity scenario assuming a rebound of 3-percent to examine the implications of the rebound. This choice is based on the judgment that in most cases, consumers do not often adjust ceiling fans. The results of this sensitivity analysis can be found in appendix 10C of this NOPR TSD.

2. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are: (1) Total annual installed cost; (2) total annual savings in operating costs; and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the forecast period.

The operating cost savings are primarily energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of electricity. To estimate electricity prices in future years, DOE multiplied the average regional electricity prices by the forecast of annual national-average residential or commercial electricity price changes in the Reference case from *AEO 2015,* which has an end year of 2040. To estimate price trends after 2040, DOE used the average annual rate of change in prices from 2025 to 2040. As part of the NIA, DOE also analyzed scenarios that used inputs from the *AEO 2015* low economic growth and high economic growth cases.

DOE estimated the range of potential impacts of amended standards by considering three sensitivity scenarios: A high-benefit scenario, a low-benefit scenario, and a scenario that includes a 3-percent rebound effect. In the high benefits scenario, DOE used the *AEO 2015* high economic growth case estimates for new housing starts and electricity prices along with its reference price trend for DC motor fans.

[54] For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb. 1998) (Available at: *http://www.eia.gov/oiaf/aeo/overview/*).

As discussed in section IV.G, price trend is only applied to the price premium between a DC motor and a direct drive AC motor. In the low benefits scenario, DOE used the low economic growth *AEO 2015* estimates for housing starts and electricity prices, along with no price trend. In the 3-percent rebound scenario, DOE assumed that there would be increased ceiling fan usage due to the decreased operating cost savings associated with a standard. The NIA results based on these alternative scenarios are presented in appendix 10C of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to federal agencies on the development of regulatory analysis.[55] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

DOE requests comments on the overall methodology used to develop shipment forecasts and estimate NES and the NPV of those savings. See issue 22 in section VII.E.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers at alternative standard levels.

ALA requested DOE consider the impact of energy conservation standards on low-income consumers. (ALA, No. 90 at p. 18) For this NOPR, DOE analyzed the impacts of the considered standard levels on low-income households and small businesses that purchase ceiling fans.

DOE calculated the LCC and PBP results for standard, hugger, and VSD fans based on a sample of low-income households or consumers who were identified in the RECS 2009 survey as being at or below the ''poverty line.'' The poverty line varies with household size, head of household age, and family income.

In the case of the HSSD and large-diameter fans, DOE conducted a subgroup analysis based on small businesses that purchase ceiling fans by applying the small company discount rate distributions for each sector in the LCC and PBP calculation, instead of the discount rate associated with the entire industry.

Chapter 11 of the NOPR TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE conducted an MIA for ceiling fans to estimate the financial impact of proposed standards on manufacturers of ceiling fans. The MIA has both quantitative and qualitative aspects. The quantitative part of the MIA relies on the GRIM, an industry cash-flow model customized for the ceiling fans covered in this rulemaking. The key GRIM inputs are data on the industry cost structure, manufacturer production costs (MPCs), shipments, and assumptions about manufacturer markups, and conversion costs. The key MIA output is INPV. DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a no-standards case and various TSLs (the standards cases). The difference in INPV between the no-standards case and standards cases represents the financial impact of amended energy conservation standards on ceiling fan manufacturers. Different sets of assumptions (scenarios) produce different INPV results. The qualitative part of the MIA addresses factors such as manufacturing capacity; characteristics of, and impacts on, any particular subgroup of manufacturers; and impacts on competition.

DOE conducted the MIA for this rulemaking in three phases. In the first phase, DOE prepared an industry characterization based on the market and technology assessment, preliminary manufacturer interviews, and publicly available information. In the second phase, DOE estimated industry cash flows in the GRIM using industry financial parameters derived in the first phase and the shipment scenarios used in the NIA. In the third phase, DOE conducted interviews with a variety of ceiling fan manufacturers that account for more than 30 percent of domestic ceiling fan sales covered by this rulemaking. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics specific to each company, and obtained each manufacturer's view of the ceiling fan industry as a whole. The interviews provided information that DOE used to evaluate the impacts of amended standards on manufacturers' cash flows, manufacturing capacities, and direct domestic manufacturing employment levels. See section V.B.2.b of this NOPR for the discussion on the estimated changes in the number of domestic employees involved in manufacturing ceiling fans covered by standards. See section IV.J.3 of this NOPR for a description of the key issues that manufacturers raised during the interviews.

During the third phase, DOE used the results of the industry characterization analysis in the first phase and feedback from manufacturer interviews to group manufacturers that exhibit similar production and cost structure characteristics. DOE identified one manufacturer subgroup for a separate impact analysis—small businesses. DOE determined that ceiling fan manufacturing falls under the North American Industry Classification System (NAICS) code 335210, small electrical appliance manufacturing. The U.S. Small Business Administration (SBA) defines a small business as having less than 750 total employees for manufacturing operating under this NAICS code. This threshold includes all employees in a business' parent company and any other subsidiaries. Based on this classification, DOE identified up to 37 ceiling fan manufacturers that could potentially qualify as small businesses. ALA commented that many of the manufacturers in the ceiling fan industry are small businesses. (ALA, No. 91, Public Meeting Transcript, pp. 18) DOE agrees that small ceiling fan manufacturers hold a significant share of the ceiling fan market. DOE analyzed the impact on the small business subgroup in the complete MIA, which is presented in chapter 12 of this NOPR TSD, and in the Regulatory Flexibility analysis required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, presented in section VI.B of this NOPR.

2. GRIM Analysis and Key Inputs

DOE uses the GRIM to quantify the changes in cash flows over time due to

[55] United States Office of Management and Budget. ''Circular A–4: Regulatory Analysis,'' (Sept. 17, 2003), section E (Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html*).

amended energy conservation standards. These changes in cash flows result in either a higher or lower INPV for the standards case compared to the no-standards case. The GRIM analysis uses a standard annual cash-flow analysis that incorporates MPCs, manufacturer markups, shipments, and industry financial information as inputs. It then models changes in MPCs, investments, and manufacturer margins that may result from analyzed amended energy conservation standards. The GRIM uses these inputs to calculate a series of annual cash flows beginning with the base year of the analysis, 2015, and continuing to 2048. DOE computes INPV by summing the stream of annual discounted cash flows during the analysis period. DOE used a real discount rate of 7.4 percent for ceiling fan manufacturers. Initial discount rate estimates were derived from industry corporate annual reports to the Securities and Exchange Commission (SEC 10-Ks). DOE initially derived a real discount rate of 5.9 percent from publicly available SEC 10-Ks of ceiling fan manufacturers. During manufacturer interviews, DOE asked ceiling fan manufacturers to provide feedback on this discount rate. Based on manufacturer feedback that the 5.9 percent discount was too low for the ceiling fan industry, DOE revised the real discount rate to be 7.4 percent for this analysis. Many of the GRIM inputs come from the engineering analysis, the NIA, manufacturer interviews, and other research conducted during the MIA. The major GRIM inputs are described in detail in the following sections.

a. Capital and Product Conversion Costs

DOE expects amended ceiling fan energy conservation standards to cause manufacturers to incur conversion costs by bringing their tooling and product designs into compliance with amended standards. For the MIA, DOE classified these conversion costs into two major groups: (1) Capital conversion costs and (2) product conversion costs. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing tooling equipment so new product designs can be fabricated and assembled. Product conversion costs are investments in research, development, testing, marketing, certification, and other non-capitalized costs necessary to make product designs comply with amended standards.

Using feedback from manufacturer interviews, DOE conducted a bottom-up analysis to calculate the capital and product conversion costs for ceiling fan manufacturers for each product class at each EL. To conduct this bottom-up analysis, DOE used manufacturer input from manufacturer interviews regarding the types and dollar amounts of discrete capital and product expenditures that would be necessary to convert specific production lines for ceiling fans at each EL. Ceiling fan manufacturers identified tooling costs as the primary capital cost that would be necessary to meet higher efficiency levels for ceiling fans. Tooling costs are necessary to produce ceiling fans with optimized designs that accommodate more efficient fan motors and fan blades to meet proposed efficiency levels. The two main types of product conversion costs for ceiling fans that manufacturers shared with DOE during manufacturer interviews were the engineering hours necessary to redesign ceiling fans to meet higher efficiency standards and the testing and certification costs necessary to comply with higher efficiency standards.

ALA commented that achieving greater efficiency through the use of a larger AC motor will impose significant ceiling fan redesign and regulatory approval costs. ALA stated that modifying an existing model to use a larger AC motor will require redesign of ceiling fan motor housings, blade arm tooling, and potentially switchcups and flange skirts to aesthetically accommodate the larger motor and maintain proper spacing to accommodate motor cooling. ALA estimates that tooling costs for this modification is $20,000 per modified model and that each modified model will need a complete safety investigation, at an additional estimated cost of $6,000 per model. (ALA, No. 91 at p. 5) Additionally, ALA commented that a standard requiring larger direct drive motors could cause manufacturers to pass on significant conversion costs associated with product design, engineering, retooling, and regulatory approval to customers. (ALA, No. 91 at p. 5–6)

DOE agrees that certain efficiency levels requiring model redesigns that include replacing the motor powering a ceiling fan and modifying motor housing and rotors will most likely cause manufacturers to incur capital conversion costs for retooling and product conversion costs for redesigning models. DOE used these comments from ALA and other comments from manufacturer interviews to make average value estimates (*i.e.,* average number of hours or average dollar amounts) based on the range of responses given by manufacturers for each capital and product conversion cost at each EL. See chapter 12 of the NOPR TSD for a complete description of DOE's assumptions for the capital and product conversion costs. Additionally, DOE analyzed how conversion costs and increased MPCs will impact the ceiling fan industry as well as how manufacturers will pass along conversion costs and increased production costs to consumers in section V.B.2.a of this NOPR.

b. Manufacturer Production Costs

Manufacturing a higher-efficiency product is typically more expensive than manufacturing a baseline product due to the use of more complex components, which are typically more costly than baseline components. The increases in the MPCs of the analyzed products can affect the revenues, gross margins, and cash flow of the industry, making these product costs key inputs for the GRIM and the MIA.

In the MIA, DOE used the MPCs calculated in the engineering analysis, as described in section IV.C and further detailed in chapter 5 of this NOPR TSD. To calculate the MPCs for ceiling fans, DOE purchased ceiling fans for specific product classes and efficiency levels and performed testing on these units to calculate the efficiencies of those units. DOE then conducted teardowns of these units to cost each ceiling fan model. This allowed DOE to estimate the incremental material, labor, depreciation, and overhead costs for products at each efficiency level within a product class. DOE used modeled data to represent some efficiency levels within a product class when it was unable to purchase ceiling fans at those efficiency levels. Manufacturers provided feedback on these performance and cost breakdowns during manufacturer interviews.

c. Shipment Scenarios

INPV, which is the key GRIM output, depends on industry revenue, which depends on the quantity and prices of ceiling fans shipped in each year of the analysis period. Industry revenue calculations require forecasts of: (1) total annual shipment volume of ceiling fans; (2) the distribution of shipments across the product class (because prices vary by product class); and, (3) the distribution of shipments across ELs (because prices vary with ceiling fan efficiency).

DOE modeled the no-standards case ceiling fan shipments and the growth of ceiling fan shipments using replacement shipments of failed ceiling fan units, new construction starts as projected by *AEO 2015,* and the number of additions to existing buildings due to expanding demand throughout the analysis period

taking into account demolitions in the housing stock.

For the standards cases, DOE used a ''roll-up'' approach to estimate shipments for HSSD and large-diameter ceiling fans and a consumer-choice model to estimate shipments for standard, hugger, and VSD ceiling fans. DOE used two different approaches to model shipments based on the availability of data to calibrate the market share model. See section IV.G.3 for further detail.

For HSSD and large-diameter ceiling fans, a roll-up approach was used, in which consumers who would have purchased ceiling fans that fail to meet the new standards in the no-standards case purchase the least efficient, compliant ceiling fans in the standards cases. Consumers that would have purchased compliant ceiling fans in the no-standards case continue to purchase the exact same ceiling fans in the standards cases. For standard, hugger, and VSD ceiling fan, a consumer-choice model was used to project consumer purchases based on consumer sensitivity to first cost.

For all ceiling fans, DOE also included price elasticity in the shipments analysis for all standards cases. When price elasticity is included in the shipment analysis, the total number of ceiling fans declines as the price of a ceiling fan increases due to standards. For a complete description of the shipments, see the shipments analysis discussion in section IV.G of this NOPR.

d. Markup Scenarios

As discussed in the previous manufacturer production costs section, the MPCs for ceiling fans are the manufacturers' costs for those units. These costs include materials, labor, depreciation, and overhead, which are collectively referred to as the cost of goods sold (COGS). The MSP is the price received by ceiling fan manufacturers from the first sale, typically to a distributor, regardless of the downstream distribution channel through which the ceiling fans are ultimately sold. The MSP is not the cost the end user pays for ceiling fans, because there are typically multiple sales along the distribution chain and various markups applied to each sale. The MSP equals the MPC multiplied by the manufacturer markup. The manufacturer markup covers all the ceiling fan manufacturer's non-production costs (*i.e.,* selling, general and administrative expenses [SG&A], research and development [R&D], interest) as well as profit. Total industry revenue for ceiling fan manufacturers equals the MSPs at each EL multiplied by the number of shipments at that EL.

Modifying these manufacturer markups in the standards cases yields a different set of impacts on ceiling fan manufacturers than in the no-standards case. For the MIA, DOE modeled three standards case markup scenarios for ceiling fans to represent the uncertainty regarding the potential impacts on prices and profitability for ceiling fan manufacturers following the implementation of analyzed amended energy conservation standards. The three scenarios are: (1) A preservation of gross margin, or flat, markup scenario; (2) a preservation of operating profit markup scenario; and (3) a two-tiered markup scenario. Each scenario leads to different manufacturer markup values, which, when applied to the inputted MPCs, result in varying revenue and cash-flow impacts on ceiling fan manufacturers.

The preservation of gross margin markup scenario assumes that the COGS for each product is marked up by a preservation of gross margin percentage to cover SG&A expenses, R&D expenses, interest expenses, and profit. This allows manufacturers to preserve the same gross margin percentage in the standards cases as in the no-standards case. This markup scenario represents the upper bound of the ceiling fan industry's profitability in the standards cases because ceiling fan manufacturers are able to fully pass additional costs due to standards to their consumers.

To estimate the industry average gross margin percentage for ceiling fans for the preservation of gross margin markup scenario, DOE examined the SEC 10-Ks of publicly traded ceiling fan manufacturers. DOE then asked manufacturers to verify the industry average gross margin percentage derived from SEC 10-Ks. For this NOPR analysis, DOE used 1.37 as the manufacturer markup for all ceiling fans in the preservation of gross margin markup scenario.

The preservation of operating profit markup scenario assumes that manufacturers are able to maintain only the no-standards case total operating profit in absolute dollars in the standards cases, despite higher product costs and investment. The no-standards case total operating profit is derived from marking up the COGS for each product by the preservation of gross margin markup. In the standards cases for the preservation of operating profit markup scenario, DOE adjusted the ceiling fan manufacturer markups in the GRIM at each TSL to yield approximately the same earnings before interest and taxes in the standards cases in the year after the compliance date of the amended ceiling fan standards as in the no-standards case. Under this scenario, while manufacturers are not able to yield additional operating profit from higher production costs and the investments that are required to comply with amended ceiling fan energy conservation standards, they are able to maintain the same operating profit in the standards case that was earned in the no-standards case.

DOE also modeled a two-tiered markup scenario, which reflects the industry's high- and low-efficiency product pricing structure. DOE implemented the two-tiered markup scenario because multiple manufacturers stated in interviews that they offer multiple tiers of product lines that are differentiated, in part, by efficiency level. The higher efficiency tiers typically earn premiums (for the manufacturer) over the baseline efficiency tier. Several manufacturers suggested that amended standards would lead to a reduction in premium markups and reduce the profitability of higher efficiency products. During the MIA interviews, manufacturers provided information on the range of typical ELs in those tiers and the change in profitability at each level. DOE used this information to estimate markups for ceiling fans under a two-tiered pricing strategy in the no-standards case. In the standards cases, DOE modeled the situation in which standards result in less product differentiation, compression of the markup tiers, and an overall reduction in profitability.

3. Discussion of Comments

Interested parties commented on the assumptions and results of the preliminary analysis. These topics covered MIA issues regarding the number of small businesses and the capital and product conversion costs associated with potential standards. These two comments were previously discussed in sections IV.J.1 and IV.J.2 respectively. No further comments on the preliminary analysis were submitted regarding the MIA.

4. Manufacturer Interviews

DOE conducted additional interviews with manufacturers following the preliminary analysis as part of the NOPR analysis. In these interviews, DOE asked manufacturers to describe their major concerns with this ceiling fan rulemaking. Manufacturers identified four major areas of concern: (1) Shift to air conditioning; (2) testing burden; and (3) utility of DC motors for residential consumers.

a. Shift to Air Conditioning

Several manufacturers stated that ceiling fan energy conservation standards could cause consumers to forgo the purchase of a ceiling fan in lieu of an air conditioner due to the anticipated price increase, or could cause ceiling fan owners to run their air conditioners more frequently instead of using their ceiling fan. Manufacturers assert that if consumers instead use their air conditioner to cool their homes, this could result in more energy use, as ceiling fans tend to be more efficient at cooling rooms than air conditioners.

Manufacturers also stated that overly stringent ceiling fan standards could force manufacturers to reduce the aesthetic quality of some ceiling fans to comply with energy conservation standards. This could cause consumers to forgo the purchase of these ceiling fans because the aesthetic appearance of ceiling fans is an important factor when consumers purchase ceiling fans. Manufacturers claim this reduction in aesthetic quality could again result in more energy use, because consumers who do not purchase ceiling fans would need to use air conditioners to cool their homes. DOE addresses this issue in section IV.E.3 of this NOPR.

b. Testing Burden

Manufacturers are concerned about the additional testing burden associated with complying with energy conservation standards. Most manufacturers use third-party testing facilities for testing and reporting purposes, which can be expensive. Manufacturers stated that ceiling fan standards would significantly increase the amount that they already invest in testing each year. DOE includes the additional testing and certification costs that manufacturers must make due to standards as part of the MIA. DOE calculates the total industry conversion costs for manufacturers, which includes the additional testing and certification costs of complying with any potential standards. These conversion costs impact the INPVs at each TSL displayed in section V.B.2.a of this NOPR notice.

c. Utility of DC Motors for Residential Consumers

Manufacturers stated that energy conservation standards that required the use of DC motors in residential ceiling fans would limit the overall utility of the fan, as well as increase maintenance costs. Manufacturers claim that DC motors require significantly more maintenance and have a higher warranty factor compared to ceiling fans with AC motors. Additionally, ceiling fans with DC motors require the use of a handheld remote, which manufacturers claim is not preferred by many residential consumers. Therefore, manufacturers stated any ceiling fan standard that required the use of a DC motor would significantly reduce the overall utility of ceiling fans to residential consumers.

DOE conducted a screening analysis as part of this NOPR analysis and concluded that DC motors should be considered as a viable technology for all product classes of covered ceiling fans for the engineering analysis. See section IV.B of this NOPR for a detailed discussion of the screening analysis. Also, DOE did include the additional repair costs of ceiling fans using DC motors as part of the LCC analysis. See section IV.F.4 for a complete description of the repair cost assumptions of DC motors.

For the HSSD and large-diameter product classes, which are expected to represent 3 percent of all covered ceiling fan shipments in 2019, DOE is proposing standards that manufacturers indicated they would most likely meet using a DC motor. Use of DC motors will not significantly impact consumer utility for HSSD and large-diameter ceiling fans because HSSD and large-diameter ceiling fans are used in commercial and industrial applications as opposed to residential applications. Most manufacturers indicated that commercial and industrial consumers do not dislike using a handheld remote that is required when operating a ceiling fan with a DC motor, and in some applications it is preferable. Also, these commercial and industrial consumers tend to be better equipped to respond to the increased maintenance costs associated with owning and operating ceiling fans with DC motors due to these consumers repairing products and equipment they own more frequently compared to residential consumers.

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of all species due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion. The associated emissions are referred to as upstream emissions.

The analysis of power sector emissions uses marginal emissions factors that were derived from data in *AEO* 2015, as described in section IV.M. The methodology is described in chapter 13 and chapter 15 of the NOPR TSD.

Combustion emissions of CH_4 and N_2O are estimated using emissions intensity factors published by the EPA, GHG Emissions Factors Hub.[56] The FFC upstream emissions are estimated based on the methodology described in chapter 15 of the NOPR TSD. The upstream emissions include both emissions from fuel combustion during extraction, processing, and transportation of fuel, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. Total emissions reductions are estimated using the energy savings calculated in the national impact analysis.

For CH_4 and N_2O, DOE calculated emissions reduction in tons and also in terms of units of carbon dioxide equivalent (CO_2eq). Gases are converted to CO_2eq by multiplying each ton of gas by the gas' global warming potential (GWP) over a 100-year time horizon. Based on the Fifth Assessment Report of the Intergovernmental Panel on Climate Change,[57] DOE used GWP values of 28 for CH_4 and 265 for N_2O.

The *AEO* incorporates the projected impacts of existing air quality regulations on emissions. *AEO 2015* generally represents current legislation and environmental regulations, including recent government actions, for which implementing regulations were available as of October 31, 2014. DOE's estimation of impacts accounts for the presence of the emissions control programs discussed in the following paragraphs.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of

[56] Available at: *http://www.epa.gov/climateleadership/inventory/ghg-emissions.html.*

[57] IPCC, 2013: *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. Chapter 8.

Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from 28 eastern States and DC were also limited under the Clean Air Interstate Rule (CAIR). 70 FR 25162 (May 12, 2005). CAIR created an allowance-based trading program that operates along with the Title IV program. In 2008, CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit, but it remained in effect.[58] In 2011, EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule (CSAPR). 76 FR 48208 (August 8, 2011). On August 21, 2012, the DC Circuit issued a decision to vacate CSAPR,[59] and the court ordered EPA to continue administering CAIR. On April 29, 2014, the U.S. Supreme Court reversed the judgment of the DC Circuit and remanded the case for further proceedings consistent with the Supreme Court's opinion.[60] On October 23, 2014, the DC Circuit lifted the stay of CSAPR.[61] Pursuant to this action, CSAPR went into effect (and CAIR ceased to be in effect) as of January 1, 2015.

EIA was not able to incorporate CSAPR into *AEO 2015,* so it assumes implementation of CAIR. Although DOE's analysis used emissions factors that assume that CAIR, not CSAPR, is the regulation in force. However, the difference between CAIR and CSAPR is not relevant for the purpose of DOE's analysis of emissions impacts from energy conservation standards.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an energy conservation standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. In past rulemakings, DOE recognized that there was uncertainty about the effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, but it concluded that negligible reductions in power sector SO_2 emissions would occur as a result of standards.

Beginning in 2016, however, SO_2 emissions will fall as a result of the Mercury and Air Toxics Standards (MATS) for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (HAP), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions will be reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. *AEO 2015* assumes that, in order to continue operating, coal plants must have either flue gas desulfurization or dry sorbent injection systems installed by 2016. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Under the MATS, emissions will be far below the cap established by CAIR, so it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or used to permit offsetting increases in SO_2 emissions by any regulated EGU. Therefore, energy conservation standards will generally reduce SO_2 emissions in 2016 and beyond.[62]

CAIR established a cap on NO_X emissions in 28 eastern States and the District of Columbia.[63] Energy conservation standards are expected to have little effect on NO_X emissions in those States covered by CAIR because excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions. However, standards would be expected to reduce NO_X emissions in the States not affected by the caps, so DOE estimated NO_X emissions reductions from the standards considered in this NOPR for these States.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO 2015,* which incorporates the MATS.

L. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the values considered in this NOPR.

For this NOPR, DOE relied on a set of values for the social cost of carbon (SCC) that was developed by a Federal interagency process. The basis for these values is summarized in the next section, and a more detailed description of the methodologies used is provided as an appendix to chapter 14 of the NOPR TSD.

1. Social Cost of Carbon

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of CO_2. A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in CO_2 emissions, while a global SCC value is meant to reflect the value of damages worldwide.

Under section 1(b) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates

[58] See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008); *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[59] See *EME Homer City Generation, LP* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012), *cert. granted,* 81 U.S.L.W. 3567, 81 U.S.L.W. 3696, 81 U.S.L.W. 3702 (U.S. June 24, 2013) (No. 12–1182).

[60] *See EPA* v. *EME Homer City Generation,* 134 S.Ct. 1584, 1610 (U.S. 2014). The Supreme Court held in part that EPA's methodology for quantifying emissions that must be eliminated in certain States due to their impacts in other downwind States was based on a permissible, workable, and equitable interpretation of the Clean Air Act provision that provides statutory authority for CSAPR.

[61] *See Georgia* v. *EPA,* Order *(D.C. Cir. filed October 23, 2014)* (*No. 11–1302),*

[62] DOE notes that the Supreme Court recently determined that EPA erred by not considering costs in the finding that regulation of hazardous air pollutants from coal- and oil-fired electric utility steam generating units is appropriate. See Michigan v. EPA (Case No. 14–46, 2015). The Supreme Court did not vacate the MATS rule and DOE has tentatively determined that the Court's decision on the MATS rule does not change the assumptions regarding the impact of energy efficiency standards on SO_2 emissions (see chapter 13 for further discussion). Further, the Court's does not change the impact of the energy efficiency standards on mercury emissions. DOE will continue to monitor developments related to this case and respond to them as appropriate.

[63] CSAPR also applies to NO_X and it would supersede the regulation of NO_X under CAIR. As stated previously, the current analysis assumes that CAIR, not CSAPR, is the regulation in force. The difference between CAIR and CSAPR with regard to DOE's analysis of NO_X emissions is slight.

presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

When attempting to assess the incremental economic impacts of CO_2 emissions, the analyst faces a number of challenges. A report from the National Research Council[64] points out that any assessment will suffer from uncertainty, speculation, and lack of information about: (1) Future emissions of GHGs; (2) the effects of past and future emissions on the climate system; (3) the impact of changes in climate on the physical and biological environment; and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise questions of science, economics, and ethics and should be viewed as provisional.

Despite the limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing CO_2 emissions. The agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC values appropriate for that year. The NPV of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Development of Social Cost of Carbon Values

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across Federal agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per metric ton of CO_2. These interim values represented the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules.

c. Current Approach and Key Assumptions

After the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates. Specially, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models commonly used to estimate the SCC: The FUND, DICE, and PAGE models. These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change (IPCC). Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models, while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

In 2010, the interagency group selected four sets of SCC values for use in regulatory analyses. Three sets of values are based on the average SCC from the three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth set, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, was included to represent higher-than-expected impacts from climate change further out in the tails of the SCC distribution. The values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[65] although preference is given to consideration of the global benefits of reducing CO_2 emissions. Table IV–9 presents the values in the 2010 interagency group report,[66] which is reproduced in appendix 14A of the NOPR TSD.

[64] National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* National Academies Press: Washington, DC (2009).

[65] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no *a priori* reason why domestic benefits should be a constant fraction of net global damages over time.

[66] *Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* Interagency Working Group on Social Cost of Carbon, United States Government (February 2010) (Available at: *www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/Social-Cost-of-Carbon-for-RIA.pdf*).

TABLE IV–9—ANNUAL SCC VALUES FROM 2010 INTERAGENCY REPORT, 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

The SCC values used for this notice were generated using the most recent versions of the three integrated assessment models that have been published in the peer-reviewed literature, as described in the 2013 update from the interagency working group (revised July 2015).[67]

Table IV–10 shows the updated sets of SCC estimates from the latest interagency update in 5-year increments from 2010 to 2050. The full set of annual SCC values between 2010 and 2050 is reported in appendix 14B of the NOPR TSD. The central value that emerges is the average SCC across models at the 3-percent discount rate. However, for purposes of capturing the uncertainties involved in regulatory impact analysis, the interagency group emphasizes the importance of including all four sets of SCC values.

TABLE IV–10—ANNUAL SCC VALUES FROM 2013 INTERAGENCY UPDATE (REVISED JULY 2015), 2010–2050

[2007$ per metric ton CO_2]

Year	Discount rate			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2010	10	31	50	86
2015	11	36	56	105
2020	12	42	62	123
2025	14	46	68	138
2030	16	50	73	152
2035	18	55	78	168
2040	21	60	84	183
2045	23	64	89	197
2050	26	69	95	212

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable because they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned previously points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of analytical challenges that are being addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC. The interagency group intends to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the values from the 2013 interagency report (revised July 2015), adjusted to 2014$ using the implicit price deflator for gross domestic product (GDP) from the Bureau of Economic Analysis. For each of the four sets of SCC cases specified, the values for emissions in 2015 were $12.2, $40.0, $62.3, and $117 per metric ton avoided (values expressed in 2014$). DOE derived values after 2050 using the relevant growth rates for the 2040–2050 period in the interagency update.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SCC value for that year in each of the four cases. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Social Cost of Other Air Pollutants

As noted previously, DOE has estimated how the considered energy

[67] *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,* Interagency Working Group on Social Cost of Carbon, United States Government (May 2013; revised July 2015) (Available at: *http://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-tsd-final-july-2015.pdf*).

conservation standards would reduce site NO_X emissions nationwide and decrease power sector NO_X emissions in those 22 States not affected by the CAIR.

DOE estimated the monetized value of NO_X emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. The report includes high and low values for NO_X (as $PM_{2.5}$) for 2020, 2025, and 2030 discounted at 3 percent and 7 percent,[68] which are presented in chapter 14 of the NOPR TSD. DOE assigned values for 2021–2024 and 2026–2029 using, respectively, the values for 2020 and 2025. DOE assigned values after 2030 using the value for 2030.

DOE multiplied the emissions reduction (tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate. DOE will continue for evaluate the monetization of avoided NOx emissions and will make any appropriate updates of the current analysis for the final rulemaking.

DOE is evaluating appropriate monetization of avoided SO_2 and Hg emissions in energy conservation standards rulemakings. DOE has not included monetization of those emissions in the current analysis.

M. Utility Impact Analysis

The utility impact analysis estimates several effects on the electric power industry that would result from the adoption of new or amended energy conservation standards. The utility impact analysis estimates the changes in installed electrical capacity and generation that would result for each TSL. The analysis is based on published output from NEMS associated with *AEO 2015.* NEMS produces the *AEO* Reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. DOE uses published side cases to estimate the marginal impacts of reduced energy demand on the utility sector. These marginal factors are estimated based on the changes to electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO* Reference case and various side cases. Details of the methodology are provided in the appendices to Chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of new or amended energy conservation standards

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more-efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supply by the utility industry; (3) increased consumer spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[69] BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[70] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[71] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact

[68] For the monetized NO_X benefits associated with $PM_{2.5}$, the related benefits (derived from benefit-per-ton values) are based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009), which is the lower of the two EPA central tendencies. Using the lower value is more conservative when making the policy decision concerning whether a particular standard level is economically justified so using the higher value would also be justified. If the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2012), the values would be nearly two-and-a-half times larger. (See chapter 14 of the NOPR TSD for further description of the studies mentioned above.)

[69] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov.*

[70] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* U.S. Department of Commerce (1992).

[71] J. M. Roop, M. J. Scott, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL–18412, Pacific Northwest National Laboratory (2009) (Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf).*

analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for ceiling fans. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for ceiling fans, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this notice.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of six TSLs for ceiling fans. These TSLs were developed by combining specific efficiency levels for each of the product classes analyzed by DOE. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table V–1 presents the TSLs and the corresponding efficiency levels for ceiling fans. TSL 6 represents the maximum technologically feasible (max-tech) energy efficiency for all product classes. TSL 5 corresponds to the maximum NPV (at a 7 percent discount rate). TSL 4 corresponds to the highest efficiency level for which the LCC savings and NPV are both positive. TSL 3 corresponds to the highest efficiency level that can be met with a standard (AC) motor for all product classes. TSL 2 corresponds to the fan-optimization design-option efficiency level. TSL 1 corresponds to the first non-baseline efficiency level (*i.e.,* EL 1).

TABLE V–1—TRIAL STANDARD LEVELS FOR CEILING FANS

	VSD	Hugger	Standard	HSSD	Large-diameter
TSL 1	EL 1	EL 1	EL 1	EL 1	EL 1
TSL 2	EL 1	EL 2	EL 2	EL 1	EL 1
TSL 3	EL 2	EL 3	EL 3	EL 3	EL 2
TSL 4	EL 2	EL 3	EL 3	EL 4	EL 3
TSL 5	EL 3	EL 3	EL 4	EL 4	EL 3
TSL 6	EL 3	EL 4	EL 4	EL 4	EL 4

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on ceiling fan consumers by looking at the effects potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on consumer subgroups. These analyses are discussed below.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) Purchase price increases, and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V–2 and Table V–3 show the LCC and PBP results for the efficiency levels considered for all the ceiling fan product classes. In the first of each pair of tables for each product class, the simple payback is measured relative to the baseline product. In the second table, the LCC savings are measured relative to the no-standards efficiency distribution in the compliance year (see section IV.F.7 of this notice).

TABLE V–2—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR STANDARD FANS

EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	113.36	19.95	184.36	297.71	.....	13.8
1	113.36	14.98	138.97	252.33	.....	13.8
2	113.36	13.32	123.84	237.20	.....	13.8
3	125.41	11.94	111.28	236.69	1.5	13.8
4	158.30	8.74	82.25	240.55	4.0	13.8

Note: The results for each EL represent the average result if all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR STANDARD FANS

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
—	.....	.....	.....
1	0.00%	1.59	48.62
2	0.00%	2.81	36.38

TABLE V–3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR STANDARD FANS—Continued

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
3	20.22%	3.03	8.47
4	61.77%	−0.40	−0.44

* The calculation excludes consumers with zero LCC savings (no impact).

TABLE V–4—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HUGGER FANS

EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	101.24	17.34	160.38	261.62	.....	13.8
1	101.24	13.02	121.05	222.29	.....	13.8
2	101.24	11.58	107.93	209.18	.....	13.8
3	111.90	10.48	97.99	209.89	1.6	13.8
4	140.97	8.09	76.43	217.40	4.3	13.8

Note: The results for each EL represent the average result if all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR HUGGER FANS

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
—	.....	.....	.....
1	0.00	1.25	41.66
2	0.00	2.20	30.20
3	21.89	1.99	5.59
4	66.01	−4.80	−5.27

* The calculation excludes consumers with zero LCC savings (no impact).

TABLE V–6—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR VSD FANS

EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	283.94	16.84	155.54	439.48	.....	13.8
1	283.94	14.98	138.64	422.57	.....	13.8
2	306.04	13.97	129.48	435.52	7.7	13.8
3	366.47	8.46	79.59	446.06	9.8	13.8

Note: The results for each EL represent the average result if all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR VSD FANS

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
—	.....	.....	.....
1	0.00	0.66	16.47
2	2.39	0.12	3.01

TABLE V–7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR VSD FANS—Continued

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
3	70.86	−10.42	−10.42

* The calculation excludes consumers with zero LCC savings (no impact).

TABLE V–8—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR HSSD FANS

EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	145.00	22.83	193.80	338.80	.....	13.8
1	145.00	20.29	172.50	317.50	.....	13.8
2	168.37	18.97	161.35	329.72	6.0	13.8
3	177.01	18.83	166.65	343.66	8.0	13.8
4	217.50	8.95	83.67	301.16	5.2	13.8

Note: The results for each EL represent the average result if all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–9—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR HSSD FANS

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
—	.....	.....	.....
1	0.00	10.03	21.56
2	59.71	−1.18	−1.29
3	71.46	−14.03	−15.26
4	32.77	25.95	27.63

* The calculation excludes consumers with zero LCC savings (no impact).

TABLE V–10—AVERAGE LCC AND PBP RESULTS BY EFFICIENCY LEVEL FOR LARGE-DIAMETER FANS

EL	Average costs (2014$)				Simple payback (years)	Average lifetime (years)
	Installed cost	First year's operating cost	Lifetime operating cost	LCC		
0	4080.64	246.45	2102.94	6183.58	.....	13.8
1	4080.64	219.48	1875.26	5955.91	.....	13.8
2	4206.91	199.87	1709.68	5916.59	2.7	13.8
3	4420.85	168.25	1486.83	5907.68	4.4	13.8
4	4577.89	160.35	1420.10	5997.99	5.8	13.8

Note: The results for each EL represent the average result if all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V–11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR LARGE-DIAMETER FANS

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
—	.....	.....	.....
1	0.00	10.41	235.01
2	1.52	14.15	159.69

TABLE V–11—AVERAGE LCC SAVINGS RELATIVE TO THE NO-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR LARGE-DIAMETER FANS—Continued

EL	Life-Cycle cost savings		
	% of Consumers that experience net cost	Average savings (all consumers) (2014$)	Average savings (affected consumers)* (2014$)
3	34.92	22.75	27.26
4	49.05	−52.65	−63.10

* The calculation excludes consumers with zero LCC savings (no impact).

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered ELs on low-income households and small businesses. Table V–12 to Table V–15 compare the average LCC savings for each EL and the simple PBP at each efficiency level for the two consumer subgroups to the average LCC savings and the simple PBP for the entire sample for all the product classes. In most cases, the average LCC savings and the simple PBP for low-income households and small businesses that purchase ceiling fans are not substantially different from the average LCC savings and simple PBP for all households and all buildings, respectively. Chapter 11 of the NOPR TSD presents the complete set of results and discussion for LCC and PBP for the subgroups.

TABLE V–12—COMPARISON OF LCC SAVINGS AND PBP FOR LOW-INCOME HOUSEHOLDS AND ALL HOUSEHOLDS FOR STANDARD FANS

EL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Low-income	All	Low-income
—				
1	48.62	50.03	0.0	0.0
2	36.38	37.26	0.0	0.0
3	8.47	8.81	1.5	1.5
4	−0.44	−1.30	4.0	4.1

TABLE V–13—COMPARISON OF LCC SAVINGS AND PBP FOR LOW-INCOME HOUSEHOLDS AND ALL HOUSEHOLDS FOR HUGGER FANS

EL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Low-income	All	Low-income
—				
1	41.66	46.99	0.0	0.0
2	30.20	31.44	0.0	0.0
3	5.59	4.98	1.6	1.6
4	−5.27	−6.60	4.3	4.4

TABLE V–14—COMPARISON OF LCC SAVINGS AND PBP FOR LOW-INCOME HOUSEHOLDS AND ALL HOUSEHOLDS FOR VSD FANS

EL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Low-income	All	Low-income
—				
1	16.47	15.97	0.0	0.0
2	3.01	1.55	7.7	7.2
3	−10.42	−8.15	9.8	9.3

TABLE V–15—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESSES AND ALL BUILDINGS FOR HSSD FANS

EL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Small businesses	All	Small businesses
—	.....	.....	.....	.....
1	21.56	19.22	0.0	0.0
2	−1.29	−3.85	6.0	6.0
3	−15.26	−17.07	8.0	7.9
4	27.63	17.25	5.2	5.2

TABLE V–16—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESSES AND ALL BUILDINGS FOR LARGE-DIAMETER FANS

EL	Average LCC savings (2014$)		Simple payback period (years)	
	All	Small businesses	All	Small businesses
—	.....	.....	.....	.....
1	235.01	194.80	0.0	0.0
2	159.69	112.87	2.7	2.7
3	27.26	−7.88	4.4	4.3
4	−63.10	−107.69	5.8	5.7

c. Rebuttable Presumption Payback

As discussed in section IV.F.8, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. The criterion is equivalent to having a simple payback period of less than 3 years. In calculating a rebuttable presumption payback period for each of the considered ELs, DOE based the energy use calculation on the DOE test procedures for ceiling fans, as required by EPCA. Table V–17 shows the results of this analysis for the considered ELs.

TABLE V–17—REBUTTABLE PRESUMPTION PAYBACK PERIOD RESULTS

EL	Standard	Hugger	VSD	HSSD	Large-diameter
—	.....	.....	.....	.....	.....
1	0.0	0.0	0.0	0.0	0.0
2	0.0	0.0	9.2	3.2	3.3
3	1.5	1.5	11.8	3.9	5.4
4	3.8	3.9	.....	2.8	7.1

While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

2. Economic Impacts on Manufacturers

a. Industry Cash-Flow Analysis Results

Table V–18 through Table V–20 present the financial impacts (represented by changes in INPV) of analyzed standards on ceiling fan manufacturers as well as the conversion costs that DOE estimates ceiling fan manufacturers would incur at each TSL. To evaluate the range of cash-flow impacts on the ceiling fan industry, DOE modeled three markup scenarios that correspond to the range of anticipated market responses to amended standards. Each scenario results in a unique set of cash flows and corresponding industry values at each TSL.

In the following discussion, the INPV results refer to the difference in industry value between the no-standards case and the standards cases that result from the sum of discounted cash flows from the base year (2015) through the end of the analysis period (2048). The results also discuss the difference in cash flows between the no-standards case and the standards cases in the year before the compliance date for analyzed standards. This difference in cash flow represents the size of the required conversion costs relative to the cash flow generated by the ceiling fan industry in the absence of amended energy conservation standards.

To assess the upper (less severe) end of the range of potential impacts on ceiling fan manufacturers, DOE modeled a preservation of gross margin, or flat, markup scenario. This scenario assumes that in the standards cases, manufacturers would be able to pass along all the higher production costs required for more efficient products to their consumers. Specifically, the industry would be able to maintain its average no-standards case gross margin (as a percentage of revenue) despite the

higher product costs in the standards cases. In general, the larger the product price increases, the less likely manufacturers are to achieve the cash flow from operations calculated in this scenario because it is less likely that manufacturers would be able to fully mark up these larger cost increases.

To assess the lower (more severe) end of the range of potential impacts on ceiling fan manufacturers, DOE modeled two additional markup scenarios; a preservation of operating profit markup and a two-tiered markup. In the preservation of operating profit markup scenario manufacturers are not able to yield additional operating profit from higher production costs and the investments that are required to comply with amended ceiling fan energy conservation standards, but instead are only able to maintain the same operating profit in the standards cases that was earned in the no-standards case. This scenario represents a potential lower end of the range of impacts on manufacturers because manufacturers are only able to maintain the operating profit that they would have earned in the no-standards case despite higher production costs and investments. Manufacturers must therefore, reduce margins as a result of this markup scenario which reduces profitability.

Another manufacturer markup scenario DOE analyzed was the two-tiered markup scenario. In this markup scenario manufacturers have two tiers of manufacturer markups for their products, one for ceiling fans with small motors and one for ceiling fans with larger AC or DC motors. As the stringency of analyzed standards increases, the higher premium markup applied to more efficient products erodes, and all products sold adopt the lower baseline markup. This scenario represents a potential lower end of the range of impacts on manufacturers because manufacturers reduce profit margins on high efficiency products as these products become the baseline, higher volume products. Therefore, manufacturers' profits are also reduced as a result of this markup scenario.

TABLE V–18—MANUFACTURER IMPACT ANALYSIS FOR CEILING FANS—PRESERVATION OF GROSS MARGIN MARKUP SCENARIO

	Units	No-standards case	Trial standard levels					
			1	2	3	4	5	6
INPV	*2014$ millions*	1,308.7	1,307.9	1,306.8	1,296.2	1,293.2	1,253.3	1,229.8
Change in INPV	*2014$ millions*		(0.8)	(1.9)	(12.4)	(15.5)	(55.4)	(78.9)
	(%)		(0.1)	(0.1)	(1.0)	(1.2)	(4.2)	(6.0)
Product Conversion Costs.	*2014$ millions*		0.0	0.1	0.8	1.1	2.0	2.4
Capital Conversion Costs.	*2014$ millions*		0.1	0.2	2.6	3.4	7.3	8.6
Total Conversion Costs.	*2014$ millions*		0.2	0.3	3.4	4.5	9.4	11.0

TABLE V–19—MANUFACTURER IMPACT ANALYSIS FOR CEILING FANS—PRESERVATION OF OPERATING PROFIT MARKUP SCENARIO

	Units	No-standards case	Trial standard levels					
			1	2	3	4	5	6
INPV	*2014$ millions*	1,308.7	1,305.2	1,299.6	1,244.9	1,231.6	1,059.1	925.2
Change in INPV	*2014$ millions*		(3.5)	(9.1)	(63.8)	(77.1)	(249.5)	(383.4)
	(%)		(0.3)	(0.7)	(4.9)	(5.9)	(19.1)	(29.3)
Product Conversion Costs.	*2014$ millions*		0.0	0.1	0.8	1.1	2.0	2.4
Capital Conversion Costs.	*2014$ millions*		0.1	0.2	2.6	3.4	7.3	8.6
Total Conversion Costs.	*2014$ millions*		0.2	0.3	3.4	4.5	9.4	11.0

TABLE V–20—MANUFACTURER IMPACT ANALYSIS FOR CEILING FANS—TWO-TIERED MARKUP SCENARIO

	Units	No-standards case	Trial standard levels					
			1	2	3	4	5	6
INPV	*2014$ millions*	1,308.7	1,311.2	1,315.3	1,147.6	1,142.4	1,091.2	1,058.5
Change in INPV	*2014$ millions*		2.5	6.6	(161.1)	(166.3)	(217.4)	(250.2)
	(%)		0.2	0.5	(12.3)	(12.7)	(16.6)	(19.1)
Product Conversion Costs.	*2014$ million)*		0.0	0.1	0.8	1.1	2.0	2.4
Capital Conversion Costs.	*2014$ millions*		0.1	0.2	2.6	3.4	7.3	8.6
Total Conversion Costs.	*2014$ millions*		0.2	0.3	3.4	4.5	9.4	11.0

TSL 1 sets the efficiency level at EL 1 for all ceiling fans. At TSL 1, DOE estimates impacts on INPV range from −$3.5 million to $2.5 million, or a change in INPV of −0.3 percent to 0.2 percent. At TSL 1, industry free cash flow (operating cash flow minus capital expenditures) is expected to decrease by approximately 0.1 percent to $79.7 million, compared to the no-standards case value of $79.0 million in 2018, the year leading up to the proposed standards.

Percentage impacts on INPV are slightly negative to slightly positive at TSL 1. DOE estimates that 97 percent of standard and hugger ceiling fan shipments, 96 percent of VSD ceiling fan shipments, 54 percent of HSSD ceiling fan shipments, and 96 percent of large-diameter fan ceiling fan shipments would meet or exceed the efficiency levels required at TSL 1.

DOE expects conversion costs to be small compared to the no-standards case industry value because most of the ceiling fan shipments, on a total volume basis, already meet or exceed the efficiency levels analyzed at TSL 1. DOE expects ceiling fan manufacturers to incur approximately $43 thousand in product conversion costs for ceiling fan redesign and testing. DOE estimates manufacturers will incur minimal capital conversion costs associated with TSL 1, as most efficiency gains will be achieved by the optimization of existing ceiling fan designs, not through any major equipment upgrades or capital investments. DOE expects approximately $114 thousand in capital conversion costs for manufacturers, primarily to invest in tooling necessary to produce optimized ceiling fans in models that do not meet the required efficiency levels.

At TSL 1, the shipment-weighted average MPC increases by approximately 0.3 percent for all ceiling fans relative to the no-standards case MPC in 2019, the expected year of compliance. In the preservation of gross margin markup scenario, manufacturers are able to fully pass on this slight cost increase to consumers. However, this slight increase in MPC is outweighed by the approximately $0.2 million in conversion costs that manufacturers would incur, which causes a slightly negative change in INPV at TSL 1 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, manufacturers earn the same operating profit as would be earned in the no-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the 0.3 percent MPC increase results in a very slight reduction in manufacturer markup after the compliance year, from 1.37 in the no-standards case to 1.369 at TSL1. This slight reduction in manufacturer markup and $0.2 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit markup scenario.

Under the two-tiered markup scenario, where manufacturers earn different markups for more efficient products, the average manufacturer markup across the entire analysis period slightly increases from 1.370 in the no-standards case to 1.371 at TSL 1. This increase in manufacturer markup combined with the slight increase in MPC outweighs the $0.2 million in conversion costs that manufacturers incur, causing a slightly positive change in INPV at TSL 1 under the two-tiered markup scenario.

TSL 2 sets the efficiency level at EL 1 for VSD, HSSD, and large-diameter ceiling fans and EL 2 for standard and hugger ceiling fans. At TSL 2, DOE estimates impacts on INPV range from −$9.1 million to $6.6 million, or a change in INPV of −0.7 percent to 0.5 percent. At this TSL, industry free cash flow is estimated to decrease by approximately 0.1 percent to $79.6 million, compared to the no-standards case value of $79.0 million in 2018.

Percentage impacts on INPV range from slightly negative to slightly positive at TSL 2. DOE projects that in 2019, 92 percent of standard and hugger ceiling fan shipments, 96 percent of VSD ceiling fan shipments, 54 percent of HSSD ceiling fan shipments, and 96 percent of large-diameter fan shipments would meet or exceed the efficiency levels required at TSL 2.

DOE expects conversion costs to be small compared to the industry value because most of the ceiling fan shipments, on a total volume basis, already meet or exceed the efficiency levels analyzed at TSL 2. DOE expects that product conversion costs will rise from approximately $43 thousand at TSL 1 to approximately $77 thousand at TSL 2 for ceiling fan redesign and testing. Capital conversion costs will increase from $0.1 million at TSL 1 to $0.2 million at TSL 2. Increased capital conversion costs at TSL 2 are driven by investments in tooling needed to further optimize ceiling fans above aggregated market minimum efficiencies for standard and hugger ceiling fan product classes to meet efficiency levels required at TSL 2.

At TSL 2, the shipment-weighted average MPC increases by approximately 0.8 percent for all ceiling fans relative to the no-standards case MPC in 2019. In the preservation of gross margin markup scenario, manufacturers are not able to recover their $0.3 million in conversion costs through the slight increase in MPC over the course of the analysis period causing a slightly negative change in INPV at TSL 2 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup, the 0.8 percent MPC increase for all ceiling fans results in a very slight reduction in manufacturer markup after the compliance year, from 1.37 in the no-standards case to 1.369 at TSL 2. This slight reduction in manufacturer markup and $0.3 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 2 under the preservation of operating profit scenario.

Under the two-tiered markup scenario, the average manufacturer markup across the entire analysis period slightly increases from 1.37 in the no-standards case to 1.371 at TSL 2. This increase in manufacturer markup combined with the slight increase in MPC outweighs the $0.3 million in conversion costs that manufacturers incur, causing a slightly positive change in INPV at TSL 2 under the two-tiered markup scenario.

TSL 3 sets the efficiency level at EL 2 for VSD and large-diameter ceiling fans and EL 3 for standard, hugger, and HSSD ceiling fans. At TSL 3, DOE estimates impacts on INPV range from −$161.1 million to −$12.4 million, or decreases in INPV of −12.3 percent to −1.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 1.8 percent to $78.3 million, compared to the no-standards case value of $79.0 million in 2018.

Percentage impacts on INPV range from moderately negative to slightly negative at TSL 3. DOE projects that in 2019, 64 percent of standard and hugger ceiling fan shipments, 96 percent of VSD ceiling fan shipments, 9 percent of HSSD ceiling fan shipments, and 91 percent of large-diameter fan shipments would meet or exceed the efficiency levels analyzed at TSL 3.

DOE expects that manufacturers will incur increased total conversion costs of $3.4 million at TSL 3. DOE expects that product conversion costs will rise from $0.1 million at TSL 2 to $0.8 million at TSL 3 for ceiling fan redesign and testing. Capital conversion costs will increase from $0.2 million at TSL 2 to $2.6 million at TSL 3. Increased capital conversion costs at TSL 3 are driven by investments in tooling needed to produce ceiling fans with larger direct

drive motors in the standard, hugger, and VSD ceiling fan product classes as well as accommodating air foil blades in the HSSD and large-diameter fan product classes.

At TSL 3, the shipment-weighted average MPC increases by approximately 5.8 percent for all ceiling fans relative to the no-standards case MPC in 2019. In the preservation of gross margin markup scenario, manufacturers are not able to recover their $3.4 million in conversion costs through the increase in MPC over the course of the analysis period causing a slightly negative change in INPV at TSL 3 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup, the 5.8 percent MPC increase for all ceiling fans results in a reduction in manufacturer markup after the compliance year, from 1.37 in the no-standards case to 1.362 at TSL 3. This reduction in manufacturer markup and $3.4 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 3 under the preservation of operating profit scenario.

Under the two-tiered markup scenario, the average manufacturer markup across the entire analysis period decreases from 1.30 in the no-standards case to 1.354 at TSL 3. This decrease in manufacturer markup and the $3.4 million in conversion costs incurred by manufacturers outweighs the increase in MPC, causing a moderately negative change in INPV at TSL 3 under the two-tiered markup scenario.

TSL 4 sets the efficiency level at EL 2 for VSD ceiling fans, EL 3 for standard, hugger, and large-diameter ceiling fans, and EL 4 for HSSD ceiling fans. At TSL 4, DOE estimates impacts on INPV range from −$166.3 million to −$15.5 million, or decreases in INPV of −12.7 percent to −1.2 percent. At this level, industry free cash flow is estimated to decrease by approximately 2.3 percent to $77.9 million, compared to the no-standards case value of $79.0 million in 2018.

Percentage impacts on INPV range from moderately negative to slightly negative at TSL 4. DOE projects that in 2019, 64 percent of standard and hugger ceiling fan shipments, 96 percent of VSD ceiling fan shipments, 6 percent of HSSD shipments, and 17 percent of large-diameter ceiling fan shipments would meet or exceed efficiency levels analyzed at TSL 4.

TSL 4 is the first TSL that requires DC motors be used to meet required efficiency levels in the large-diameter fan and HSSD ceiling fan product classes. DOE expects total conversion costs to increase from $3.4 million at TSL 3 to $4.5 million at TSL 4. DOE estimates manufacturers will incur product conversion costs of $1.1 million to redesign and test ceiling fans that do not meet required efficiency levels at TSL 4. DOE estimates that manufacturers will incur $3.4 million in capital conversion costs due to retooling costs associated with accommodating larger direct drive motors in the standard, hugger and VSD product classes and DC motors in the HSSD and large-diameter fan product classes.

At TSL 4, the shipment-weighted average MPC increases by approximately 7.0 percent for all ceiling fans relative to the no-standards case MPC in 2019. In the preservation of gross margin markup scenario, manufacturers are not able to recover their $4.5 million in conversion costs through the increase in MPC over the course of the analysis period causing a slightly negative change in INPV at TSL 4 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup, the 7.0 percent MPC increase for all ceiling fans results in a reduction in manufacturer markup after the compliance year, from 1.37 in the no-standards case to 1.360 at TSL 4. This reduction in manufacturer markup and $4.5 million in conversion costs incurred by manufacturers causes a slightly negative change in INPV at TSL 4 under the preservation of operating profit scenario.

Under the two-tiered markup scenario, the average manufacturer markup across the entire analysis period decreases from 1.370 in the no-standards case to 1.351 at TSL 4. This decrease in manufacturer markup and $4.5 million in conversion costs that manufacturers incur outweigh the increase in MPC, causing a moderately negative change in INPV at TSL 4 under the two-tiered markup scenario.

TSL 5 sets the efficiency level at EL 3 for hugger, VSD, and large-diameter ceiling fans and EL 4 for standard and HSSD ceiling fans. At TSL 5, DOE estimates impacts on INPV range from −$249.5 million to −$55.4 million, or decreases in INPV of −19.1 percent to −4.2 percent. At this level, industry free cash flow is estimated to decrease by approximately 4.9 percent to $75.9 million, compared to the no-standards case value of $79.0 million in 2018.

Percentage impacts on INPV range from significantly negative to slightly negative at TSL 5. DOE projects that in 2019, 9 percent of standard ceiling fan shipments, 64 percent of hugger ceiling fan shipments, no VSD ceiling fan shipments, 6 percent of HSSD shipments, and 17 percent of large-diameter fan shipments would meet or exceed the efficiency levels analyzed at TSL 5.

DOE expects total conversion costs to increase from $4.5 million at TSL 4 to $9.4 million at TSL 5. DOE estimates manufacturers will incur product conversion costs of $2.0 million to redesign and test ceiling fans that do not meet required efficiency levels at TSL 5. DOE estimates that manufacturers will incur $7.3 million in capital conversion costs due to retooling costs associated with accommodating larger direct drive motors in the hugger ceiling fan product class and DC motors in the standard, VSD, HSSD, and large-diameter fan product classes.

At TSL 5, the shipment-weighted average MPC increases by approximately 23.4 percent for all ceiling fans relative to the no-standards case MPC in 2019. In the preservation of gross margin markup scenario, manufacturers are not able to recover their $9.4 million in conversion costs through the increase in MPC over the course of the analysis period causing a slightly negative change in INPV at TSL 5 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup scenario, the 23.4 percent MPC increase for all ceiling fans results in a reduction in manufacturer markup after the compliance year, from 1.37 in the no-standards case to 1.346 at TSL 5. This reduction in manufacturer markup and $9.4 million in conversion costs incurred by manufacturers causes a significantly negative change in INPV at TSL 5 under the preservation of operating profit markup scenario.

Under the two-tiered markup scenario, the average manufacturer markup across the entire analysis period decreases from 1.37 in the no-standards case to 1.351 at TSL 5. This decrease in manufacturer markup and $9.4 million in conversion costs that manufacturers incur outweigh the increase in MPC, causing a moderately negative in INPV at TSL 5 under the two-tiered markup scenario.

TSL 6 represents max-tech for all ceiling fan product classes. This TSL sets the efficiency level at EL 3 for VSD ceiling fans and EL 4 for standard, hugger, HSSD, and large-diameter ceiling fans. At TSL 6, DOE estimates impacts on INPV range from −$383.4 million to −$78.9 million, or decreases in INPV of −29.3 percent to −6.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 5.7 percent to $75.2 million, compared to the no-standards case value of $79.0 million in 2018.

Percentage impacts on INPV range from significantly negative to slightly negative at TSL 6. DOE projects that in 2019, 9 percent of standard and hugger ceiling fan shipments, no VSD ceiling fan shipments, 6 percent of HSSD shipments, and 17 percent of large-diameter fan shipments would meet the efficiency levels analyzed at TSL 6.

DOE expects total conversion costs to increase from $9.4 million at TSL 5 to $11.0 million at TSL 6. DOE estimates manufacturers will incur product conversion costs of $2.4 million to redesign and test the majority of covered ceiling fans currently offered on the market. DOE estimates that manufacturers will incur $8.6 million in capital conversion costs due to retooling costs associated with accommodating DC motors in all of the ceiling fan product classes.

At TSL 6, the shipment-weighted average MPC increases by approximately 36.9 percent for all ceiling fans relative to the no-standards case MPC in 2016. In the preservation of gross margin markup scenario, manufacturers are not able to recover their $11.0 million in conversion costs through the increase in MPC over the course of the analysis period causing a slightly negative change in INPV at TSL 6 under the preservation of gross margin markup scenario.

Under the preservation of operating profit markup, the 36.9 percent MPC increase for all ceiling fans results in a reduction in manufacturer markup after the compliance years, from 1.37 in the no-standards case to 1.336 at TSL 6. This reduction in manufacturer markup and $11.0 million in conversion costs incurred by manufacturers causes a significantly negative change in INPV at TSL 6 under the preservation of operating profit markup scenario.

Under the two-tiered markup scenario, the average manufacturer markup across the entire analysis period decreases from 1.37 in the no-standards case to 1.351 at TSL 6. This decrease in manufacturer markup and $11.0 million in conversion costs that manufacturers incur outweigh the increase in MPC, causing a moderately negative change in INPV at TSL 6 under the two-tiered markup scenario.

b. Impacts on Employment

DOE quantitatively assessed the impacts of potential amended energy conservation standards on direct employment in the ceiling fan industry. DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the no-standards case and at each TSL from 2015 to 2048. DOE used statistical data from the U.S. Census Bureau's 2011 Annual Survey of Manufacturers, the results of the engineering analysis, and interviews with manufacturers to determine the inputs necessary to calculate industry-wide labor expenditures and domestic employment levels. Labor expenditures involved with the manufacturer of the product are a function of the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time.

In the GRIM, DOE used the labor content of ceiling fans and the MPCs to estimate the annual labor expenditures in the industry. DOE used Census data and interviews with manufacturers to estimate the portion of the total labor expenditures that is attributable to domestic labor.

The production worker estimates in this section only cover workers up to the line-supervisor level directly involved in fabricating and assembling a product within a manufacturing facility. Workers performing services that are closely associated with production operations, such as material handing with a forklift, are also included as production labor. DOE's estimates account for production workers who manufacture only the specific products covered by this rulemaking.

The employment impacts shown in Table V–21 represent the potential production employment that could result following amended energy conservation standards. The upper bound of the results estimates the maximum change in the number of production workers that could occur after compliance with amended energy conservation standards when assuming that manufacturers continue to produce the same scope of covered products in the same production facilities. It also assumes that domestic production does not shift to lower labor-cost countries. Because there is a real risk of manufacturers evaluating sourcing decisions in response to amended energy conservation standards, the lower bound of the employment results includes the estimated total number of U.S. production workers in the industry who could lose their jobs if some or all existing production were moved outside of the United States. While the results present a range of employment impacts following 2019, the sections below also include qualitative discussions of the likelihood of negative employment impacts at the various TSLs. Finally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, documented in chapter 17 of this NOPR TSD.

DOE estimates that in the absence of amended energy conservation standards, there would be approximately 39 domestic production workers involved in manufacturing ceiling fans in 2019. The table below shows the range of the impacts of potential amended energy conservation standards on U.S. production workers in the ceiling fan industry.

TABLE V–21—POTENTIAL CHANGES IN THE TOTAL NUMBER OF DOMESTIC CEILING FAN PRODUCTION WORKERS IN 2019

	No-standards case	Trial standard level					
		1	2	3	4	5	6
Total Number of Domestic Production Workers in 2019 (without changes in production locations)	39	39	39	38	38	36	34
Potential Changes in Domestic Production Workers in 2019*		0–(39)	0–(39)	(1)–(39)	(1)–(39)	(3)–(39)	(5)–(39)

* DOE presents a range of potential employment impacts. Numbers in parentheses indicate negative numbers.

At the upper end of the employment impact range, all TSLs show either no change in domestic employment or slight negative impacts. These slightly negative impacts are driven by the reduction in total ceiling fan shipments at higher TSLs. DOE included price elasticity as part of the shipments analysis, so as the average price of ceiling fans increase due to amended standards, fewer ceiling fans would be sold. Therefore, the amount of labor

associated with these fewer shipments also decreases. It is important to note that while the average total MPC increases for more efficient ceiling fans, the increase in MPC is almost entirely attributed to the increase in the material costs used to produce more efficient fans. The amount of labor associated with more efficient ceiling fans remains constant even as the total MPC of a ceiling fan increases at higher ELs.

At the lower end of the range, DOE models a situation where all domestic employment associated with ceiling fan production moves abroad as a result of energy conservation standards. In this situation, the handful of manufacturers who currently purchase various ceiling fan components from original equipment manufacturers abroad and assemble ceiling fans domestically may instead purchase fully assembled ceiling fans, and the handful of manufacturers who currently produce ceiling fans domestically may move all ceiling fan production abroad. DOE does not anticipate either of these situations to be probable, because the majority of manufacturers that have domestic production produce large diameter ceiling fans and the associated shipping costs of those large diameter ceiling fans is significant. Therefore, manufacturers would incur much higher shipping costs if production or assembly is moved abroad. Based on manufacturer feedback, DOE does not expect a significant impact on domestic employment at any TSL.

At TSL 4, the proposed TSL in today's NOPR, DOE concludes, based on the shipment analysis, manufacturer interviews, and the potential range of result of the direct employment analysis, that manufacturers could face a slight negative impact on domestic employment due to a slight reduction in overall ceiling fan shipments in 2019. However, DOE does not have information upon which to conclude that any ceiling fan manufacturers would shift their domestic ceiling fan production abroad as a result of the proposed standards.

c. Impacts on Manufacturing Capacity

Ceiling fan manufacturers stated that they anticipate manufacturing capacity constraints if all ceiling fans are required to use DC motors to comply with the amended energy conservation standards. DOE learned during interviews that manufacturers primarily source motors for ceiling fans from either ceiling fan original equipment manufacturers or directly from motor manufacturers and then insert them into their ceiling fan models. During interviews, manufacturers stated that demand for DC motors may outpace supply if DC motors are required for all ceiling fans to comply with amended standards. Manufacturers expressed concern during interviews that currently only a few ceiling fan shipments incorporate DC motors, and there would be major sourcing concerns if all ceiling fan were required to use DC motors.

While the proposed TSL 4 requires HSSD and large-diameter ceiling fans to use DC motors to meet efficiency levels, this only accounts for approximately 2.5 percent of all ceiling fans. Therefore, DOE does not anticipate a manufacturer capacity constraint on the supply of DC motors for this small portion of the overall ceiling fan market. DOE expects that the motor manufacturers that supply ceiling fan manufacturers with DC motors would be able to increase production of DC motors in the estimated 3 years from the publication of the final rule to the compliance date to meet demand for ceiling fans that require DC motors due to amended standards. DOE does not anticipate any significant impact on the manufacturing capacity at the proposed amended energy conservation standards in this NOPR. See section V.C.1 for more details on the proposed standard. DOE seeks comment on any potential impact on manufacturing capacity at the efficiency levels proposed in this NOPR. See issue 23 in section VII.E.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche product manufacturers, and manufacturers exhibiting cost structures substantially different from the industry average could be affected disproportionately. DOE identified only one manufacturer subgroup that would require a separate analysis in the MIA; small businesses. DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this NOPR. DOE did not identify any other adversely impacted manufacturer subgroups for ceiling fans for this rulemaking based on the results of the industry characterization. DOE seeks comment on any other potential manufacturer subgroups that could be disproportionally affected by amended energy conservation standards for ceiling fans. See issue 24 in section VII.E.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of recent or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts a cumulative regulatory burden analysis as part of its rulemakings for ceiling fans.

DOE identified a number of requirements, in addition to amended energy conservation standards for ceiling fans, that ceiling fan manufacturers will face for products they manufacture approximately 3 years prior to and 3 years after the estimated compliance date of these amended standards. The following section addresses key related concerns that manufacturers raised during interviews regarding cumulative regulatory burden.

Manufacturers raised concerns about existing regulations and certifications separate from DOE's energy conservation standards that ceiling fan manufacturers must meet. These include California Title 20, which has the same energy conservation standards to DOE's existing ceiling fan standards, but requires an additional certification, and California Air Resources Board Standards limiting the amount of formaldehyde in composite wood used to make fan blades, among others.

DOE discusses these and other requirements in chapter 12 of the NOPR TSD, which lists the estimated compliance costs of those requirements when available. In considering the cumulative regulatory burden, DOE evaluates the timing of regulations that affect the same product because the coincident requirements could strain financial resources in the same profit center and consequently affect capacity. DOE identified the upcoming ceiling fan light kit standards rulemaking as a potential source of additional cumulative regulatory burden on ceiling fan manufacturers.

DOE has initiated a rulemaking to evaluate the energy conservation standards of ceiling fan light kits by publishing a notice of availability for a framework document (78 FR 16443; Mar. 15, 2013) and preliminary analysis TSD (79 FR 64712; Oct. 31, 2014), (ceiling fan light kit standards rulemaking). The ceiling fan light kit standards rulemaking affects the majority of ceiling fan manufacturers and has a similar projected compliance

as the ceiling fan rulemaking. Due to these similar projected compliance dates, manufacturers could potentially be required to make investments to bring ceiling fan light kits and ceiling fans into compliance during the same time period. Additionally, redesigned ceiling fan light kits could also require adjustments to ceiling fan redesigns separate from those potentially required by the ceiling fan rule.

In addition to the proposed amended energy conservation standards on ceiling fans, several other existing and pending federal regulations may apply to other products produced by ceiling fan manufacturers. DOE acknowledges that each regulation can affect a manufacturer's financial operations. Multiple regulations affecting the same manufacturer can quickly strain manufacturers' profit and possibly cause them to exit particular markets. Table V–22 lists the other DOE energy conservation standards that could also affect ceiling fan manufacturers in the 3 years leading up to and after the estimated compliance date of amended energy conservation standards for these products.

TABLE V–22—OTHER DOE REGULATIONS POTENTIALLY AFFECTING CEILING FAN MANUFACTURERS

Regulation	Approximate compliance date	Estimated industry total conversion expenses
Electric Motors	2016	$84.6 million (2013$).[a]
Ceiling Fan Light Kits	*2019	N/A.†
Commercial and Industrial Fans	*2019	N/A.†

* The dates listed are an approximation. The exact dates are pending final DOE action.
† For energy conservation standards for rulemakings awaiting DOE final action, DOE does not have a finalized estimated total industry conversion cost.
[a] Estimated industry conversion expenses were published in the TSD for the May 2014 electric motors final rule. 79 FR 30933 The TSD for 2014 electric motors final rule can be found at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/42*.

DOE did not receive any data on other regulatory costs that affect the industry modeled in the cash-flow analysis. To the extent DOE receives specific costs associated with other regulations affecting the ceiling fan profit centers modeled in the GRIM, DOE will incorporate that information, as appropriate, into its cash-flow analysis. DOE seeks comment on the compliance costs of any other regulations on products that ceiling fan manufacturers also manufacture, especially if compliance with those regulations is required 3 years before or after the estimated compliance date of this proposed standard. See issue 25 in section VII.E.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for ceiling fans, DOE compared the energy consumption of those products under the no-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2019–2048). Table V–23 presents DOE's projections of the national energy savings for each TSL considered for ceiling fans. The savings were calculated using the approach described in section IV.H of this notice.

TABLE V–23—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CEILING FANS SHIPPED 2019–2048

	Trial standard level (Quads)					
	1	2	3	4	5	6
Primary energy	0.132	0.201	0.531	0.725	1.303	1.724
FFC energy	0.137	0.210	0.555	0.758	1.362	1.802

OMB Circular A–4 [72] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9, rather than 30, years of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[73] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to ceiling fans. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V–24. The impacts are counted over the lifetime of ceiling fans purchased in 2019–2027.

[72] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis'' (Sept. 17, 2003) (Available at: *http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

[73] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

TABLE V–24—CUMULATIVE NATIONAL ENERGY SAVINGS FOR CEILING FANS; NINE YEARS OF SHIPMENTS
[2019–2027]

	Trial standard level (Quads)					
	1	2	3	4	5	6
Primary energy	0.041	0.061	0.152	0.203	0.401	0.544
FFC energy	0.042	0.064	0.159	0.212	0.419	0.569

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for ceiling fans. In accordance with OMB's guidelines on regulatory analysis,[74] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate.

Table V–25 shows the consumer NPV results with impacts counted over the lifetime of products purchased in 2019–2048.

TABLE V–25—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CEILING FANS SHIPPED IN 2019–2048

Discount rate	Trial standard level (Billion 2014$)					
	1	2	3	4	5	6
3 percent	0.952	1.333	1.944	2.760	4.466	5.251
7 percent	0.400	0.539	0.522	0.813	1.094	1.051

The NPV results based on the aforementioned 9-year analytical period are presented in Table V–26. The impacts are counted over the lifetime of products purchased in 2019–2027. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V–26—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CEILING FANS; NINE YEARS OF SHIPMENTS
[2019–2027]

Discount rate	Trial standard level *(Billion 2014$)*					
	1	2	3	4	5	6
3 percent	0.360	0.491	0.561	0.773	0.947	0.834
7 percent	0.203	0.268	0.180	0.280	0.138	−0.126

The above results reflect the use of a default trend to estimate the change in price for ceiling fans over the analysis period (see section IV.G of this document). DOE also conducted a sensitivity analysis that considered one scenario with no price decline. The results of these alternative cases are presented in appendix 10C of the NOPR TSD.

c. Indirect Impacts on Employment

DOE expects energy conservation standards for ceiling fans to reduce energy bills for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2019–2024), where these uncertainties are reduced.

The results suggest that the proposed standards are likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

DOE has tentatively concluded that the standards proposed in this NOPR would not reduce the utility or performance of the ceiling fans under consideration in this rulemaking. During manufacturer interviews, manufacturers stated that energy conservation standards that require the use of DC motors in ceiling fans would limit the overall utility of ceiling fans for residential consumers, as well as increase maintenance costs. DOE is proposing standards that manufacturers indicated they would likely meet using a DC motor for the HSSD and large-diameter ceiling fan product classes, which represent less than three percent of expected covered ceiling fan shipments in 2019. Additionally, the

[74] U.S. Office of Management and Budget, ''Circular A–4: Regulatory Analysis,'' section E, (Sept. 17, 2003) (Available at:*http://www.whitehouse.gov/omb/circulars_a004_a-4/*).

use of DC motors will not significantly impact consumer utility for HSSD and large-diameter ceiling fans because the consumers using these products have significantly different needs for their ceiling fans than the needs of consumers using residential ceiling fans that were referenced by manufacturers during interviews.

5. Impact of Any Lessening of Competition

DOE has considered any lessening of competition that is likely to result from the proposed standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact.

To assist the Attorney General in making such determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. See issue 26 in section VII.E. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. As a measure of this reduced demand, chapter 15 of the NOPR TSD presents the estimated impact on generating capacity, relative to the no-standards case, for the TSLs that DOE considered in this rulemaking.

Energy savings from amended standards for ceiling fans are expected to yield environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases. Table V–27 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The table includes both power sector emissions and upstream emissions. The emissions were calculated using the multipliers discussed in section IV.K. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V–27—CUMULATIVE EMISSIONS REDUCTION FOR CEILING FANS SHIPPED 2019–2048

	Trial standard level					
	1	2	3	4	5	6
Power Sector Emissions						
CO_2 (*million metric tons*)	7.87	11.99	31.67	43.20	77.91	103.19
SO_2 (*thousand tons*)	4.40	6.71	17.67	24.04	43.61	57.85
NO_X (*thousand tons*)	8.84	13.48	35.64	48.66	87.62	116.00
Hg (*tons*)	0.02	0.02	0.07	0.09	0.16	0.22
CH_4 (*thousand tons*)	0.63	0.97	2.55	3.47	6.29	8.34
N_2O (thousand tons)	0.09	0.14	0.36	0.49	0.89	1.18
Upstream Emissions						
CO_2 (*million metric tons*)	0.45	0.68	1.81	2.48	4.45	5.88
SO_2 (*thousand tons*)	0.08	0.13	0.34	0.46	0.82	1.09
NO_X (*thousand tons*)	6.43	9.81	25.99	35.51	63.72	84.28
Hg (*tons*)	0.00	0.00	0.00	0.00	0.00	0.00
CH_4 (*thousand tons*)	35.52	54.17	143.56	196.12	351.90	465.40
N_2O (thousand tons)	0.00	0.01	0.02	0.02	0.04	0.05
Total FFC Emissions						
CO_2 (*million metric tons*)	8.31	12.67	33.48	45.68	82.36	109.08
SO_2 (*thousand tons*)	4.49	6.84	18.01	24.50	44.43	58.94
NO_X (*thousand tons*)	15.28	23.29	61.63	84.17	151.34	200.27
Hg (*tons*)	0.02	0.03	0.07	0.09	0.16	0.22
CH_4 (*thousand tons*)	36.15	55.14	146.11	199.59	358.18	473.74
CH_4 (*thousand tons CO_2eq*)*	1012.20	1543.84	4091.09	5588.54	10029.17	13264.68
N_2O (thousand tons)	0.09	0.14	0.38	0.51	0.93	1.23
N_2O (*thousand tons CO_2eq*)*	24.83	37.83	99.71	135.69	245.85	326.06

* CO_2eq is the quantity of CO_2 that would have the same global warming potential.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the considered TSLs for ceiling fans. As discussed in section IV.L of this notice, for CO_2, DOE used the most recent values for the SCC developed by an interagency process. The four sets of SCC values for CO_2 emissions reductions in 2015 resulting from that process (expressed in 2014$) are represented by $12.2/metric ton (the average value from a distribution that uses a 5-percent discount rate), $40.0/metric ton (the average value from a distribution that uses a 3-percent discount rate), $62.3/metric ton (the average value from a distribution that uses a 2.5-percent discount rate), and $117/metric ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages (public health, economic and

environmental) as the projected magnitude of climate change increases.

Table V–28 presents the global value of CO_2 emissions reductions at each TSL. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values; these results are presented in chapter 14 of the NOPR TSD.

TABLE V–28—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR PRODUCTS SHIPPED IN 2019–2048

(Million 2014$)

TSL	SCC Case *			
	5% discount rate, average	3% discount rate, average	2.5% discount rate, average	3% discount rate, 95th percentile
Power Sector Emissions				
1	53.88	247.99	394.24	755.34
2	81.92	377.43	600.14	1149.69
3	214.57	992.25	1579.02	3023.52
4	291.62	1350.73	2150.25	4116.32
5	533.47	2455.82	3904.26	7480.15
6	709.41	3260.18	5181.11	9928.66
Upstream Emissions				
1	3.02	14.01	22.30	42.70
2	4.59	21.33	33.98	65.04
3	12.07	56.27	89.70	171.61
4	16.43	76.71	122.32	233.96
5	29.89	138.74	220.94	422.94
6	39.69	183.90	292.76	560.54
Total FFC Emissions				
1	56.90	262.00	416.54	798.03
2	86.52	398.76	634.12	1214.73
3	226.64	1048.53	1668.72	3195.13
4	308.06	1427.44	2272.57	4350.28
5	563.36	2594.56	4125.20	7903.09
6	749.10	3444.09	5473.88	10489.20

* For each of the four cases, the corresponding SCC value for emissions in 2015 is $12.2, $40.0, $62.3, and $117 per metric ton (2014$). The values are for CO_2 only (*i.e.,* not CO_{2eq} of other greenhouse gases).

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed on reduced CO_2 emissions in this rulemaking is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this proposed rule the most recent values and analyses resulting from the interagency review process.

DOE also estimated the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from the considered TSLs for ceiling fans. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V–29 presents the cumulative present value ranges for NO_X emissions for each TSL calculated using 7-percent and 3-percent discount rates. This table presents values that use the low dollar-per-ton values. Results that reflect the range of NO_X dollar-per-ton values are presented in Table V–31.

TABLE V–29—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR CEILING FANS SHIPPED 2019–2048

(Million 2014$)

TSL	3% discount rate	7% discount rate
Power Sector Emissions		
1	28.60	11.67
2	43.48	17.67
3	113.87	45.66
4	154.82	61.76
5	283.19	115.39
6	376.58	154.36
Upstream Emissions		
1	20.48	8.15
2	31.15	12.36
3	81.80	32.02
4	111.29	43.34
5	202.78	80.64
6	269.34	107.74

TABLE V–29—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR CEILING FANS SHIPPED 2019–2048—Continued

(Million 2014$)

TSL	3% discount rate	7% discount rate
Total FFC Emissions		
1	49.08	19.82
2	74.63	30.02
3	195.67	77.68
4	266.11	105.10
5	485.97	196.04
6	645.92	262.11

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of National Economic Impacts

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V–30 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL for ceiling fans considered in this rulemaking, at both a 7-percent and 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four sets of SCC values discussed above.

TABLE V–30—NET PRESENT VALUE OF CONSUMER SAVINGS COMBINED WITH PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS

TSL	Consumer NPV at 3% discount rate added with: (Billion 2014$)			
	SCC case $12.2/metric ton and 3% low NO_X values	SCC case $40.0/metric ton and 3% low NO_X values	SCC case $62.3/metric ton and 3% low NO_X values	SCC case $117/metric ton and 3% low NO_X values
1	1.1	1.3	1.4	1.8
2	1.5	1.8	2.0	2.6
3	2.4	3.2	3.8	5.3
4	3.3	4.5	5.3	7.4
5	5.5	7.5	9.1	12.9
6	6.6	9.3	11.4	16.4
TSL	Consumer NPV at 7% discount rate added with: (Billion 2014$)			
	SCC case $12.2/metric ton and 7% low NO_X values	SCC case $40.0/metric ton and % 7% low NO_X values	SCC case $62.3/metric ton and 7% low NO_X values	SCC case $117/metric ton and 7% low NO_X values
1	0.5	0.7	0.8	1.2
2	0.7	1.0	1.2	1.8
3	0.8	1.6	2.3	3.8
4	1.2	2.3	3.2	5.3
5	1.9	3.9	5.4	9.2
6	2.1	4.8	6.8	11.8

Although adding the value of consumer savings to the values of emission reductions informs DOE's evaluation, two issues should be considered. First, the national operating cost savings are domestic U.S. monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and the SCC are performed with different methods that use different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped from 2019 to 2048. Because CO_2 emissions have a very long residence time in the atmosphere,[75] the SCC values in future years reflect future climate-related impacts resulting from the emission of CO_2 that continue beyond 2100.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for ceiling fans at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative

[75] The atmospheric lifetime of CO_2 is estimated of the order of 30–95 years. Jacobson, MZ, ''Correction to 'Control of fossil-fuel particulate black carbon and organic matter, possibly the most effective method of slowing global warming,''' *J. Geophys. Res.* 110. pp. D14105 (2005).

analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. There is evidence that consumers undervalue future energy savings as a result of: (1) A lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases; (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[76]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[77] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Ceiling Fan Standards

Table V–31 and Table V–32 summarize the quantitative impacts estimated for each TSL for ceiling fans. The national impacts are measured over the lifetime of ceiling fans purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2019–2048). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this notice.

TABLE V–31—SUMMARY OF ANALYTICAL RESULTS FOR CEILING FANS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings						
quads	0.137	0.210	0.555	0.758	1.362	1.802
NPV of Consumer Costs and Benefits (2014$ billion)						
3% discount rate	0.952	1.333	1.944	2.760	4.466	5.251
7% discount rate	0.400	0.539	0.522	0.813	1.094	1.051
Cumulative FFC Emissions Reduction (Total FFC Emissions)						
CO_2 *million metric tons*	8.31	12.67	33.48	45.68	82.36	109.08
SO_2 *thousand tons*	4.49	6.84	18.01	24.50	44.43	58.94
NO_X *thousand tons*	15.28	23.29	61.63	84.17	151.34	200.27
Hg *tons*	0.02	0.03	0.07	0.09	0.16	0.22
CH_4 *thousand tons*	36.15	55.14	146.11	199.59	358.18	473.74
CH_4 *thousand tons* CO_2eq*.	1012.20	1543.84	4091.09	5588.54	10029.17	13264.68
N_2O *thousand tons*	0.09	0.14	0.38	0.51	0.93	1.23
N_2O *thousand tons* CO_2eq*.	24.83	37.83	99.71	135.69	245.85	326.06
Value of Emissions Reduction (Total FFC Emissions)						
CO_2 *2014$ billion***	0.057 to 0.798	0.087 to 1.215	0.227 to 3.195	0.308 to 4.350	0.563 to 7.903	0.749 to 10.489

[76] P.C. Reiss and M.W. White, Household Electricity Demand, Revisited, *Review of Economic Studies* (2005) 72, 853–883.

[77] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory (2010) (Available online at: *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*).

TABLE V–31—SUMMARY OF ANALYTICAL RESULTS FOR CEILING FANS TSLS: NATIONAL IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
NO_X—3% discount rate *2014$ million*.	49.1 to 108.9	74.6 to 165.6	195.7 to 433.9	266.1 to 590.0	486.0 to 1078.7 ..	645.9 to 1434.2
NO_X—7% discount rate *2014$ million*.	19.8 to 44.2	30.0 to 67.0	77.7 to 173.4	105.1 to 234.6	196.0 to 437.5	262.1 to 584.9

* CO_2eq is the quantity of CO_2 that would have the same global warming potential (GWP).
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

TABLE V–32—SUMMARY OF ANALYTICAL RESULTS FOR CEILING FANS TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1*	TSL 2*	TSL 3*	TSL 4*	TSL 5*	TSL 6*
Manufacturer Impacts						
Industry NPV (2014$ million) (*No-Standards Case INPV = 1,309*)	1,305–1,311	1,300–1,315	1,148–1,296	1,142–1,293	1,059–1,253	925–1,230
Industry NPV *$2014 million change*	(3.5)–2.5	(9.1)–6.6	(161.1)–(12.4)	(166.3)–(15.5)	(249.5)–(55.4)	(383.4)–(78.9)
Industry NPV *% change*	(0.3)–0.2	(0.7)–0.5	(12.3)–(1.0)	(12.7)–(1.2)	(19.1)–(4.2)	(29.3)–(6.0)
Consumer Impacts						
Consumer Average LCC Savings *2014$:*						
Standard	48.62	36.38	8.47	8.47	(0.44)	(0.44)
Hugger	41.66	30.20	5.59	5.59	5.59	(5.27)
VSD	16.47	16.47	3.01	3.01	(10.42)	(10.42)
HSSD	21.56	21.56	(15.26)	27.63	27.63	27.63
Large-Diameter	235.01	235.01	159.69	27.26	27.26	(63.10)
Consumer Simple PBP **years:*						
Standard	–	–	1.5	1.5	4.0	4.0
Hugger	–	–	1.6	1.6	1.6	4.3
VSD	–	–	7.7	7.7	9.8	9.8
HSSD	–	–	8.0	5.2	5.2	5.2
Large-Diameter	–	–	2.7	4.4	4.4	5.8
% of Consumers that Experience Net Cost:						
Standard	0.00	0.00	20	20	62	62
Hugger	0.00	0.00	22	22	22	66
VSD	0.00	0.00	2	2	71	71
HSSD	0.00	0.00	71	33	33	33
Large-Diameter	0.00	0.00	2	35	35	49

* Parentheses indicate negative (–) values.
** Simple PBP results are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

DOE first considered TSL 6, which represents the max-tech efficiency levels. TSL 6 would save 1.802 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be $1.051 billion using a discount rate of 7 percent, and $5.251 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 109.08 Mt of CO_2, 58.94 thousand tons of SO_2, 200.27 thousand tons of NO_X, 0.22 ton of Hg, 473.74 thousand tons of CH_4, and 1.23 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 6 ranges from $0.749 billion to $10.489 billion.

At TSL 6, the average LCC impact is a savings of ($10.42) for VSD ceiling fans, ($5.27) for hugger ceiling fans, ($0.44) for standard ceiling fans, $27.63 for HSSD ceiling fans, and ($63.10) for large-diameter ceiling fans. The simple payback period is 9.8 years for VSD ceiling fans, 4.3 years for hugger ceiling fans, 4.0 years for standard ceiling fans, 5.2 years for HSSD ceiling fans, and 5.8 years for large-diameter ceiling fans. The fraction of consumers experiencing a net LCC cost is 71 percent for VSD ceiling fans, 66 percent for hugger ceiling fans, 62 percent for standard ceiling fans, 33 percent for HSSD ceiling fans, and 49 percent for large-diameter ceiling fans.

At TSL 6, the projected change in INPV ranges from a decrease of $383.4 million to a decrease of $78.9 million, which represent decreases of 29.3 percent and 6.0 percent, respectively.

At TSL 6, the corresponding efficiency levels for all product classes are the max-tech efficiency levels. Specifically for the VSD, hugger, standard and large-diameter ceiling fan product classes, the average LCC savings in 2014$ for all consumers, and affected consumers relative to no standards case is negative. Additionally, the percentage of consumers that experience net cost for the VSD, hugger and standard ceiling fan product classes at max-tech efficiencies are greater than 60 percent.

The Secretary tentatively concludes that at TSL 6, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative average LCC savings for the VSD, hugger, standard, and large-diameter ceiling fan product classes and the potential reduction in manufacturer industry value. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5, which corresponds to the maximum NPV at a 7 percent discount rate, which would save 1.362 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $1.094 billion using a discount rate of 7 percent, and $4.466 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 82.36 Mt of CO_2, 44.43 thousand tons of SO_2, 151.34 thousand tons of NO_X, 0.16 ton of Hg, 358.18 thousand tons of CH_4, and 0.93 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 5 ranges from $0.563 billion to $7.903 billion.

At TSL 5, the average LCC impact is a savings of ($10.42) for VSD ceiling fans, $5.59 for hugger ceiling fans, ($0.44) for standard ceiling fans, $27.63 for HSSD ceiling fans, and $27.26 for large-diameter ceiling fans. The simple payback period is 9.8 years for VSD ceiling fans, 1.6 years for hugger ceiling fans, 4.0 years for standard ceiling fans, 5.2 years for HSSD ceiling fans, and 4.4 years for large-diameter ceiling fans. The fraction of consumers experiencing a net LCC cost is 71 percent for VSD ceiling fans, 22 percent for hugger ceiling fans, 62 percent for standard ceiling fans, 33 percent for HSSD ceiling fans, and 35 percent for large-diameter ceiling fans.

At TSL 5, the projected change in INPV ranges from a decrease of $249.5 million to a decrease of $55.4 million, which represent decreases of 19.1 percent and 4.2 percent, respectively.

For TSL 5, the efficiency levels for each product class correspond to the following: max-tech efficiency levels for the VSD, standard and HSSD ceiling fan product classes, and EL 3 for hugger and large-diameter ceiling fan product classes. Therefore, for the VSD and standard ceiling fan product classes, the average LCC savings in 2014$ for all consumers and affected consumers relative to no standards case is negative. Additionally, the percentage of consumers that experience net cost for these product classes at max-tech efficiencies are greater than 60 percent. The Secretary tentatively concludes that at TSL 5 for ceiling fans, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the negative average LCC savings for the VSD and standard ceiling fan product classes and the potential reduction in manufacturer industry value. Consequently, the Secretary has tentatively concluded that TSL 5 is not economically justified.

DOE then considered TSL 4, which corresponds to the highest efficiency level for which the LCC and NPV are both positive, which would save 0.758 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $0.813 billion using a discount rate of 7 percent, and $2.760 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 45.68 Mt of CO_2, 24.50 thousand tons of SO_2, 84.17 thousand tons of NO_X, 0.09 ton of Hg, 199.59 thousand tons of CH_4, and 0.51 thousand tons of N_2O. The estimated monetary value of the CO_2 emissions reduction at TSL 4 ranges from $0.308 billion to $4.350 billion.

At TSL 4, the average LCC impact is a savings of $3.01 for VSD ceiling fans, $5.59 for hugger ceiling fans, $8.47 for standard ceiling fans, $27.63 for HSSD ceiling fans, and $27.26 for large-diameter ceiling fans. The simple payback period is 7.7 years for VSD ceiling fans, 1.6 years for hugger ceiling fans, 1.5 years for standard ceiling fans, 5.2 years for HSSD ceiling fans, and 4.4 years for large-diameter ceiling fans. The fraction of consumers experiencing a net LCC cost is 2 percent for VSD ceiling fans, 22 percent for hugger ceiling fans, 20 percent for standard ceiling fans, 33 percent for HSSD ceiling fans, and 35 percent for large-diameter ceiling fans.

At TSL 4, the projected change in INPV ranges from a decrease of $166.3 million to a decrease of $15.5 million, which represent decreases of 12.7 percent and 1.2 percent, respectively.

For TSL 4, the efficiency levels for each product class correspond to the following: max-tech for HSSD ceiling fan product class, EL 3 for the hugger, standard and large-diameter ceiling fan product classes, and EL 2 for the very-small diameter ceiling fan product class. At TSL 4, the average LCC savings in 2014$ are positive for all product classes. Also, the fraction of consumers that experience net savings at TSL 4 is much greater than the fraction of consumers that experience a net cost.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that at TSL 4, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings would outweigh the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers. Accordingly, the Secretary has tentatively concluded that TSL 4 would offer the maximum improvement in efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy.

Therefore, based on the above considerations, DOE proposes to adopt the energy conservation standards for ceiling fans at TSL 4. The proposed amended energy conservation standards for ceiling fans, which are expressed as maximum CFM/W, are shown in Table V–33.

TABLE V–33—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR CEILING FANS

Product class	Maximum air-flow efficiency equation (CFM/W) *
Very Small-Diameter (VSD)	3.17D–16.75
Hugger	0.05D+56.41
Standard	0.30D+60.61
High-Speed Small-Diameter (HSSD)	4.22D+0.02
Large Diameter	1.16D–24.38

* D is the ceiling fan diameter, in inches.

2. Summary of Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of: (1) the annualized national economic value (expressed in 2014$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of CO_2 and NO_X emission reductions.[78]

[78] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2014, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (2020, 2030, *etc.*), and then

Table V–34 shows the annualized values for ceiling fans under TSL 4, expressed in 2014$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for benefits and costs other than CO_2 reduction (for which DOE used a 3-percent discount rate along with the average SCC series that has a value of $40.0/t in 2015), the estimated cost of the standards proposed in this rule is $140 million per year in increased equipment costs, while the estimated annual benefits are $220 million in reduced equipment operating costs, $80 million in CO_2 reductions, and $10 million in reduced NO_X emissions. In this case, the net benefit amounts to $170 million per year.

Using a 3-percent discount rate for all benefits and costs and the average SCC series that has a value of $40.0/t in 2015, the estimated cost of the proposed ceiling fans standards is $136 million per year in increased equipment costs, while the estimated annual benefits are $290 million in reduced operating costs, $80 million in CO_2 reductions, and $15 million in reduced NO_X emissions. In this case, the net benefit amounts to $248 million per year.

TABLE V–34—ANNUALIZED BENEFITS AND COSTS OF PROPOSED STANDARDS (TSL 4) FOR CEILING FANS

	Discount rate	Million 2014$/year		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Consumer Operating Cost Savings	7%	220	195	253.
	3%	290	255	341.
CO_2 Reduction Value ($12.2/t) **	5%	23	21	26.
CO_2 Reduction Value ($40.0/t) **	3%	80	71	90.
CO_2 Reduction Value ($62.3/t) **	2.5%	117	105	132.
CO_2 Reduction Value ($117/t) **	3%	243	217	274.
NO_X Reduction Value †	7%	10	9	26.
	3%	15	13	37.
Total Benefits ††	7% plus CO_2 range	254 to 473	225 to 421	305 to 553.
	7%	310	275	369.
	3% plus CO_2 range	328 to 547	289 to 485	404 to 652.
	3%	384	340	467.
Costs				
Consumer Incremental Product Costs	7%	140	177	155.
	3%	136	182	152.
Total ††	7% plus CO_2 range	114 to 333	47 to 243	150 to 398.
	7%	170	98	214.
	3% plus CO_2 range	192 to 411	107 to 303	251 to 499.
	3%	248	157	315.

* This table presents the annualized costs and benefits associated with ceiling fans shipped in 2019–2048. These results include benefits to consumers which accrue after 2048 from the products purchased in 2019–2048. The results account for the incremental variable and fixed costs incurred by manufacturers due to the standard, some of which may be incurred in preparation for the rule. The Primary Estimate assumes the Reference case electricity prices and housing starts from AEO 2015 and decreasing product prices for ceiling fans with DC motors, due to price trend on the electronics components. The Low Benefits Estimate uses the Low Economic Growth electricity prices and housing starts from AEO 2015 and no price trend for ceiling fans with DC motors. The High Benefits Estimate uses the High Economic Growth electricity prices and housing starts from AEO 2015 and the same product price decrease for ceiling fans with DC motors as in the Primary Estimate.

** The CO_2 values represent global monetized values of the SCC, in 2014$, in 2015 under several scenarios of the updated SCC values. The first three cases use the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The fourth case represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The SCC time series incorporate an escalation factor.

† The $/ton values used for NO_X are described in section IV.L. DOE estimated the monetized value of NOx emissions reductions using benefit per ton estimates from the Regulatory Impact Analysis titled, ''Proposed Carbon Pollution Guidelines for Existing Power Plants and Emission Standards for Modified and Reconstructed Power Plants,'' published in June 2014 by EPA's Office of Air Quality Planning and Standards. (Available at: *http://www3.epa.gov/ttnecas1/regdata/RIAs/111dproposalRIAfinal0602.pdf.*) See section IV.L.2 I.A.2for further discussion. For DOE's Primary Estimate and Low Net Benefits Estimate, the agency is presenting a national benefit-per-ton estimate for particulate matter emitted from the Electric Generating Unit sector based on an estimate of premature mortality derived from the ACS study (Krewski et al., 2009). For DOE's High Net Benefits Estimate, the benefit-per-ton estimates were based on the Six Cities study (Lepuele et al., 2011), which are nearly two-and-a-half times larger than those from the ACS study. Because of the sensitivity of the benefit-per-ton estimate to the geographical considerations of sources and receptors of emission, DOE intends to investigate refinements to the agency's current approach of one national estimate by assessing the regional approach taken by EPA's Regulatory Impact Analysis for the Clean Power Plan Final Rule.

†† Total Benefits for both the 3% and 7% cases are derived using the series corresponding to the average SCC with a 3-percent discount rate ($40.0/t case). In the rows labeled ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

discounted the present value from each year to 2015. The calculation uses discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions, for which DOE used case-specific discount rates. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year that yields the same present value.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the proposed standards set forth in this NOPR are intended to address are as follows:

(1) Insufficient information and the high costs of gathering and analyzing relevant information leads some consumers to miss opportunities to make cost-effective investments in energy efficiency.

(2) In some cases, the benefits of more-efficient equipment are not realized due to misaligned incentives between purchasers and users. An example of such a case is when the equipment purchase decision is made by a building contractor or building owner who does not pay the energy costs.

(3) There are external benefits resulting from improved energy efficiency of appliances and equipment that are not captured by the users of such products. These benefits include externalities related to public health, environmental protection, and national energy security that are not reflected in energy prices, such as reduced emissions of air pollutants and greenhouse gases that impact human health and global warming. DOE attempts to quantify some of the external benefits through use of social cost of carbon values.

The Administrator of the Office of Information and Regulatory Affairs (OIRA) in the OMB has determined that the proposed regulatory action is a significant regulatory action under section (3)(f) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(B) of the Order, DOE has provided to OIRA: (i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and (ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate. DOE has included these documents in the rulemaking record.

In addition, the Administrator of OIRA has determined that the proposed regulatory action is an ''economically'' significant regulatory action under section (3)(f)(1) of Executive Order 12866. Accordingly, pursuant to section 6(a)(3)(C) of the Order, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments can be found in the technical support document for this rulemaking.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. 76 FR 3281 (Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (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 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 impacts; 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 upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, OIRA has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

1. Description on Estimated Number of Small Entities Regulated

For manufacturers of ceiling fans, the SBA has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description available at: *https://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*. Ceiling fan manufacturing is classified under NAICS code 335210, ''Small Electrical Appliance Manufacturing.'' The SBA sets a threshold of 750 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small businesses that sell ceiling fans covered by this rulemaking, DOE conducted a market survey using publicly available information. DOE first attempted to identify all potential ceiling fan manufacturers by researching industry trade associations (*e.g.,* ALA [79]), information from previous rulemakings, individual company Web sites, and SBA's database. DOE then attempted to gather information on the location and number of employees to see if these companies met SBA's definition of a small business for each potential ceiling fan manufacturer by reaching out directly to those potential small businesses and using market research tools (*e.g., www.hoovers.com, www.manta.com, glassdoor.com, www.linkedin.com, etc.*). DOE also asked interested parties and industry representatives if they were aware of any small businesses during manufacturer interviews and DOE public meetings. DOE used information from these sources to create a list of companies that potentially manufacture or sell ceiling fans and would be affected by this rulemaking. DOE

[79] ALA. Membership Directory and Buyer's Guide 2015. Last Accessed June 9, 2015. *http://www.lightrays-digital.com/lightrays/2015_membership_directory#pg1.*

screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are completely foreign owned and operated.

For ceiling fans, DOE initially identified 82 potential companies that sell ceiling fans in the United States. After reviewing publicly available information on these potential ceiling fan manufacturers, DOE determined that 45 were either large businesses or businesses that were completely foreign owned and operated. DOE determined that the remaining 37 companies were small businesses that either manufacture or sell covered ceiling fans in the United States. Based on manufacturer interviews, DOE estimates that these small businesses account for approximately 25 percent of the ceiling fan market.

DOE seeks comments, information, and data on the small businesses in the industry, including their numbers and their role in the ceiling fan market. DOE also requests data on the market share of small businesses in the ceiling fan market. See issue 27 in section VII.E.

2. Description and Estimate of Compliance Requirements

At TSL 4, DOE estimates that small ceiling fan businesses selling standard and hugger ceiling fans could be disproportionally impacted by the proposed energy conservation standards compared to large ceiling fan businesses. However, since DOE estimates that more than 90 percent of VSD, HSSD, and large-diameter ceiling fans are manufactured by small businesses, DOE projects the impacts on small businesses that only produce VSD, HSSD, and large-diameter fan product classes to be represented by the overall industry impacts for those particular product classes. DOE displays the overall industry impacts for VSD, HSSD, and large-diameter fan product classes individually at the proposed TSL in Table VI–1, Table VI–2, and Table VI–3.

TABLE VI–1—MANUFACTURER IMPACT ANALYSIS FOR VERY SMALL-DIAMETER CEILING FANS AT THE PROPOSED TRIAL STANDARD LEVEL (TSL 4)

	Units	No-standards case	Proposed trial standard level (TSL 4)		
			Preservation of gross margin	Preservation of operating profit	Two-tiered
INPV	*2014$ thousands*	8,898	8,889	8,855	7,020
Change in INPV	*2014$ thousands*		(9)	(43)	(1,878)
	%		(0.1)	(0.5)	(21.1)
Product Conversion Costs	*2014$ thousands*		3	3	3
Capital Conversion Costs	*2014$ thousands*		9	9	9
Total Conversion Costs	*2014$ thousands*		12	12	12

For the VSD ceiling fan product class, at TSL 4 DOE estimates impacts on INPV range from −$1,878 thousand to −$9 thousand, or decreases in INPV of −21.1 percent to −0.1 percent. DOE projects that in 2019, 96 percent of VSD ceiling fan shipments will meet or exceed efficiency levels analyzed at TSL 4.

TABLE VI–2—MANUFACTURER IMPACT ANALYSIS FOR HIGH-SPEED SMALL-DIAMETER CEILING FANS AT THE PROPOSED TRIAL STANDARD LEVEL (TSL 4)

	Units	No-standards case	Proposed trial standard level (TSL 4)		
			Preservation of gross margin	Preservation of operating profit	Two-tiered
INPV	*2014$ thousands*	29,350	28,030	13,088	27,278
Change in INPV	*2014$ thousands*		(1,323)	(16,265)	(2,072)
	%		(4.5)	(55.4)	(7.1)
Product Conversion Costs	*2014$ thousands*		94	94	94
Capital Conversion Costs	*2014$ thousands*		293	293	293
Total Conversion Costs	*2014$ thousands*		388	388	388

For the HSSD ceiling fan product class, at TSL 4 DOE estimates impacts on INPV range from −$16,265 thousand to −$1,323 thousand, or decreases in INPV of −55.4 percent to −4.5 percent. TSL 4 represents max-tech for the HSSD ceiling fan product class, and DOE projects that in 2019, 6 percent of HSSD ceiling fan shipments will meet or exceed efficiency levels analyzed at TSL 4.

TABLE VI–3—MANUFACTURER IMPACT ANALYSIS FOR LARGE-DIAMETER CEILING FANS AT THE PROPOSED TRIAL STANDARD LEVEL (TSL 4)

	Units	No-standards case	Proposed trial standard level (TSL 4)		
			Preservation of gross margin	Preservation of operating profit	Two-tiered
INPV	*2014$ thousands*	37,840	36,415	33,923	34,870

TABLE VI–3—MANUFACTURER IMPACT ANALYSIS FOR LARGE-DIAMETER CEILING FANS AT THE PROPOSED TRIAL STANDARD LEVEL (TSL 4)—Continued

	Units	No-standards case	Proposed trial standard level (TSL 4)		
			Preservation of gross margin	Preservation of operating profit	Two-tiered
Change in INPV	*2014$ thousands*		(1,425)	(3,917)	(2,970)
	%		(3.8)	(10.4)	(7.8)
Product Conversion Costs	*2014$ thousands*		174	174	174
Capital Conversion Costs	*2014$ thousands*		638	638	638
Total Conversion Costs	*2014$ thousands*		812	812	812

For the large-diameter ceiling fans product class, at TSL 4, DOE estimates impacts on INPV range from −$3,917 thousand to −$1,425 thousand, or decreases in INPV of −10.4 percent to −3.8 percent. DOE projects that in 2019, 17 percent of large-diameter ceiling fan shipments will meet or exceed efficiency levels analyzed at TSL 4.

Because small businesses represent the majority of the VSD, HSSD and large-diameter ceiling fan markets, these estimated industry impacts represent the estimated impacts on small businesses selling VSD, HSSD, and large-diameter ceiling fan product classes.

As a result of this rulemaking, small businesses will incur product conversion costs because products that no longer meet the proposed efficiency levels of amended energy conservation standards will most likely need to be redesigned, tested, and certified. Manufacturers will also incur capital conversion costs due to retooling costs associated with producing more efficient ceiling fans required by the proposed standards. Table VI–4 presents total conversion costs for both large and small manufacturers. At TSL 4, approximately fifty percent of total industry conversion costs are incurred by small manufacturers.

TABLE VI–4—TOTAL CONVERSION COSTS BY MANUFACTURER TYPE

	Units	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Total Conversion Costs for Small Manufacturers.	*2014$ (thousands)*	99	140	1,209	2,273	4,072	4,610
Total Conversion Costs for Large Manufacturers.	*2014$ (thousands)*	57	144	2,221	2,221	5,284	6,411
Total Industry Conversion Costs	*2014$ (thousands)*	156	284	3,430	4,494	9,356	11,022

Because small businesses have significantly less revenue, annual R&D budgets, and annual capital expenditure budgets than large manufacturers, the conversion costs necessary to comply with proposed standards represent the majority of a typical small business' annual R&D budget, almost one and a half times a typical small business' annual capital expenditure budget, and a sizeable portion of a typical small business' annual revenue. Table VI–5 demonstrates the impacts that conversion costs as a result of the proposed standards could have on typical small and large ceiling fan business's annual R&D budgets, annual capital expenditure budgets, and annual revenues.

TABLE VI–5—ESTIMATED TESTING AND CERTIFICATION COSTS AS A PERCENTAGE OF ANNUAL R&D EXPENSE AND REVENUE FOR CEILING FAN MANUFACTURERS

	Product conversion cost as a percentage of annual R&D expense	Capital conversion cost as a percentage of annual capital expenditure	Total conversion cost as a percentage of annual revenue
Typical Small Manufacturer	80	147	7
Typical Large Manufacturer	12	23	1

At TSL 4, an average of 36 percent of standard and hugger ceiling fans would need to be redesigned to meet the efficiency levels required at the proposed TSL. For a typical small business that sells standard and hugger ceiling fans, the cost of redesigning and testing these models would account for 80 percent of a typical small business' annual R&D budget, compared to 12 percent of a typical large business' annual R&D budget.

Capital conversion costs are driven primarily by the retooling costs associated with producing redesigned models that meet efficiency levels required by the proposed standards and would account for 147 percent of a typical small business' annual capital expenditure budget, compared to 23 percent of a typical large business' annual capital expenditure budget.

Additionally, total conversion costs at the proposed standards represents 7 percent of an average small ceiling fan business' revenue, compared to 1 percent of an average large ceiling fan business' revenue. Small ceiling businesses that sell standard and hugger ceiling fans must recover costs that

account for a larger percentage of their total revenue with a smaller amount of sales than large ceiling fan businesses.

Due to the difficulty of cost recovery, DOE concludes that small businesses selling standard and hugger ceiling fan product classes could be disproportionately impacted by the proposed amended ceiling fan energy conservation standard compared to large businesses.

DOE seeks comment on the potential impacts of the amended standards on ceiling fan small businesses. See issue 28 in section VII.E.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed amended standard. DOE seeks comment on any rules or regulations that could potentially duplicate, overlap, or conflict with the proposed amended standard. See issue 29 in section VII.E.

4. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, TSL 4. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1, TSL 2, and TSL 3 would reduce the impacts on small business manufacturers, it would come at the expense of a significant reduction in energy savings and NPV benefits to consumers. TSL 1 achieves 82 percent lower energy savings and 51 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 4. TSL 2 achieves 72 percent lower energy savings and 34 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 4. TSL 3 achieves 27 percent lower energy savings and 36 percent less NPV benefits to consumers compared to the energy savings and NPV benefits at TSL 4.

Establishing standards at TSL 4 balances the benefits of the energy savings and the NPV benefits to consumers created at TSL 4 with the potential burdens placed on ceiling fan manufacturers, including small business manufacturers. Accordingly, DOE is declining to adopt one of the other TSLs considered in the analysis, or the other policy alternatives detailed as part of the regulatory impacts analysis included in chapter 17 of this NOPR TSD.

Additional compliance flexibilities may be available through other means. For example, individual manufacturers may petition for a waiver of the applicable test procedure (see 10 CFR 430.27). Further, EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. Additionally, Section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of ceiling fans must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for ceiling fans, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including ceiling fans. See generally 10 CFR part 429. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the

following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf*.

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more by the private sector. Specifically, the proposed rule would likely result in a final rule that could require expenditures of $100 million or more. Such expenditures may include: (1) Investment in research and development and in capital expenditures by ceiling fan manufacturers in the years between the final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency ceiling fans, starting at the compliance date for the applicable standard..

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the NOPR and the ''Regulatory Impact Analysis'' section of the NOPR TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(d), (f), and (o), 6313(e), and 6316(a), this proposed rule would establish amended energy conservation standards for ceiling fans that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the NOPR TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed

statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for ceiling fans, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov*.

Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email (*Regina.Washington@ee.doe.gov)* so that the necessary procedures can be completed.

DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the Forrestal Building. Any person wishing to bring these devices into the building will be required to obtain a property pass. Visitors should avoid bringing these devices, or allow an extra 45 minutes to check in. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding identification (ID) requirements for individuals wishing to enter Federal buildings from specific States and U.S. territories. As a result, driver's licenses from several States or territory will not be accepted for building entry, and instead, one of the alternate forms of ID listed below will be required. DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington. Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the States of Minnesota, New York, or Washington (Enhanced licenses issued by these States are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government-issued Photo-ID card.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx?ruleid=65*. Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via *www.regulations.gov*. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on the proposed product class structure based on blade diameter, distance from the ceiling and the UL 507 table. See section IV.A.1.

2. DOE seeks comment on the definition of highly-decorative ceiling fans based on both an RPM and a CFM threshold. See section IV.A.1.a.

3. DOE requests comment on the applications of wind and temperature sensors, and if they reduce or increase the energy consumption of a ceiling fan considering both active and standby of

fan operation. If so, DOE seeks specific data on how wind and temperature sensors reduce or increase energy consumption of a ceiling fan. See section IV.A.2.c.

4. DOE requests comment on the technologies that were assumed to be available and able to allow each product class to meet the specified energy efficiency level, including fan optimization, larger direct-drive motor and DC motors for the very small-diameter product class. See section IV.B.

5. DOE requests comment and data about the performance of occupancy sensors and occupancy sensor schedulers and whether they would reduce or increase the energy consumption of a ceiling fan considering both active and standby/off modes of fan operation. See section IV.B.1.a.

6. One method to improve ceiling fan efficiency is to reduce the fan speed. Some reduction in fan speed may not impact consumer utility. DOE requests comment on what an acceptable reduction of fan speed may be such that it does not affect consumer utility for each of the proposed product classes. See section IV.C.

7. DOE requests comment about the proposed factory costs at each efficiency level for each product class. Specifically DOE seeks comment on the 52-inch standard ceiling fan baseline factory costs of $38.85 and a baseline MPC of $54.93. See section IV.C.3.

8. DOE requests any data on operating hours for each product class and inparticular the HSSD ceiling fan product class. See section IV.E.2.b.

9. DOE requests any relevant data on how the proposed ceiling fan standards could have on the operation of air conditioners, whether and to what level there may be a substitution effect that would cause a reduction in the purchase of residential and/or commercial air conditioning systems in lieu of ceiling fans. In addition, DOE requests any relevant data regarding whether the proposed standards would impact the usage rate of residential and/or commercial air conditioning systems. See section IV.E.3.

10. Installation costs were assumed not to vary by efficiency level for all product classes, and therefore were not considered in the analysis. DOE requests comments on this assumption. See section IV.F.

11. DOE requests comments on the methodology of the LCC and PBP analysis for ceiling fans. See section IV.F.

12. DOE has assumed that the excess rate of failure for DC motors, above the repair rate for AC motors, is 6.5 percent of purchases. DOE also assumed a repair cost of $150 for all product classes other than the large-diameter product class, and a repair cost of $1000 for large-diameter fans. DOE requests comment, input, and data that can improve the estimate of repair costs, particularly repairs costs associated with DC motors. See section IV.F.4.

13. DOE requests comment on the survival function used in this rulemaking, which DOE assumed has the form of a cumulative Weibull distribution, and provides a mean of 13.8 years and a median of 13.0 years for appliance lifetime. This is the same distribution employed in the preliminary analysis. DOE welcomes comment on these estimates. See section IV.F.5.

14. Shipment data were only available for standard, hugger, and VSD ceiling fans, so DOE assumed the survival probability function of large-diameter and HSSD ceiling fans is the same as that for standard, hugger, and VSD ceiling fans. DOE requests comments and data on product lifetimes of large-diameter and HSSD ceiling fans. See section IV.F.5.

15. Using updated, price-weighted data, DOE calculated 48.7 percent and 51.3 percent as the current market share split for hugger and standard ceiling fans, respectively. (This calculation retained the 27 percent/73 percent installation split used in the preliminary analysis for multi-mount fans.) DOE requests comment, data, or information on its estimates for the relative split between hugger, standard, and VSD product classes. See section IV.G.1.

16. DOE requests data and information on current and historical shipments for HSSD and large-diameter ceiling fans. See section IV.G.1.

17. DOE requests comments on the assumed ceiling fan usage by sector for all product classes. See section IV.G.1.

18. DOE requests comments on its approach for estimating the market share distribution by efficiency level using a consumer-choice model sensitive to first cost for standard, hugger, and VSD ceiling fans. See section IV.G.3.

19. DOE requests comments on its use of the roll-up approach to estimate market-shares by efficiency levels for HSSD and large-diameter ceiling fans. See section IV.G.3.

20. DOE assumed that the cost of DC motor ceiling fans would decrease over the course of the shipments analysis due to a price trend applied to the electronics controller used in DC motor fans. DOE estimated the cost of the electronics controller as the incremental price difference between a DC motor and a comparable AC motor. DOE applied a 6% price decline rate to the incremental cost associated with the electronic controller. DOE's methodology leads to an average annual decrease of 0.5% in the total price of a DC motor ceiling fan. DOE requests input on the validity of its price trend methodology as applied to the incremental cost of a DC motor. See section IV.G.4.

21. DOE requests data and information to more accurately estimate a price elasticity of demand specific to ceiling fans. Specifically, DOE requests concurrent data on industry-wide shipments-weighted retail price and efficiency and average household income. See section IV.G.5.

22. DOE requests comments on the overall methodology used to develop shipment forecasts and estimate NES and the NPV of those savings. See section IV.H.2.

23. DOE seeks comment on any potential impact on manufacturing capacity at the efficiency levels proposed in this NOPR. See section V.B.2.c.

24. DOE seeks comment on any other potential manufacturer subgroups that could be disproportionally affected by amended energy conservation standards for ceiling fans. See section V.B.2.d.

25. DOE seeks comment on the cumulative regulatory burden due to compliance costs of any other regulations, such as the ceiling fan light kit proposed rule, on products that ceiling fan manufacturers also manufacture, especially if compliance with those regulations is required 3 years before or after the estimated compliance date of this proposed standard. See section V.B.2.e.

26. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. See section V.B.5.

27. DOE seeks comments, information, and data on the small businesses in the industry, including their numbers and their role in the ceiling fan market. DOE also requests data on the market share of small businesses in the ceiling fan market. See section VI.B.1.

28. DOE seeks comment on the potential impacts of the amended standards on ceiling fan small businesses. See section VI.B.2.

29. DOE seeks comment on any rules or regulations that could potentially duplicate, overlap, or conflict with the proposed amended standard. See section VI.B.3.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on December 23, 2015.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.2 is amended by adding the definitions for ''belt-driven ceiling fan,'' ''highly-decorative ceiling fan,'' ''high-speed small-diameter ceiling fan,'' ''hugger ceiling fan,'' ''large-diameter ceiling fan,'' ''small-diameter ceiling fan,'' ''standard ceiling fan,'' and ''very small-diameter ceiling fan'' in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

Belt-driven ceiling fan means a ceiling fan with a series of one or more fan heads, each driven by a belt connected to one or more motors.

* * * * *

Highly-decorative ceiling fan means a ceiling fan with a maximum rotational speed of 90 RPM and less than 1,840 CFM airflow at high speed.

* * * * *

High-speed small-diameter ceiling fan means a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and has a blade thickness of < 3.2 mm at the edge or a maximum tip speed > the applicable limit in the table in this definition.

SMALL-DIAMETER CEILING FANS, LESS THAN OR EQUAL TO 7 FEET IN DIAMETER

Airflow Direction	Thickness (t) of Edges of Blades		Maximum Speed at Tip of Blades	
	mm	inch	m/s	feet per minute
Downward-only	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	16.3	3,200
Downward-only	t ≥ 4.8	t ≥ 3/16	20.3	4,000
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2,400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3,200

* * * * *

Hugger ceiling fan means a ceiling fan that is not a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is ≤ 10 inches from the ceiling; and has a blade thickness of ≥ 3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in the table in this definition.

SMALL-DIAMETER CEILING FANS, LESS THAN OR EQUAL TO 7 FEET IN DIAMETER

Airflow Direction	Thickness (t) of Edges of Blades		Maximum Speed at Tip of Blades	
	mm	inch	m/s	feet per minute
Downward-only	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	16.3	3,200
Downward-only	t ≥ 4.8	t ≥ 3/16	20.3	4,000
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2,400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3,200

* * * * *

Large-diameter ceiling fan means a ceiling fan that is greater than 7 feet in diameter.

* * * * *

Small-diameter ceiling fan means a ceiling fan that is less than or equal to 7 feet in diameter.

* * * * *

Standard ceiling fan means a ceiling fan is not a ceiling fan that is not a very small-diameter ceiling fan, highly-decorative ceiling fan or belt-driven ceiling fan; and where the lowest point on fan blades is > 10 inches from the ceiling; and has a blade thickness of ≥ 3.2 mm at the edge and a maximum tip speed ≤ the applicable limit in the table in this definition.

SMALL-DIAMETER CEILING FANS, LESS THAN OR EQUAL TO 7 FEET IN DIAMETER

Airflow Direction	Thickness (t) of Edges of Blades		Maximum Speed at Tip of Blades	
	mm	inch	m/s	feet per minute
Downward-only	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	16.3	3,200
Downward-only	t ≥ 4.8	t ≥ 3/16	20.3	4,000
Reversible	4.8 > t ≥ 3.2	3/16 > t ≥ 1/8	12.2	2,400
Reversible	t ≥ 4.8	t ≥ 3/16	16.3	3,200

* * * * *

Very small-diameter ceiling fan means a ceiling fan that is not a highly-decorative ceiling fan or belt-driven ceiling fan; and has one or more fan heads, each of which has a blade span of 18 inches or less.

* * * * *

■ 3. Section 430.32 is amended by:

■ a. Redesignating paragraphs (s)(2), (s)(3), (s)(4) and (s)(5) as (s)(3), (s)(4), (s)(5) and (s)(6).

■ b. Adding a new paragraph (s)(2).

The addition to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(s) * * *

(1) * * *

(2) Ceiling fans manufactured on or after [DATE 3 YEARS AFTER DATE OF FINAL RULE PUBLICATION IN THE **Federal Register**] shall meet the requirements shown in the table:

Product Class	Airflow Efficiency Equation (CFM/W) *
Very small-diameter (VSD)	3.17D − 16.75
Hugger	0.05D + 56.41
Standard	0.30D + 60.61
High-speed small-diameter (HSSD)	4.22D + 0.02
Large-diameter	1.16D − 24.38

* D is the ceiling fan diameter, in inches.

* * * * *

[FR Doc. 2015–33062 Filed 1–12–16; 8:45 am]

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FEDERAL REGISTER

Vol. 81 Wednesday,
No. 8 January 13, 2016

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622
Fisheries of the Caribbean, Gulf, and South Atlantic; Aquaculture; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 622

[Docket No. 080225276–5601–02]

RIN 0648–AS65

Fisheries of the Caribbean, Gulf, and South Atlantic; Aquaculture

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the Fishery Management Plan for Regulating Offshore Aquaculture in the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico Fishery Management Council (Council). The FMP entered into effect by operation of law on September 3, 2009. This final rule establishes a comprehensive regulatory program for managing the development of an environmentally sound and economically sustainable aquaculture fishery in Federal waters of the Gulf of Mexico (Gulf), *i.e.,* the Gulf exclusive economic zone (EEZ). The purpose of this final rule is to increase the yield of Federal fisheries in the Gulf by supplementing the harvest of wild caught species with cultured product.

DATES: This rule is effective February 12, 2016.

ADDRESSES: Electronic copies of the FMP, which includes a final programmatic environmental impact statement (FPEIS), a Regulatory Flexibility Act analysis (RFA), and a regulatory impact review, along with the supplement to the FPEIS (SFPEIS) and supplemental information report (SIR), may be obtained from the Southeast Regional Office's Aquaculture Web site (Web site) at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/.*

Comments regarding the burden-hour estimates, clarity of the instructions, or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Adam Bailey, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; or, the Office of Management and Budget, by email at *OIRASubmission@omb.eop.gov,* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Jess Beck-Stimpert, 727–824–5301.

SUPPLEMENTARY INFORMATION: The aquaculture fishery in the Gulf is managed under the FMP. The FMP was prepared by the Council and is being implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 4, 2009, NMFS published a notice of availability for the FMP and requested public comment (74 FR 26829). On September 3, 2009, the FMP entered into effect by operation of law. On that same date, NOAA announced that it would develop a new National Aquaculture Policy that would provide context for the FMP. On June 9, 2011, NOAA announced the release of the final National Aquaculture Policy and NOAA's intentions to move forward with rulemaking for the FMP. On August 28, 2014, NMFS published a proposed rule for the FMP and requested public comment (79 FR 51424). The proposed rule and the FMP outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

The FMP was developed under the authority of the Magnuson-Stevens Act to regulate aquaculture operations in the Gulf EEZ. The FMP provides a comprehensive framework for authorizing and regulating offshore aquaculture activities. The FMP also establishes a programmatic approach for evaluating the potential impacts of aquaculture operations in the Gulf.

Gulf Aquaculture Permits

This final rule requires persons who want to conduct select aquaculture activities in the Gulf exclusive economic zone (EEZ) to apply for and obtain a Gulf aquaculture permit. This permit authorizes the operation of an offshore aquaculture facility in the Gulf EEZ and allows the sale of allowable aquaculture species cultured at an offshore aquaculture facility in the Gulf EEZ. Persons issued a Gulf aquaculture permit are authorized to harvest, or designate hatchery personnel or other entities to harvest, and retain live wild broodstock of an allowable aquaculture species, and to possess or transport cultured species in, to, or from an offshore aquaculture facility in the Gulf EEZ. Permit eligibility is limited to U.S. citizens and permanent resident aliens. Gulf aquaculture permits are transferable as long as the geographic location of the aquaculture facility site remains unchanged and all applicable permit requirements are satisfied and up-to-date at the time of transfer. The Gulf aquaculture permit is effective for 10 years and must be renewed in 5-year increments thereafter to remain valid. The initial permit application fee is $10,000, and a $1,000 fee is assessed annually, to cover the administrative costs of issuing permits and reviewing permit activities that are reported annually. The renewal application fee is $5,000. These fees are based on the NOAA Finance Handbook. A valid Gulf aquaculture permit must be prominently displayed and available at the aquaculture facility. An aquaculture facility is defined broadly at 50 CFR part 622.2 as an installation of a structure, including any aquaculture system(s) (including moorings), hatcheries, equipment, and associated infrastructure used to hold, propagate, and rear allowable aquaculture species in the Gulf EEZ under the authority of a Gulf aquaculture permit. For those parts of the aquaculture facility that are deployed in the water, the permit holder may choose to comply with the requirement to display the Gulf aquaculture permit by marking the gear with the permit number. A copy of a valid Gulf aquaculture permit signed by the permit owner must be in the possession of any person who possesses live wild broodstock of an allowable aquaculture species, or who possesses or transports cultured species in, to, or from an offshore aquaculture facility in the Gulf EEZ.

A dealer who receives species cultured at an offshore aquaculture facility in the EEZ is required to have a Gulf aquaculture dealer permit. As defined in 50 CFR 600.10, dealer means the person who first receives fish by way of purchase, barter, or trade. The fee for a Gulf aquaculture dealer permit fee is $50.00 (if the person applies for a single permit) or $12.50 (if the person applies for the Gulf aquaculture dealer permit in conjunction with another type of permit) to cover the administrative costs of permit issuance. Dealer permits are issued annually and must be prominently displayed and available on the dealer's premises. A Gulf aquaculture dealer permit is not transferable.

Electronic System Requirements, Account Setup, and Information

The administrative functions associated with this aquaculture program, such as account setup, landing transactions, and reporting, are to be accomplished online; therefore, all permittees need access to a computer and the Internet to participate. NMFS will mail permittees information and instructions for setting up an online aquaculture account and using the online system, upon issuance of a Gulf

aquaculture permit or a Gulf aquaculture dealer permit. Assistance with online functions is available from the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

Additionally, the NMFS Southeast Regional Administrator (RA) will provide each aquaculture permittee with paper forms for complying with the basic reporting requirements of the aquaculture program when use of such forms is authorized during catastrophic conditions. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are affected by the catastrophic conditions. The RA will provide timely notice to affected participants and may authorize the affected participants' use of paper forms for the duration of the catastrophic conditions. Program functions are limited under the paper-based system. Assistance in complying with the requirements of the paper-based system is available via the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time.

If some online functions are not available at the time of initial implementation of this aquaculture program, participants may comply by submitting the required information via email using the appropriate forms that are available on the Web site. Once online functions are available, participants must comply by using the online system unless alternative methods are specified.

Application Requirements

Applications for a Gulf aquaculture permit are available from the RA or from the Web site. Applicants must complete and submit the application form and all required supporting documents to the RA at least 180 days prior to the date they desire the permit to be effective. Information required as part of the application package includes: Name of business, name of applicant, hatchery contact information, documentation of U.S. citizenship or resident alien status, a baseline environmental survey of the proposed site conducted consistent with the guidance specified by NMFS and available on the Web site, a description of the geographic location and dimensions of the aquaculture facility and site, a description of the equipment, aquaculture systems, and methods to be used for grow-out (time period from when an organism is stocked into offshore systems until it is harvested for market), a list of species to be cultured, estimated production levels of each species to be cultured, and a copy of an emergency disaster plan (an emergency plan in the event of a disaster).

The applicant is required to obtain an assurance bond sufficient to cover the costs associated with removing all components of the aquaculture facility, including cultured animals, if permittees fail to do so when ordered by NMFS.

The applicant is required to provide a document certifying that all broodstock or progeny of such broodstock will be or were originally harvested from U.S. waters of the Gulf, will be or were harvested from the same population or sub-population that occurs where the facility is located, and that no genetically engineered or transgenic animals will be used or possessed at the aquaculture facility. The purpose of these requirements is to ensure that the genetic make-up of cultured animals is similar to the wild stocks where the facility is located. As defined in § 622.2 of this final rule, genetically engineered animals are those modified by rDNA techniques, including the entire lineage of animals that contain the modification. The term 'genetically engineered animal' can refer to both animals with heritable rDNA constructs and animals with non-heritable rDNA constructs (*e.g.,* those modifications intended to be used as gene therapy). Also defined in § 622.2 of this final rule, transgenic animals are those whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal.

The applicant is required to provide a copy of the contractual agreement with a certified aquatic animal health expert. An aquatic animal health expert is defined as a licensed doctor of veterinary medicine or a person who is certified by the American Fisheries Society, Fish Health Section, as a ''Fish Pathologist'' or ''Fish Health Inspector.''

Prior to issuance of a Gulf aquaculture permit, permit applicants must provide NMFS a copy of valid Federal permits (*e.g.,* Army Corps of Engineers (ACOE) Section 10 permit, and Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permit) and authorizations applicable to the proposed aquaculture site, facilities, or operations. Permit applicants do not need to provide copies of these valid Federal permits as part of their Gulf aquaculture permit application.

Public Comment Process Regarding Gulf Aquaculture Permit Applications

After the RA has determined an application to be complete, NMFS will announce its receipt of the application in the **Federal Register**. The public will be provided up to 45 days to comment on the application and comments will be requested during public testimony at a Council meeting. The RA may consult with the Council on the permit application and will offer the applicant an opportunity to appear in support of the application at a Council meeting. After public comment ends and comments are reviewed, the RA will notify the applicant and the Council in writing of the decision to issue or deny the Gulf aquaculture permit. Reasons the RA may deny a permit might include: The applicant fails to disclose material information or includes false statements of material facts; the RA determines that issuing the permit would pose significant risk to marine resources, public health, or safety, or conflict with established or potential oil and gas infrastructure, access to outer continental shelf (OCS) energy or marine mineral resources, safe transit to and from infrastructure, or future geological and geophysical surveys; or the RA determines the application proposes activities that are inconsistent with the objectives of the FMP, Magnuson-Stevens Act, or other applicable laws. The RA also may consider revisions to the application made by the applicant in response to public comment before approving or denying the Gulf aquaculture permit request.

Consultation With Other Federal Agencies

The RA will consult with Federal agencies as appropriate, to address and resolve any conflicts regarding use of the OCS for aquaculture, with special emphasis on OCS energy programs for resolving and documenting the proposed solution of existing conflicts. Consultation will occur when working with potential permittees during the pre-application stage of the permit process and when evaluating potentially relevant conflicts or issues identified through the permit application review process. The RA will consult with Federal agencies, as appropriate, prior to making a decision to approve or deny a permit.

Operational Requirements, Monitoring Requirements, and Restrictions

Permittees must abide by operational requirements, monitoring requirements, and restrictions, as specified in the regulations applicable to aquaculture (50 CFR part 622 and 40 CFR part 451). To reduce the potential for speculative entry into the fishery, permittees are required to place 25 percent of aquaculture systems approved for use at

a specific aquaculture facility in the water at the permitted site within 2 years of permit issuance, and to place cultured animals in aquaculture systems at the site within 3 years of permit issuance. Permittees may request a 1-year extension of these deadlines in the event of a catastrophe (*e.g.,* hurricane). Failure to comply with any of the operational requirements, monitoring requirements, or restrictions is grounds for revocation of the permit.

Fingerlings or other juvenile animals obtained for grow-out at an aquaculture facility in the EEZ must be obtained from a hatchery located in the U.S. All broodstock used for spawning at a hatchery supplying fingerlings or other juvenile animals to an aquaculture facility in the Gulf EEZ must be certified by the hatchery owner as having been marked or tagged (*e.g.,* dart or internal wire tag). Prior to stocking fish in approved aquaculture systems, the applicant must provide NMFS with a copy of an animal health certificate signed by an aquatic animal health expert certifying that the fish have been inspected and are visibly healthy, and that the source population tests negative for World Organization of Animal Health (OIE) pathogens specific to the cultured species and for pathogens that are identified as reportable pathogens in the National Aquatic Animal Health Plan (NAAHP). This process must be repeated for each new stocking event.

The use of biologics, pesticides, and drugs must comply with all applicable United States Department of Agriculture (USDA), EPA, and FDA requirements. Use of aquaculture feeds must be conducted in compliance with EPA feed monitoring and management guidelines (40 CFR 451.21). Applicants also must comply with all monitoring and reporting requirements specified in their EPA NPDES permit and their ACOE Section 10 permit. Additionally, NMFS requires permittees to inspect aquaculture systems for entanglements or interactions with marine mammals, protected species, and migratory birds. The frequency of inspections will be specified by NMFS as a condition of the permit. Permittees are required to monitor and report baseline environmental survey data to NMFS in accordance with procedures specified by NMFS in guidance available on the Web site.

The RA must approve all broodstock harvest activities before they occur. At least 30 days before the date permittees intend to harvest broodstock from the Gulf EEZ or Gulf state waters, the permittee or permittee's designee must submit a request for broodstock harvest to the RA. The request must include information on the number, size, and species to be harvested, the methods, gear, and vessels to be used for capturing, holding, and transporting broodstock, the date and specific location of the intended harvest, and the location where the broodstock will be delivered. Only gear and methods specified in 50 CFR 600.725 for the respective fishery may be used for harvest—except that rod-and-reel may be used to harvest red drum. The RA may deny a request to harvest broodstock if allowable methods or gear are not proposed for use, the number of broodstock is larger than necessary for spawning and rearing activities, or based on a determination the proposed activity is inconsistent with FMP objectives or Federal laws. The RA will provide the permittee a written determination regarding the approval or denial of the broodstock harvest request. If a broodstock harvest request is approved, the permittee will be required to submit a report to the RA within 15 days of the date of harvest summarizing the number, size, and species harvested, and identifying the location where the broodstock were captured.

Remedial Actions by NMFS

Section 622.108 of this rule provides safeguards that address two specific concerns identified by the Council during development of the FMP: Pathogens and genetic issues.

Section 622.108(a)(1) provides that NMFS, in cooperation with the USDA's Animal and Plant Health Inspection Service (APHIS), may order movement restrictions and/or removal of all cultured animals upon confirmation by the APHIS reference laboratory that the cultured animals test positive for a reportable or emerging pathogen and pose a threat to the health of wild or cultured animals.

Section 622.108(a)(2) provides that NMFS may sample cultured animals to determine genetic lineage. If cultured animals are determined to be genetically engineered or transgenic, then NMFS will order the removal of all cultured animals for which such determination applies. In conducting the genetic testing to determine that all broodstock or progeny of such broodstock are originally harvested from U.S. waters of the Gulf, are from the same population or sub-population that occurs where the facility is located, and that juveniles stocked in offshore systems are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the FMP, NMFS may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA to conduct such genetic testing if the RA agrees to accept the third party testing results. The non-Federal Government third party may not be the same entity as the permittee.

In addition to the actions specified above, NMFS has the authority to issue emergency rules to address unforeseen events that present serious conservation or management problems. See 16 U.S.C. 1855(c); NMFS Policy Guidelines for the Use of Emergency Rules (62 FR 44421, August 21, 1997). An emergency rule is generally in effect for a limited time but could remain in effect for an extended period if the rule is responding to a public health issue or an oil spill. See 16 U.S.C. 1855(c)(3)(C). If warranted under the circumstances, appropriate measures could also be established through an FMP amendment prepared by the Council, or by the Secretary of Commerce if the Council fails to develop such an amendment. Any measures established in an FMP amendment would remain in effect until modified. Additionally, in the event of a significant unexpected problem requiring urgent action to protect public health, interest, or safety, NMFS may consider withdrawing, suspending, revoking, or annulling a permit pursuant to the Administrative Procedure Act, 5 U.S.C. 558(c).

Biological Reference Points, Status Determination Criteria, Annual Catch Limits and Accountability Measures

Consistent with National Standard 1 of the Magnuson-Stevens Act and the National Standard 1 Guidelines, the FMP specifies biological reference points, status determination criteria, annual catch limits and accountability measures. The FMP establishes an annual catch limit (ACL) for offshore aquaculture in the Gulf EEZ of 64 million lb (29 million kg), round weight, which is equal to optimum yield (OY) and maximum sustainable yield (MSY) specified by the Council. This maximum level of harvest represents the average landings of all marine species in the Gulf, except menhaden and shrimp, between 2000–2006. Also, the FMP limits a person, corporation, or other entity from producing, annually, more than 20 percent of the total annual ACL (12.8 million lb (5.8 million kg), round weight) for offshore aquaculture in the Gulf EEZ, to ensure entities do not obtain an excessive share of the ACL.

If the total annual ACL is exceeded in a given year, NMFS will publish a control date in the **Federal Register**, and

entry into the aquaculture fishery may be limited or prohibited after that control date. The control date will serve as an accountability measure while the Council initiates review of the Gulf aquaculture program and biological reference points.

The FMP recognizes that thresholds for determining overfishing and overfished status are used as proxies to assess the effect of the aquaculture fishery upon wild stocks. Thus, they are not directly applicable to the cultured fish but it is conceivable that some level of aquaculture in the Gulf could result in adverse impacts to wild stocks, which could result in overfishing and depletion of such stocks. Thus, the FMP also specifies overfished and overfishing criteria established in existing FMPs for wild stocks, consistent with the provisions at 50 CFR 600.310(d)(7). These thresholds are used by NMFS to determine if offshore aquaculture in the Gulf EEZ is adversely affecting wild populations, causing them to become overfished or undergo overfishing. If aquaculture operations are determined to cause such effects, then the Council and NMFS will take action(s) that could include, but is not limited to, reducing aquaculture production levels, removing cultured animals containing pathogens, and reevaluating facility siting locations to avoid habitat degradation.

Measures To Enhance Enforceability

Permittees are required to provide NMFS personnel and authorized officers (as defined in 50 CFR 600.10) access to their aquaculture facilities and records to conduct inspections and determine compliance with applicable regulations relating to Gulf aquaculture in the EEZ. In conducting the inspections, NMFS may enter into cooperative agreements with States, may delegate the inspection authority to any State, or may contract with non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA to conduct such inspections if the RA agrees to accept the third party inspection results. The non-Federal Government third party may not be the same entity as the permittee.

Permittees participating in the aquaculture program are allowed to offload cultured animals at aquaculture dealers only between 6 a.m. and 6 p.m., local time. All fish landed on shore are required to be maintained whole with heads and fins intact. Spiny lobster are required to be maintained whole with tail intact until landed ashore. Any cultured animals harvested from an aquaculture facility and being transported are required to be accompanied by the applicable bill of lading through offloading and the first point of sale.

Any person transporting cultured fingerlings or other juvenile animals from a hatchery to an aquaculture facility, other than from a hatchery that is integrated with an aquaculture facility, is required to notify NMFS at least 72 hours prior to transport. Permittees are also required to notify NMFS at least 72 hours prior to harvest of cultured animals at an aquaculture facility and notify NMFS at least 72 hours prior to the intended time of landing. The harvest notification includes the time, date, and weight of cultured animals to be harvested. The landing notification includes the time, date, and port of landing. These notifications are required to be provided to NMFS by calling the telephone number or accessing the Web-based form on the Web site.

Any vessel transporting cultured animals to or from an aquaculture facility is required to stow fishing gear below deck or in an area where it is not normally used or readily available for fishing. Possession of any wild fish, with the exception of broodstock associated with a hatchery in the Gulf EEZ, is prohibited within the boundaries of an aquaculture facility's restricted access zone as specified in § 622.104. Except when harvesting broodstock, the possession of wild fish aboard an aquaculture operation's transport and service vessels, vehicles, or aircraft is prohibited. Stowage requirements and possession restrictions are intended to enhance enforcement by preventing the simultaneous possession of cultured and wild fish.

Species Allowed for Aquaculture

The FMP allows owners and operators of aquaculture facilities in the Gulf EEZ to culture all species native to the Gulf that are managed by the Council in a fishery management unit (FMU) under a current FMP, except those species in the shrimp and coral FMU's. As explained in the preamble to the proposed rule, prior to the FMP, offshore aquaculture in the Gulf EEZ, other than live rock aquaculture, could only be authorized by an exempted fishing permit (EFP) from NMFS. Anyone wishing to culture species in the Gulf EEZ that are not allowable aquaculture species as specified in the FMP and at § 622.105(b) must apply for an EFP (see regulations at 50 CFR 600.745). Under the FMP, no genetically engineered or transgenic animals may be cultured in the Gulf.

Allowable Aquaculture Systems for Grow-Out

Aquaculture systems used for growing fish will be evaluated and approved by the RA on a case-by-case basis. The structural integrity and ability of aquaculture systems to withstand physical stresses associated with major storm events (*e.g.,* hurricanes) will be reviewed by the RA, using engineering analyses, computer and physical oceanographic models, or other required documentation. The RA will evaluate the potential risks of aquaculture systems to essential fish habitat (EFH), endangered or threatened species, marine mammals, wild fish stocks, public health, and safety. The RA will consider the significance of any such risks in determining whether to approve or deny an aquaculture system. If the RA denies use of an aquaculture system, then the applicant will be provided a written determination from the RA of such findings. Each aquaculture system approved for use must be marked with a minimum of one properly functioning locating device (*e.g.,* global positioning system device) to assist in locating the system in the event it is damaged or lost. The U.S. Coast Guard (USCG) also requires structures to be marked with lights and signals to ensure compliance with private aids to navigation (33 CFR 66.01).

Siting Requirements and Conditions

Aquaculture facilities are prohibited in Gulf EEZ marine protected areas, marine reserves, habitat areas of particular concern (HAPCs), Special Management Zones, permitted artificial reef areas, and coral areas specified in 50 CFR part 622. No aquaculture facility may be sited within 1.6 nm (3 km) of another aquaculture facility. Permit sites must be twice as large as the combined area encompassed by the approved aquaculture systems to allow for best management practices such as the rotation of systems for fallowing. The RA will evaluate proposed sites on a case-by-case basis. Siting criteria include but are not limited to the following: Results of the baseline environmental survey; site depth; frequency of harmful algal blooms or hypoxia; and location of the site relative to marine mammal migratory pathways, important natural habitats, and fishing grounds. The RA may deny use of a proposed aquaculture site based on a determination that the proposed site: Would pose significant risks to EFH, or to endangered or threatened species; would result in user conflicts with commercial or recreational fishermen or with other marine resource users; would

pose risk to the cultured species due to low dissolved oxygen or harmful algal blooms; is not of sufficient depth for the approved aquaculture system; is characterized by substrate and currents that would inhibit the dispersal of wastes and effluents; or is otherwise inconsistent with FMP objectives or applicable Federal laws.

Aquaculture Facility Restricted Access Zones

A restricted access zone will be established for each facility. The boundaries of the restricted access zone correspond to the coordinates listed on the approved ACOE Section 10 permit for the site. Restricted access zone boundaries must be clearly marked with a floating device, such as a buoy. No recreational or commercial fishing, other than aquaculture, may occur within the restricted access zone. Only fishing vessels that have a copy of the aquaculture facility's permit with an original signature of the permittee are allowed to operate in or transit through the restricted access zone.

Recordkeeping and Reporting Requirements

Gulf aquaculture permittees are required to report to NMFS major escapement events; findings of reportable pathogens; and entanglements or interactions with marine mammals, protected species, or migratory birds. All of these events must be reported within 24 hours of discovery of the event. Major escapement is defined as the escape, within a 24-hour period, of 10 percent of the fish from a single approved aquaculture system (*e.g.,* one cage or one net pen) or 5 percent or more of the fish from all approved aquaculture systems combined, or the escape, within any 30-day period, of 10 percent or more of the fish from all approved aquaculture systems combined. Reportable pathogens include any OIE pathogen or pathogens that are identified as reportable pathogens in the NAAHP. If no major escapement, finding of reportable pathogen, or entanglement or interaction occurs during a given fishing year, then a permittee is required to submit by January 31 of the following year an annual report to the RA indicating no event occurred. If major escapement occurs, the permittee is required to provide to NMFS the contact and permit information for the facility at which the escapement occurred, the duration and location of escapement, the cause(s) of escapement, the quantity, size, and percent of fish that escaped, by species; and actions being taken to address the escapement and to prevent future escapements. If an entanglement or interaction occurs, the permittee is required to submit to NMFS information on the date, time, and location of the event, the species involved, the number of mortalities or acute injuries, causes of entanglement or interaction, and steps being taken to address the entanglement or interaction. If reportable pathogens are discovered, the permittee is required to provide NMFS information on the reportable pathogen present, the percent of cultured animals infected, the findings of the aquatic animal health expert, plans for confirmatory testing, testing results (when available), and actions being taken to address the pathogen episode.

In addition to the above-mentioned reporting requirements, permittees are required to report to NMFS if there is a change to the hatchery (or hatcheries) used for obtaining fingerlings or other juvenile animals. Permittees are also required to report, to other Federal agencies, the use of new animal drugs in accordance with 40 CFR 451.3.

For recordkeeping requirements, permittees must maintain and file with NMFS valid copies of all state and Federal permits required for conducting offshore aquaculture, as well as copies of state and Federal permits for each hatchery from which fingerlings or other juvenile animals are obtained. Also, aquaculture facilities must maintain the following records for the most recent 3-year period: Monitoring reports related to aquaculture activities required by state and Federal permits; daily records of fish introduced or removed from each aquaculture system; and original or copies of feed purchase invoices and sale records. These records must be provided to NMFS or authorized officers upon request.

Aquaculture dealers are required to complete a landing transaction report when purchasing cultured animals from a Gulf aquaculture permit holder. The transaction report includes the date, time, and location of the transaction; the identities of the Gulf aquaculture permit holder, vessel transporting cultured animals to port, and dealer involved in the transaction; and the quantity, average price, and average weight of each species landed and sold.

Framework Procedures

The RA may modify MSY, OY, permit application requirements, operational requirements and restrictions, including monitoring requirements, aquaculture system requirements, siting requirements, and recordkeeping and reporting requirements in accordance with the framework procedure in the FMP.

Comments and Responses

NMFS received over 1,100 submissions from the public on *Regulations.gov* during the comment periods for the proposed rule and FMP. NMFS has identified 115 unique comments from the public submissions. These include comments responding to the eight issues NMFS identified in the public participation section of the proposed rule. Comments and responses on those eight issues are addressed in the Public Participation Comments section below.

Public Participation Comments

Comment 1: NMFS requested public comment on the definition of ''significant risk'' as it pertains to offshore aquaculture in the Gulf and whether it is a different standard than what is established under the Endangered Species Act (ESA) (this corresponds to issue 1 in the Public Participation section of the proposed rule). NMFS received several comments on this proposed definition. Several commenters stated the definition is adequate and another stated the threshold for denying permits under this definition should be increased, giving NMFS less discretion. In contrast, a few commenters requested the threshold for significant risk be lowered, thereby making it easier for NMFS to deny permit applications. One commenter also stated that ''significant risk'' is not defined in the ESA but the term has been interpreted in case law; specifically, *Babbitt* v. *Sweet Home Chapter of Communities,* 515 U.S. 687 (1995), in which the Supreme Court ruled that actual harm must occur. Another commenter stated the term ''significant risk'' should focus on direct threats of actual harm, and not indirect, insignificant, discountable, or extremely unlikely harm.

Response: After considering all of the comments received, NMFS has determined that a more moderate threshold for ESA-listed species should be included in the definition of ''significant risk.'' The proposed definition linked the ESA criterion to the jeopardy and adverse modification standards established in the ESA. In this final rule, NMFS adopts a revised definition that will provide the RA discretion to deny a Gulf aquaculture permit application or use of a proposed site or aquaculture system, or specify conditions for an aquaculture system, if it is determined to adversely affect ESA-listed species or their critical habitat.

This revised definition is consistent with the original definition deemed by the Council in February 2013 and makes the ESA-related criterion in the definition consistent with those for marine mammals, EFH, wild fish stocks and public health and safety. This revised definition recognizes that ''significant risk'' means more than insignificant or discountable (extremely unlikely) harm, but that activities may present a ''significant risk'' even if they fall short of jeopardizing the continued existence of an entire species or destroying or adversely modifying their critical habitat.

NMFS does not agree that the *Sweet Home* decision is relevant to the definition of ''significant risk'' in this rule. That decision focused on whether the regulatory definition of ''harm,'' which included ''significant habitat modification or degradation,'' was reasonable and within the Department of the Interior's authority.

Comment 2: NMFS requested public comment on the use of the term ''genetically modified organism'' in the rule and whether it should be changed to ''genetically engineered animal'' to be consistent with terminology used by FDA (this corresponds to issue 2 in the Public Participation section of the proposed rule). NMFS also requested public comment on whether the definition of ''genetically modified organism'' should be removed and a definition for ''genetically engineered animal'' should be added to the rule, which is more consistent with the definition used by FDA (this corresponds to issue 3 in the Public Participation section of the proposed rule). NMFS received several comments supporting these changes, one of which stated that this would result in uniformity across Federal agencies. Another commenter opposed these changes and supported the original terms and definitions, which they felt were more restrictive.

Response: After considering these comments, NMFS is changing the term ''genetically modified organism'' to ''genetically engineered animal'' in this final rule as this is a more scientifically precise term, more accurately describes the use of modern biotechnology, and is consistent with FDA terminology.

NMFS is also adopting the FDA definition for ''genetically engineered animal,'' which is defined as an ''animal modified by rDNA techniques, including the entire lineage of animals that contain the modification. The term 'genetically engineered animal' can refer to both animals with heritable rDNA constructs and animals with non-heritable rDNA constructs (*e.g.,* those modifications intended to be used as gene therapy).'' An animal that has been altered such that its ploidy (number of sets of chromosomes in its cells) has been changed (*e.g.,* a triploid animal (an animal with an extra set of chromosomes in its cells)) is not considered to be genetically engineered provided that that animal does not contain genes that have been introduced or otherwise altered by modern biotechnology.

Comment 3: NMFS requested public comment on whether it would be sufficiently protective to require broodstock to be collected from another population within the Gulf, rather than the same population or sub-population that occurs where the facility is located. NMFS also asked the public to provide comment on any additional costs or burdens this requirement would pose on aquaculture facilities (this corresponds to issue 4 in the Public Participation section of the proposed rule). NMFS received several comments which agreed that NMFS should keep the requirement to harvest broodstock from the same population or subpopulation where the facility is located. NMFS received comments that this requirement would be an impediment to selective breeding and the selection of traits that render individuals less fit to survive in the wild.

Response: NMFS has determined that it is appropriate to keep the requirement to collect broodstock from the same population or subpopulation where the facility is located. The purpose of this requirement is to ensure that the genetic make-up of cultured animals is similar to that of the wild stocks where the facility is located. This is important to eliminate the potential for out-breeding depression caused by escaped fish interbreeding with fish from the local wild stock should escapement occur.

The extent to which there are population differences in genotypes among potential farmed species in the Gulf varies by species. Scientific information available for species likely to be cultured in the Gulf EEZ (cobia, almaco jack, red drum, red snapper) indicates that red snapper and red drum should be collected within a 62 and 82 mile (100 and 132 km), respectively, radius of the location of the offshore aquaculture facility, while cobia and almaco jack may be collected from anywhere within the Gulf in order to maintain the genetic integrity of those populations. Due to these large collection ranges, NMFS has determined that this requirement does not pose an additional burden on aquaculture operators.

NMFS does not agree that the FMP requirement that broodstock be from the same population or subpopulation where the aquaculture facility is located is an impediment to selective breeding as this requirement does not directly address selective breeding practices. NMFS is developing guidance which will address selective breeding practices which will afford sufficient protections to wild stocks, should escapement occur. NMFS is also developing tools (*e.g.,* Offshore Mariculture Escapes Genetics Assessment (OMEGA) model) which will allow industry and regulators to objectively evaluate the potential genetic risk(s) posed by cultured escapees.

Therefore, NMFS has not made any changes to this requirement.

Comment 4: NMFS requested public comment regarding whether it is necessary for facilities to provide a Notice of Harvest to NMFS 72 hours prior to harvesting cultured animals to ensure that only cultured animals are landed (this corresponds to issue 5 in the Public Participation section of the proposed rule). NMFS received several comments opposing the requirement to notify NMFS 72 hours prior to harvesting. These comments indicated that this requirement would be burdensome as harvesting may occur on a daily basis and weather conditions and other factors may impact harvest schedules.

Response: NMFS has determined that it is appropriate to require the Notice of Harvest. The 72-hour notification window is intended to aid law enforcement and NMFS staff by allowing them the opportunity to be present at a facility when harvesting occurs to verify that permittees are harvesting only cultured species (*e.g.,* through genetic testing) and that they remain within their production cap. Permittees can provide notification to NMFS either by phone or web-based form and may use this same method to provide updates on harvest times, etc. should inclement weather or other circumstances arise. This requirement was contained in the FMP and the preamble to the proposed rule and NMFS is adding it to the regulations in this final rule.

Comment 5: NMFS requested public comment on the additional costs, if any, of maintaining a daily record of the number of fish introduced into and number or pounds and average weight of fish removed from each approved aquaculture system, including mortalities. In addition, NMFS requested public comment on the extent to which this information aids enforcement of production quotas and

auditing (this corresponds to issue 6 in the Public Participation section of the proposed rule). NMFS received one comment requesting that this requirement be maintained for enforcement purposes. NMFS did not receive any comments opposing this requirement.

Response: NMFS has determined that this requirement is necessary to provide the data needed to effectively enforce individual production quotas and for auditing purposes. This type of recordkeeping is standard practice in the aquaculture industry and therefore no additional costs are anticipated. Therefore, NMFS has not made any changes to this requirement.

Comment 6: NMFS requested public comment on the practical utility and additional cost of the requirement to maintain original purchase invoices for feed, or copies of such invoices, for 3 years from the date of purchase in light of the recordkeeping requirement in EPA regulations at 40 CFR 451.21(g)(1) (this corresponds to issue 7 in the Public Participation section of the proposed rule). NMFS received one comment related to this issue which urged NMFS to maintain strict record-keeping requirements.

Response: NMFS has determined that it's appropriate to require that permittees maintain original or copies of invoices for feed for 3 years from the date of purchase. This requirement will assist NMFS and the EPA in the event that water quality problems arise as a result of the type of feed being used. Further, the EPA regulations (40 CFR 451.21(g)(1)) only require that NPDES permittees maintain records documenting the feed amounts while NMFS' requirement will provide information on the type of feed purchased as well as require permittees keep this information for 3 years. NMFS does not anticipate this requirement will result in additional costs to the applicant as the applicant will receive this information as part of their normal business activity. This requirement was contained in the preamble to the proposed rule and NMFS is adding it to the regulations in this final rule.

Comment 7: NMFS requested public comment on the draft SIR which was prepared to evaluate whether there is a need for supplemental National Environmental Policy Act (NEPA) analysis on the FMP, specific to the passage of time (*i.e.,* since 2009). In the proposed rule, NMFS stated the draft SIR concludes that there are no substantial changes to the proposed action or significant new circumstances or information that require the preparation of an additional supplement to the FPEIS for the FMP (this corresponds to issue 8 in the Public Participation section of the proposed rule). NMFS received several comments supporting the SIR's conclusion that that there are no substantial changes to the proposed action or significant new circumstances or information that require the preparation of additional supplemental NEPA analyses. NMFS also received several comments which stated the SIR was inadequate and that the 2009 FMP/FPEIS should be supplemented. Some of these commenters also stated that the supplemental NEPA document should also analyze the effects of the Deepwater Horizon MC252 oil spill on the affected environment in the Gulf.

Response: On June 26, 2009, NMFS noticed in the **Federal Register** the availability of the FPEIS for the FMP (74 FR 30569). The Deepwater Horizon MC252 oil spill occurred on April 20, 2010, and was successfully capped on July 15, 2010. On January 25, 2013, NMFS noticed in the **Federal Register** its intent to supplement the FPEIS (SFPEIS) to consider potential changes to the environment linked to the Deepwater Horizon oil spill and determine if and how such changes may affect the actions and alternatives analyzed in the FMP/FPEIS (78 FR 5403). NMFS noticed the availability of the draft SFPEIS in the **Federal Register** on February 28, 2014 (79 FR 11428), and published the notice of availability of the final SFPEIS on July 2, 2015 (80 FR 38199).

The comments which stated the SIR was inadequate and the 2009 FMP/FPEIS should be further supplemented did not identify any new circumstances, information or impacts that are uncertain or that differ from those described in the FMP/FPEIS and SFPEIS. NMFS determined that no new or additional supplemental NEPA analysis is necessary, and finalized the SIR on July 6, 2015. The FPEIS, SFPEIS and SIR can be found on the Web site.

General Comments

Comment 8: There is no support in the Magnuson-Stevens Act for NMFS's interpretation that Congress intended the term ''fishing,'' and thus the term ''harvesting,'' to include the culture of fish.

Response: NMFS disagrees. As discussed in the preamble to the proposed rule, it has been NOAA's long-standing interpretation that the Magnuson-Stevens Act provides NMFS the authority to regulate aquaculture as ''fishing'' and, thus, that regional fishery management councils have the authority to prepare fishery management plans covering all aspects of aquaculture in EEZ waters under their respective jurisdictions. NMFS also, long ago, implemented the Council's Coral FMP, which includes provisions for the aquaculture of ''live rock,'' and remains in effect currently.

This interpretation is based on the Magnuson-Stevens Act definitions of the terms ''fishery'' (16 U.S.C. 1802(13)), ''stock of fish'' (16 U.S.C. 1802(42)), and ''fishing'' (16 U.S.C. 1802(16)). Because the Act does not define the term ''harvesting,'' NMFS looks to the ordinary meaning of that word. ''Harvest'' is ''the act or process of gathering in a crop.'' Merriam-Webster Dictionary (2011). ''Crop'' is defined as ''the produce of cultivated plants, esp. cereals, vegetables, and fruit;'' ''the amount of such produce in any particular season;'' or ''the yield of some other farm produce: the lamb crop.'' World English Dictionary (2011). Together, these definitions provide a sound basis for concluding that ''fishing'' includes the catch, take, or harvest of cultured stocks, and thus, that aquaculture activities are within the scope of the term ''fishery'' as used in the Magnuson-Stevens Act.

Further, because the definition of ''fishing'' includes not just harvesting itself, but also activities expected to result in harvesting fish, and operations at sea in support of such activities, NMFS has determined there is a sound basis for concluding that ''fishing'' as used in the Magnuson-Stevens Act encompasses, in addition to harvesting the fish from aquaculture operations, other activities (*e.g.,* stocking and growing fish in offshore systems) at sea that are integral to aquaculture operations.

Comment 9: Neither NMFS nor the Council have authority to develop a permitting regime for aquaculture facilities, because such facilities are neither ''fishing vessels'' under the Magnuson-Stevens Act, nor are they ''vessels'' under 1 U.S.C. 3.

Response: NMFS disagrees the Council lacks the authority to permit aquaculture facilities in the Gulf EEZ. Contrary to the statement in the comment, the Gulf aquaculture permit is not limited to permitting the facility. Under § 622.101(a) and (c) of this final rule, a Gulf aquaculture permit is necessary to deploy the gear, operate the facility, sell or attempt to sell cultured species, possess or transfer fish in or from the Gulf EEZ, operate any vessels, vehicle, or aircraft in support of the aquaculture activity, and harvest and retain on board a vessel live wild broodstock. Therefore, the permit applies to fishing vessels, gear (the

aquaculture systems), and other fundamental aspects of the fishery.

The Magnuson-Stevens Act allows the Council to require a permit with respect to any fishing vessel (section 303(b)(1)), to prohibit, limit, condition, or require the use of specified types and quantities of fishing gear (section 303(b)(4)), and to ''prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery'' (section 303(b)(14)). Together, these provisions provide the Council the authority to require a permit to engage in aquaculture in the Gulf EEZ.

Comment 10: NMFS should disapprove the rule because it was submitted in 2013 and not simultaneously with the FMP in 2009.

Response: The Council submitted proposed regulations in 2009 at the same time as the FMP. However, before NMFS published the proposed rule, additional language was added to the regulations. The Council reviewed these changes in February 2013 and deemed those changes as necessary and appropriate for purposes of implementing the FMP. NMFS has determined that this procedure was consistent with the requirements of the Magnuson-Stevens Act.

Comment 11: The FMP, which entered into effect in September 2009 is unlawful because it contains significant differences from the version approved by the Council in January 2009, therefore, the Secretary cannot lawfully implement the FMP.

Response: NMFS disagrees that the editorial changes made to the FMP between the time it was approved by the Council and took effect were significant or render the FMP unlawful. The Council, when approving the FMP, was aware that staff would have usual editorial license to correct errors and make non-substantive changes to language in the FMP to improve the readability of the document. Thus, consistent with this understanding, NMFS and Council staff made several editorial changes to the FMP following Council approval in January 2009, but no substantive changes were made prior to the Council's formal submission of the FMP to the Secretary of Commerce for review.

Comment 12: The proposed rule is inconsistent with the Magnuson-Stevens Act because it does not contain a link to the final FMP, which includes changes deemed by the Council in February 2013. In addition, the proposed rule failed to provide a list of the technical changes that the Secretary made to the FMP.

Response: The proposed rule did contain a link to the final FMP in the **ADDRESSES** section. No changes were made to the final FMP after it was transmitted to the Secretary of Commerce for review and implementation. Since the FMP was finalized, NMFS made several changes to the proposed regulations. These changes clarified the existing FMP requirements but did not change the substantive requirements of the FMP. In February 2013, the Council reviewed and deemed these changes as necessary and appropriate to carry out the actions in the FMP/FPEIS.

Comment 13: The Secretary acted outside of his authority under the Magnuson-Stevens Act by allowing the FMP to enter into effect by operation of law, because the FMP fails to demonstrate that it is necessary for the conservation and management of Gulf fisheries. Another commenter stated the Council acted outside its authority when preparing the FMP for the same reason.

Response: NMFS disagrees. Section 304 of the Magnuson-Stevens Act specifies that ''If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.'' Because the Secretary did not take action at the end of the comment period, the FMP entered into effect by operation of law, rather than through Secretarial action. This was the reasoning the Court applied when it ruled, in litigation brought after the FMP took effect by operation of law, which included the arguments contained in this comment, there was no final agency action. See the response to Comment 8, above, with respect to the authority to manage aquaculture as fishing under the Magnuson-Stevens Act.

Comment 14: The Council and NMFS have failed to evaluate whether the FMP is consistent with NOAA's 2011 Marine Aquaculture Policy.

Response: NMFS disagrees. In June 2011, NMFS completed an internal consistency analysis, which found that the FMP is consistent with NOAA's 2011 Marine Aquaculture Policy. A copy of this analysis can be found on the Web site.

Comment 15: The FMP and proposed rule violate the Public Trust Doctrine by authorizing NMFS to confer exclusive property rights for use in aquaculture.

Response: NMFS disagrees. The public trust doctrine is not implicated by the FMP or the implementing regulations, which NMFS has determined are consistent with the Magnuson-Stevens Act and other applicable law. Further, the FMP and rule do not authorize NMFS to confer exclusive property rights for use in aquaculture. A Gulf aquaculture permit only authorizes the use of a particular site for the duration of the permit and may be revoked, suspended, or modified pursuant to enforcement proceedings under subpart D of 15 CFR part 904.

Comment 16: The final rule should outline specific parameters for the baseline environmental survey (formerly referred to as the baseline environmental assessment).

Response: NMFS is currently working with other Federal permitting agencies to develop guidance for the baseline environmental survey. This document will be made available on the Web site when the rule becomes effective. Potential applicants are encouraged to contact NMFS and other Federal regulatory agencies early in the permit application process with any questions about the guidance document.

Comment 17: NOAA's 2011 Marine Aquaculture Policy mentions the culture of non-native species may be possible if the best available science demonstrates it would not cause undue harm and this option should also be allowed in this rule. The rule should also allow culture of species with lesser levels of environmental impact, such as native shellfish, and encourage the use of multi-trophic aquaculture systems which use plants.

Response: NMFS disagrees that the culture of non-native species should be allowed. The Council considered an alternative that would have allowed the culture of any species, including those that are non-native to the Gulf (Action 4). However, the Council's Ad Hoc Aquaculture Advisory Panel opposed the use of non-native species for aquaculture. As explained in the FMP, if non-native species were allowed to be cultured in the Gulf EEZ and some escaped, this could have negative environmental impacts by introducing competition with wild stocks, changing community structure and food web dynamics, and modifying genetic structure if mating occurred with wild stocks. For this reason, the Council determined, and NMFS agrees, that it is appropriate to prohibit the culture of non-native species in the FMP.

With respect to the culture of shellfish and plants, plants are not managed by the Council and are therefore not included in the list of species allowed for culture under this rule. The Council does manage shrimp but excluded shrimp from the allowable species, because the Council did not expect

offshore aquaculture of shrimp to be cost effective. The only other shellfish species that is managed by the Council and could be cultured under the FMP is spiny lobster. Multi-trophic aquaculture systems that use allowable species are encouraged.

Comment 18: NMFS failed to comply with the National Marine Sanctuaries Act, which requires consultation when an agency action, whether internal or external to a national marine sanctuary, is likely to destroy, cause the loss of, or injure any sanctuary resources. Because the FMP and rule do not prohibit offshore aquaculture in or adjacent to designated marine sanctuaries and offshore aquaculture is likely to result in significant harm to the Gulf Coast environment, NMFS was required to consult with the Office of National Marine Sanctuaries and failed to do so.

Response: NMFS disagrees that consultation under the National Marine Sanctuaries Act is necessary. The Council considered prohibiting offshore marine aquaculture in marine sanctuaries, but ultimately rejected this alternative so that each marine sanctuary can evaluate whether marine offshore aquaculture is compatible with their management plan. This will allow individual consideration of proposed sites and an evaluation by the experts in the Office of National Marine Sanctuaries to determine whether the activity can be permitted under the applicable provisions of the National Marine Sanctuaries Act and the sanctuary regulations. During the permit review and approval process, the RA will also evaluate any proposed site that is adjacent to a marine sanctuary, as required under § 622.103(a)(4), and will consult with the Office of National Marine Sanctuaries if appropriate.

Comment 19: NMFS missed statutory deadlines when publishing the notice of availability for the FMP. Therefore, the Council and NMFS must reinitiate the rulemaking process and properly follow the statutory timelines.

Response: The transmittal date for the FMP was May 29, 2009, and the notice of availability published on June 4, 2009. This publication schedule is consistent with the timelines set out in § 304(a) of the Magnuson-Stevens Act.

Comment 20: Offshore aquaculture regulations promulgated in the Gulf should apply to all U.S. EEZ waters.

Response: Neither the Council nor NMFS has the authority under the Magnuson-Stevens Act to require that the regulations in this final rule apply to all U.S. EEZ waters. The Magnuson-Stevens Act established 8 regional fishery management Councils that have specified jurisdictions. The FMP was developed by the Council and implemented by NMFS to regulate offshore aquaculture in the Gulf EEZ. Other Councils may decide to develop their own regulations for offshore aquaculture in EEZ waters under their jurisdiction.

Comment 21: The definitions of ''aquaculture'' and ''aquaculture facility'' in the rule refer to ''propagation and rearing'' which would require both activities to be conducted to qualify as an aquaculture activity. This should be changed to make it clear that an activity is ''aquaculture'' under this rule if it involves either propagation or rearing.

Response: NMFS agrees that using the phrase ''propagation and rearing'' could be interpreted to require both activities. Therefore, NMFS has changed the phrase ''propagation and rearing'' in the definition of ''aquaculture'' to the phrase ''propagation or rearing''. In addition, NMFS has changed the phrase ''hold, propagate, and rear'' in the definition of ''aquaculture facility'' to the phrase ''hold, propagate, or rear'' for the same reasons.

Comment 22: The proposed rule is inconsistent with the FMP as it omits ''same population or subpopulation'' in § 622.101(a)(2)(xiii).

Response: NMFS resolved the inconsistency by adding that language to § 622.101(a)(2)(xiii) of this final rule. The language was contained in the FMP and discussed in the preamble of the proposed rule, however, it was not included in the proposed codified text. Based on public comment, NMFS determined this should be added to the regulations in this final rule.

Comment 23: Stocking densities in offshore aquaculture systems should be limited to levels that do not harm marine ecosystems.

Response: NMFS does not specify stocking limits for offshore aquaculture systems. However, NMFS will consider site size, location, baseline environmental survey data as well as the amount of animals cultured at each site when reviewing permit applications. NMFS may deny a permit or a particular site if it would pose significant risks to marine resources.

Comment 24: The FMP should specify a strategy for regulating the occupational safety and health of those employed by offshore aquaculture operations, and provide a mechanism to monitor workplace conditions and health outcomes.

Response: The U.S. Department of Labor's Occupational Safety and Health Administration is the main Federal agency charged with setting and enforcing standards under the Occupational Safety and Health Act of 1970. Thus, issues related to the occupational safety and health of those employed by offshore aquaculture operations are outside NMFS' jurisdiction and the scope of this rulemaking, and not addressed here.

National Standards

Comment 25: The FMP fails to meet the requirements of National Standard 1 of the Magnuson-Stevens Act because the definition of MSY for cultured species in the FMP is impermissible and because neither the FMP nor regulations demonstrate how the aquaculture permitting program will reduce fishing mortality and increase OY. To the contrary, the FMP might increase mortality from spread of disease and increase the catch of prey species to feed captive fish.

Response: NMFS disagrees. National Standard 1 requires conservation and management measures to prevent overfishing while achieving, on a continuing basis, the OY from the fishery (16 U.S.C. 1851(a)(1)). NMFS' implementing guidelines at 50 CFR 600.310 set out standard approaches for specifying MSY, OY and other parameters to be used in assessing the performance of fisheries relative to this mandate, but also recognize there may be circumstances, including harvests from aquaculture operations, which do not fit the standard approaches. In those circumstances, the guidelines provide the councils flexibility to propose alternative approaches for satisfying the National Standard 1 requirements.

Sections 4 and 6 of the FMP explain and analyze the alternative approaches the Council considered to meet the National Standard 1 mandate. Since aquaculture is essentially a farming operation, all animals cultured are intended for harvest and there is no need to leave cultured animals in aquaculture systems to support future generations and guard against long-term depletion. However, it is conceivable that some level of aquaculture in the Gulf could adversely impact wild stocks or the marine environment. Therefore, the Council determined, and NMFS agrees, the most logical approach is to define management reference points and status determination criteria for the aquaculture fishery in a way that is intended to constrain production below that critical threshold level until we obtain more information about the environmental impacts of aquaculture and the production capacity of the Gulf.

The resulting MSY and OY specified in the FMP will increase the seafood production potential of wild stocks, their contributions to national, regional,

and local economies, and their capacity to meet the Nation's nutritional needs. The FMP's reliance on existing overfished and overfishing criteria established in FMPs for wild stocks will help to ensure offshore aquaculture, including broodstock harvest operations, in the Gulf EEZ does not adversely affect wild stocks by spreading disease or other factors, causing them to undergo overfishing or become overfished.

Comment 26: The FMP violates the allocation requirements of National Standard 4 of the Magnuson-Stevens Act.

Response: NMFS disagrees. National Standard 4 states that, if it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (1) fair and equitable to all such fishermen; (2) reasonably calculated to promote conservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges (16 U.S.C. 1851(a)(4)).

NMFS' implementing guidelines at 50 CFR 600.325(c) define an ''allocation'' or ''assignment'' of fishing privileges as a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. The guidelines also state that, to be fair and equitable, any allocation should be rationally connected to the achievement of OY; to promote conservation, allocations may encourage a rational, more easily managed use of the resource; and, to avoid excessive shares, allocations must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges.

The FMP provides that all U.S. citizens and permanent resident aliens are eligible to apply for a Gulf aquaculture permit. The only factors limiting participation are permitting requirements, which apply equally to all applicants, and a maximum annual production cap. The maximum annual production cap is intended to promote conservation by helping to responsibly manage the development of the offshore aquaculture industry while we obtain more information about the number and size of aquaculture operations, the production capacity of various aquaculture systems, and the environmental impacts and economic sustainability of aquaculture. Also, the FMP limits persons, corporations, and other entities from producing, annually, more than 20 percent of the production cap to prevent any one entity from obtaining an excessive share of fishing privileges, and inordinate control by buyers and sellers that would not otherwise exist.

Comment 27: The FMP fails to meet the requirements of National Standard 5 of the Magnuson-Stevens Act because neither the FMP nor the implementing regulations address a serious management or conservation purpose. Rather, the real purpose of the FMP and implementing regulations is economic allocation (*i.e.,* the transfer of fishing rights to aquaculturists).

Response: NMFS disagrees with this interpretation of National Standard 5, which requires conservation and management measures to promote efficiency in the use of fishery resources, where practicable, except that no such measure will have economic allocation as its sole purpose (16 U.S.C. 1851(a)(5)).

Even so, the conservation and management need for the FMP is articulated in the primary goal, which is to increase the MSY and OY of Federal fisheries in the Gulf by supplementing the harvest of wild caught species with cultured product. As explained in the FMP, supplementing the harvest of domestic fisheries with cultured product will help the U.S. to meet consumers' growing demand for seafood and may reduce the Nation's dependence on seafood imports. The MSY and OY of each Council-managed fishery are currently limited by each fishery's biological potential. However, establishing an aquaculture fishery would increase total yield above and beyond that which can be produced solely from wild stocks. Increasing the seafood production potential of these fisheries will increase their contributions to national, regional, and local economies, and their capacity to meet the Nation's nutritional needs.

Further, the FMP does not authorize NMFS to confer exclusive property rights for use in aquaculture. A Gulf aquaculture permit only authorizes the use of a particular site for the duration of a permit and may be revoked, suspended, or modified pursuant to enforcement proceedings under subpart D of 15 CFR part 904.

Comment 28: The FMP violates National Standard 8 of the Magnuson-Stevens Act because it fails to take into account the importance of fishery resources to fishing communities, and does not, to the extent practicable, minimize adverse economic impacts on such communities. The plan does not demonstrate that offshore aquaculture will prevent overfishing or rebuild fisheries and is almost certain to adversely impact fishing communities.

Response: NMFS disagrees. National Standard 8 provides that conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities (16 U.S.C. 1851(a)(8)).

The Gulf fishing communities potentially affected by this action are extensively described in the Gulf Council's 2004 and 2005 EFH Environmental Impact Statements (EISs), and the permitting, operational, monitoring, and reporting requirements of the FMP are designed to achieve the conservation objectives of the FMP and the Magnuson-Stevens Act (including preventing overfishing and rebuilding overfished wild stocks), while minimizing adverse economic impacts on those communities to the extent practicable.

The potential impacts of the FMP on fishing communities are discussed in Sections 4, 5.4, 6, 7, and 8 of the FMP. Depending on the extent to which aquaculture products compete with landings from domestic fisheries, fishing communities could experience adverse effects, such as loss of jobs and revenue due to decreased prices. However, if the aquaculture products are primarily bound for export with little to no impact on domestic supply of traditionally landed species, fishing communities, especially dealers and processors, could benefit from increased jobs and revenues. Moreover, if domestic aquaculture products compete with imports of aquaculture product, there could be a decrease in imported seafood and simultaneously an increase in economic benefits that derive from an increase in net exports. However, the likelihood of net beneficial or adverse impacts occurring would depend on the relative prices, quality and quantity of aquaculture product, and many other factors influencing domestic and international market demand of both farmed and wild-caught species.

Since aquaculture is essentially a farming operation, all animals cultured are intended for harvest and cannot undergo overfishing or become overfished. Offshore aquaculture may help reduce fishing mortality on wild stocks by providing an alternate source of food and relieving some fishing pressure on wild stocks.

Comment 29: The FMP fails to meet the requirements of National Standard 9 of the Magnuson-Stevens Act because it

fails to adequately discuss bycatch and because it attempts to limit bycatch through NMFS evaluation of the aquaculture system and reporting requirements rather than requiring NMFS to reject aquaculture systems with the highest potential for bycatch and authorizing the agency to revoke or modify permits of those facilities that have high levels of bycatch.

Response: NMFS disagrees. National Standard 9 requires conservation and management measures that, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch (16 U.S.C. 1851(a)(9)). The FMP and this final rule contain a number of measures aimed at minimizing the bycatch of aquaculture operations to the extent practicable.

The RA is required to review proposed aquaculture systems on a case-specific basis and may deny the use of a system if it poses significant risk to endangered or threatened species, marine mammals, other marine resources, and is otherwise inconsistent with National Standard 9 or other applicable Federal law.

This final rule will allow NMFS to minimize any potential adverse impacts of broodstock collection by requiring permittees to obtain the RA's approval prior to each collection event. Collection requests must include information on the number, size, and species to be harvested, the methods, gear, and vessels to be used for capturing, holding, and transporting broodstock, the date and specific location of the intended harvest, and the location where the broodstock will be delivered. The RA may deny a request to harvest broodstock if allowable methods or gear are not proposed for use, the number of broodstock is larger than necessary for spawning and rearing activities, or if the proposed activity is otherwise inconsistent with National Standard 9 or other Federal law.

Also, permittees are required to inspect aquaculture systems for entanglements and interactions with marine mammals, protected species, and migratory birds at a frequency specified as a condition of their permit, and to report any entanglements or other interactions to NMFS.

NEPA Analyses

Comment 30: The SFPEIS violates NEPA because it was not presented to the Council, did not inform the Council's decision to approve the FMP, lacked meaningful public input, fails to include and assess substantive changes NMFS made to the FMP, and was not finalized in a timely manner.

Response: NMFS disagrees. The SFPEIS was prepared to analyze the effects of the Deepwater Horizon MC252 oil spill, which occurred after the Council approved the FMP. NMFS provided the Council the opportunity to review and comment on the draft SFPEIS during the 45-day public comment period, which was noticed in the **Federal Register** on February 28, 2014 (79 FR 11428). NMFS received 15 distinct comments on the draft SFPEIS and addressed those comments in the final SFPEIS, which is available on the Web site. The Council has the authority and discretion to revisit and modify the FMP at any time should the Council determine there is a conservation and management need that has not been addressed.

NMFS did not make any substantive changes to the FMP that would require additional analysis in the SFPEIS. When approving the FMP, the Council was aware that staff would have usual editorial license to correct errors and improve the readability of the document. Thus, consistent with this understanding, NMFS and Council staff made several editorial changes to the FMP following Council approval in January 2009, but no substantive changes were made prior to the Council's formal submission of the FMP to the Secretary of Commerce for review.

In regard to the timeliness of the SFPEIS, NMFS finalized the document within approximately two years of the notice of intent to prepare an SFPEIS. This schedule is not atypical for such documents. Section 1502.9 of the CEQ regulations implementing NEPA specifies under what conditions agencies must supplement an EIS, but does not dictate specific timeframes in regard to preparation of such documents.

Comment 31: One commenter stated the FMP/FPEIS is inconsistent with NEPA because the ''Purpose and Need'' section of the document is too narrowly defined, rendering the agency's alternatives analysis meaningless. Another commenter also stated the FMP/FPEIS does not contain an adequate impact analysis and fails to evaluate a reasonable number of alternatives.

Response: NMFS disagrees that the purpose and need of the FMP/FPEIS is too narrowly defined to support a reasonable range of alternatives and that the impact analysis is inadequate.

The stated purpose of the FMP is to maximize benefits to the Nation by establishing a regional permitting process to manage the development of an environmentally sound and economically sustainable aquaculture fishery in the Gulf EEZ. This purpose is not so narrow as to define competing reasonable alternatives out of consideration. The Council initiated this action to provide a programmatic approach to evaluating the impacts of aquaculture proposals in the Gulf.

The FPEIS analyzes a wide range of alternatives considered by the Council and NMFS related to all aspects of the aquaculture permitting program, including No Action alternatives for each action analyzed in the FPEIS. The proposed action to establish a permit program for aquaculture facilities in the Gulf EEZ considered a No Action alternative that would maintain the status quo (an exempted fishing permit would be required to conduct aquaculture in the Gulf EEZ), as well as reasonable range of alternatives to maintaining the status quo, including one that defines the permit program in this final rule and one that would have required separate permits for siting and operations. Also, the FMP/FPEIS explores a number of other alternatives related to permit duration; operational requirements and restrictions; species to be cultured and systems to be used; siting requirements and restrictions; restricted access zones; reporting and recordkeeping requirements; management reference points; and framework procedures.

Section 6.0 of the FMP/FPEIS contains a detailed comparative analysis of the direct and indirect effects of the proposed action and all alternatives on the affected physical, biological, ecological, economic, social, and administrative environments described in Section 5.0 of the document. Additional alternatives the Council considered during the scoping and public review process, but did not retain for full analysis, are described in Appendix D, along with the rationale for eliminating them from detailed study.

Comment 32: The proposed rule should have referenced the NEPA analysis for this action.

Response: The proposed rule indicated that NMFS prepared a FPEIS in association with the FMP to satisfy NEPA. Also, the proposed rule stated that NMFS was preparing a SFPEIS to consider new information related to the Deepwater Horizon MC252 oil spill. The proposed rule specifically requested comments on a draft SIR NMFS prepared to evaluate whether there is a need for additional supplemental NEPA analysis on the FPEIS specific to the passage of time in accordance with 40 CFR 1502.9(c).

Comment 33: The FMP is deficient because it fails to consider socio-

economic impacts; environmental impacts related to benthic and water quality impacts, ocean ecosystem impacts, escapes, diseases and parasites, overfishing of forage fish species, and human health; new information relevant to the effects analysis; reasonable mitigation measures; and recent studies which address the ecological, economic, and cultural problems associated with aquaculture.

Response: NMFS disagrees. Section 6.0 of the FMP/FPEIS analyzes the direct, indirect, and cumulative effects of marine aquaculture on the environment, including the potential economic and social effects of the fishery on domestic fisheries and fishing communities; potential user conflicts; the effects of aquaculture systems and effluent on surrounding habitats and ecosystems; potential interactions with wildlife; the effects of culturing species, including harvesting prey species for feed, and escapes on local wild stocks; the effects of diseases and parasites on aquatic animal health; and the effects of cultured species on human health, with respect to the use of antibiotics and consumption of cultured fish and the health benefits of consuming seafood. Section 6.1.4 summarizes the mitigation measures incorporated into each proposed action, and concludes those measures sufficiently mitigate the impacts of offshore marine aquaculture.

In regard to the lack of recent information in the FMP, the FMP was finalized in 2009, however, the SFPEIS and SIR evaluated recent studies and new information relevant to the effects analysis and determined no changes to the proposed actions are warranted. Those documents are available on the Web site.

Comment 34: The proposed rule places the responsibility for conducting an environmental assessment on each permit applicant.

Response: The proposed rule stated that applicants for Gulf aquaculture permits are required to submit environmental assessments to NMFS, along with their applications. The term ''environmental assessment'' used in that context refers to baseline environmental assessments, which will contain survey and data requirements that NMFS will use to review and approve proposed aquaculture sites during the permit application process.

Because the term ''environmental assessment'' is also a common NEPA term, NMFS changed the term ''baseline environmental assessment'' to ''baseline environmental survey'' in this final rule to avoid confusion. The baseline environmental survey requirement is separate from any additional NEPA analysis which NMFS may undertake for individual aquaculture applications during the permit review process.

Comment 35: The application of NEPA to the aquaculture permit approval process established in the FMP and this final rule is questionable. Specifically, it is unclear whether the process constitutes a major Federal action subject to NEPA and whether the ''tiering'' process established by the FPEIS precludes the use of EISs in evaluating individual Gulf aquaculture permit applications. In addition, a separate NEPA review should be conducted related to the harvest of fish from offshore systems, which requires a separate approval from NMFS and is therefore a separate agency action.

Response: The implementation of the Gulf aquaculture FMP is a major Federal action subject to NEPA. The FPEIS and SFPEIS serve as the basis for evaluating the effects of issuing permits to Gulf aquaculture operations. NMFS intends to evaluate each aquaculture application during the review and approval process to determine whether it is adequately supported by the FPEIS and SFPEIS and, therefore, NEPA compliant. If an application proposes an action, including activities related to the harvest of fish from offshore systems, which substantially differs from the FMP in a way that is relevant to environmental concerns, or presents significant new circumstances or information relevant to environmental concerns, then NMFS will further supplement the FPEIS, consistent with Council on Environmental Quality regulations at 40 CFR 1502.9(c). If NMFS determines that additional supplemental NEPA analysis is needed, then that analysis will likely ''tier'' off the analyses in the FPEIS and SFPEIS, and would be prepared, circulated and filed in the same fashion (exclusive of scoping) as the draft and final PEIS and SPEIS.

Comment 36: The Council violated the Magnuson-Stevens Act and NEPA when they deemed the changes NMFS made to the proposed regulations in 2013 because they did not revisit and amend the FMP before they deemed the regulations and because the SFPEIS had not yet been finalized before they deemed the regulations.

Response: NMFS disagrees that the Magnuson-Stevens Act requires the Council to revisit and amend the FMP before deeming changes to the implementing regulations. Before publishing the proposed regulations the Council submitted along with the FMP in 2009, NMFS added some additional language to clarify the FMP requirements. That language did not change any FMP requirements. Because the regulations and FMP are consistent, the Council did not need to consider amending the FMP to resolve any inconsistencies when they deemed the additional language as necessary and appropriate for implementing the FMP.

Also, NMFS disagrees that NEPA requires the SFPEIS to have been finalized before the Council deemed changes to the regulations implementing the FMP. Council on Environmental Quality regulations at § 1502.9(c) require federal agencies to supplement EISs if they make substantial changes to the proposed action that are relevant to environmental concerns or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. As stated in the notice of intent published in the **Federal Register** on January 25, 2013, NMFS prepared the SFPEIS to evaluate how the Deepwater Horizon MC252 oil spill may have changed the affected environment *since* the FMP took effect and whether there is a resulting need to revisit the FMP (78 FR 5403). Because the regulations deemed by the Council simply implement the existing FMP, the analysis in the SFPEIS was not relevant to the Council action to deem those regulations.

The SFPEIS, which published in the **Federal Register** on July 2, 2015, concludes, based on the information known at this time, there is no reason to believe the conclusions reached in the FMP/FPEIS have been altered or changed due to the oil spill and, therefore, there is no need to evaluate other actions or alternatives that differ from those considered in the original FPEIS (80 FR 38199). Through the Natural Resource Damage Assessment process, NOAA and the other trustees continue to work toward a better understanding of the effects of the Deepwater Horizon MC252 oil spill on the environment and resources of the northern Gulf. The Council may revisit the FMP at any time should they determine there is a conservation and management need that has not been addressed.

Comment 37: NMFS failed to satisfy the procedural requirement of NEPA by not publishing a record of decision (ROD) within 30 days of finalizing the FPEIS.

Response: NEPA does not require that an agency publish a ROD within 30 days of finalizing an EIS. Per 40 CFR 1505.2, an agency is required to publish the ROD at the time of its decision. The only timing limitations with respect to publishing the ROD are set out in 40 CFR 1506.10(b), which states that this

cannot occur until the later of 90 days after publication of a notice of a draft EIS or 30 days after publication of a notice of a final EIS.

Gulf Aquaculture Permitting Process and Requirements

Comment 38: The final rule should explain the regulatory framework for other Federal agencies for permitting offshore aquaculture operations.

Response: NMFS disagrees that it is necessary to explain in this final rule the regulatory framework of other Federal agencies for permitting offshore aquaculture operations. Section 10.0 of the FMP outlines other applicable Federal laws in relation to offshore aquaculture facilities. In addition, the National Science and Technology Council's Committee on Science's Interagency Working Group on Aquaculture (formerly known as the Joint Subcommittee on Aquaculture) established a Regulatory Task Force to better streamline and coordinate the Federal aquaculture permitting processes, and that Working Group is developing a guidance document that outlines the various permitting responsibilities and authorities of Federal agencies for offshore aquaculture operations in the Gulf EEZ. This document will be made available on the Web site when the rule becomes effective.

Comment 39: The criteria for Gulf aquaculture permit renewals should be explicitly stated.

Response: Section 622.101(d)(6) of the final rule states the requirements and timing criteria for permit renewals. Applicants must submit a completed renewal application form and all required supporting documentation to the RA at least 120 days and 30 days prior to the date they desire the aquaculture permit or aquaculture dealer permit renewal to take effect, respectively. The application forms will indicate the specific information and documentation required, which will be a sub-set of the information and documentation required for initial issuance of the permit as specified in § 622.101(a)(2) of this final rule. NMFS considers compliance with recordkeeping and reporting requirements (including annual reports) as specified in the regulations as information necessary for administration of the permit, and may decline to process a renewal request until all the applicable requirements are met. Further, as stated in § 622.101(d)(8), a permit application may be denied in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

Comment 40: The requirement that permittees deploy at least 25 percent of aquaculture systems within 2 years of permit issuance and stock juveniles into these systems within 3 years of permit issuance does not take into account the long lead times required to establish an aquaculture operation. NMFS should allow at least 5 years for these activities or require permittees to submit a site development plan and ensure that certain milestones are met.

Response: The Council determined, and NMFS agrees, the 2- and 3-year time requirements for deploying systems and stocking juveniles, respectively, were considered reasonable for an aquaculture facility to begin operation.

Permittees may request a 1-year extension of these deadlines in the event of a catastrophe (*e.g.,* hurricane). The RA will approve or deny the extension request after determining if catastrophic conditions exist and whether or not the permittee was affected by the catastrophic conditions. The RA will provide the determination and the basis for it, in writing to the permittee.

Comment 41: NMFS should implement a streamlined permitting process with other Federal agencies to reduce any conflicting or duplicative requirements. Additionally, a Memorandum of Understanding (MOU) should be developed between the appropriate Federal agencies, and agencies should be provided adequate time and resources to build enforcement capacity.

Response: NOAA chairs the Interagency Working Group on Aquaculture's Regulatory Task Force, which is charged with coordinating Federal aquaculture permitting processes to reduce duplication and streamline permitting processes. As part of that effort, NMFS and other Federal agencies are developing an interagency MOU to facilitate the needed coordination.

Comment 42: There should be at least a 60-day public comment period on each Gulf aquaculture permit application. Another comment stated that any public comment period requirement is burdensome and unnecessary.

Response: The Council determined, and NMFS agrees, that, as a general rule, a 45-day comment period is sufficient for purposes of commenting on individual aquaculture applications because this provides the public ample time to review and comment on applications without unduly delaying the review process.

NMFS disagrees that the comment period is burdensome and unnecessary. The public comment period on individual aquaculture applications is a critical component of the approval process. Public comments received on individual applications may allow NMFS to identify potential user conflicts and other issues that may be relevant to NMFS' decision regarding whether to approve a permit. Facilitating public participation in the decision to issue a Gulf aquaculture permit is an important part of the process that will improve NMFS' decision making without unduly burdening the permit applicant.

Comment 43: The final rule should direct NMFS to consider all relevant ecological factors during the permit review process.

Response: NMFS agrees that it is important to consider relevant ecological factors during the permit review process and has determined that the final rule requires this consideration. As specified in §§ 622.103(a)(4) and 622.105(a), the RA will evaluate each proposed site, and each proposed system and its operations, during the permit review process. NMFS may deny use of a site or a system if it is determined to pose a significant risk to wild fish stocks, EFH, endangered or threatened species, or marine mammals, will result in user conflicts with commercial or recreational fishermen, other marine resource users, or the OCS energy program, if the depth of the site is not sufficient for the allowable aquaculture system, substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site is prone to low dissolved oxygen or harmful algal blooms, or if the proposed site or system is otherwise inconsistent with FMP objectives or other applicable law.

Comment 44: The final rule should establish grounds for revoking, suspending, or modifying permits and explain when NMFS will take remedial actions.

Response: Section 622.101(d)(8) of this final rule specifies that a permit may be revoked, suspended, or modified in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904. Section 904.301(a) specifies the bases for permit sanction or denials, including the commission of any violation prohibited by any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder or with the use of a permitted vessel. Thus, reasons for revoking

permits include, but are not limited to, failure to comply with the monitoring, recordkeeping or reporting requirements of NMFS and other Federal agencies, failure to maintain valid ACOE Section 10 and EPA NPDES permits and failure to abide by permit terms and conditions.

Section 622.108 addresses remedial actions by NMFS and provides that in addition to permit sanction and denials, NMFS may order movement restrictions or the removal of all cultured animals if pathogens are identified or it is determined the genetically engineered or transgenic animals were used.

Comment 45: The 180-day time period for review of a Gulf aquaculture permit is excessive and should be changed to 90 days, after which time the permit should be issued if NMFS has not made a decision.

Response: NMFS disagrees that a 180-day time period for permit review is excessive and that a 90-day permit review timeframe would be adequate. The Council determined, and NMFS agrees, that 180 days is a reasonable amount of time to review and process individual permit applications, conduct public comment periods, and complete necessary consultations without unduly delaying or prolonging the approval process.

Comment 46: Several commenters stated that 10-year permit terms and 5-year renewals are not long enough to attract significant commercial investment and that permits should be issued for longer periods of time. In contrast, several other commenters stated that permit terms should be issued for shorter periods of time to ensure permits are thoroughly reviewed on a more frequent basis.

Response: The Council determined, and NMFS agrees, the initial permit term of 10 years with 5-year renewals strikes the best balance between providing adequate time to establish operations and funding, while not granting excessively long permit durations which would make it difficult for NMFS to review and address any unexpected problems related to user conflicts or other issues. However, in response to industry concerns, NMFS has also determined that it is appropriate to make an administrative change to the permitting process to allow permit holders to request additional time to secure financing and prepare for production without changing the 10-year effective period of the initial issuance. Therefore, NMFS is modifying the requirements in § 622.101(d)(3)(iii) to allow the applicant to defer initial issuance of a Gulf aquaculture permit for up to 2 years from the date the RA notifies the applicant of the decision to grant the permit. The Council may choose to change the permit duration terms in the future after more information is known about the impacts and feasibility of aquaculture operations in the Gulf EEZ. Additionally, as discussed above, in the event of a significant unexpected problem requiring urgent action to protect public health, interest, or safety, NMFS may consider withdrawing, suspending, revoking, or annulling a permit pursuant to the Administrative Procedure Act, 5 U.S.C. 558(c).

Comment 47: The $10,000 permit application fee is prohibitive and unnecessary given the nascent status of the offshore aquaculture industry.

Response: NMFS disagrees. The fee schedule for permit applications is based on criteria set forth in the NOAA Finance Handbook and reflects the administrative costs associated with review of Gulf aquaculture permit applications and permit issuance. These costs include meeting with potential applicants to provide guidance and identifying critical issues before applications are finalized, reviewing application packages (*e.g.,* site surveys, systems, business information) to determine the impacts of proposed operations on NOAA trust resources and associated requirements consulting with the Council and the public on proposed operations, and legal and technical support informing determinations regarding permit issuance. Details on the NOAA Finance Handbook can be found at: *http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html.*

Comment 48: NMFS should explain the contingencies for transferring a Gulf aquaculture permit.

Response: Permit transfer provisions are outlined in § 622.101(d)(5) of this final rule. Gulf aquaculture permits are transferable as long as the geographic location of the aquaculture facility site remains unchanged and all applicable permit requirements were completed and updated at the time of transfer. The transferee must also be a U.S. citizen or permanent resident alien in order to be eligible for a permit.

Comment 49: The proposed rule estimates the average time to prepare a Gulf aquaculture permit application and supporting documents to be 33 hours. This is an underestimation. The final rule should also correct the assumption that the baseline environmental survey will require 24 hours to complete as this will likely take several weeks or more.

Response: NMFS agrees and has recalculated the estimated time it will take to prepare a permit application and supporting documents (assurance bond, contract with a certified aquatic animal health expert, emergency disaster plan) to be approximately 51 hours. This estimate does not include the time necessary to complete a baseline environmental survey, which could take up to 320 hours based on the calculation of work necessary to conduct the survey on a site that would produce approximately 12.8 million lb (5.8 million kg) annually. NMFS notes that the actual time to complete an application and baseline environmental survey may vary as it will depend on the complexity of the operation, as well as the location and size of the proposed site.

Siting Criteria and Requirements

Comment 50: NMFS should consider information on ocean depth, ocean speeds, substrate types, hypoxia, and fish habitats prior to approving a permit.

Response: NMFS agrees. As specified in § 622.103(a)(4) and as discussed in Section 4.6 of the FMP, the RA will evaluate proposed sites on a case-by-case basis. Siting criteria for offshore aquaculture systems include but are not limited to: The depth of the site, current speeds and benthic sediments, the frequency of harmful algal blooms or hypoxia at the proposed site, marine mammal migratory pathways, and the location of the proposed site relative to important habitats. NMFS will consider this information as well as information from the baseline environmental survey requirement when determining whether to approve or deny a permit.

The RA may deny use of a proposed aquaculture site based on a determination the proposed site: Would pose significant risks to EFH, or to endangered or threatened species; would result in user conflicts with commercial or recreational fishermen or with other marine resource users; would pose risk to the cultured species due to low dissolved oxygen or harmful algal blooms; is not of sufficient depth for the approved aquaculture system; is characterized by substrate and currents that would inhibit the dispersal of wastes and effluents; or is otherwise inconsistent with FMP objectives and applicable Federal laws.

Comment 51: The 1.6 nm (3 km) minimum distance between aquaculture operations is too conservative and should be based on scientific criteria and designated on a case-by-case basis according to the specifics of each facility.

Response: The Council determined, and NMFS agrees, that, as a general rule, 1.6 nm (3 km) provides a sufficient buffer between Gulf aquaculture facilities. As discussed in the proposed

rule, as well as in section 4.6 of the FMP, this siting requirement was established to minimize transmission of pathogens between facilities. British Columbia and Chile require salmon farms to be sited at least 1.6 nm (3km) apart, while Scotland requires salmon farms to be sited at least 4.3 nm (8km) apart. By comparison, Nova Scotia, Newfoundland, Maine, and New Brunswick require salmon farms to be separated by a distance of 0.5 nm (1 km) or less. Thus, although there is no widely accepted standard for how far apart facilities should be sited, the farther apart facilities are sited, the lower the likelihood that water from one facility will contaminate water at another facility. The Council determined and NMFS agrees that the minimum distance of 1.6 nm (3 km) strikes an appropriate balance. However, this final rule also states that each proposed site will be evaluated on a case-by-case basis and allows the RA to deny the use of a proposed site based on the criteria in § 622.103(a)(4) even if it meets or exceeds the minimum distance requirement of 1.6 nm (3 km).

Comment 52: NMFS should prohibit siting of aquaculture facilities in sensitive habitats. Offshore aquaculture facilities will compete for space with other uses of the ocean, such as protected areas (*e.g.,* marine reserves).

Response: NMFS agrees that offshore aquaculture facilities should not be sited in sensitive habits. The requirement to monitor and report baseline environmental survey data will allow NMFS to determine if sensitive habitat exists at the site and could be impacted by aquaculture operation.

To ensure facilities do not compete with marine reserves and other protected areas, § 622.103(a)(1) of the final rule specifies that offshore aquaculture operations would be prohibited in Gulf EEZ marine protected areas and marine reserves, HAPCs, Special Management Zones, and permitted artificial reef areas and coral reef areas. Additionally, permits other than those for aquaculture may also be required in certain protected areas, such as within National Marine Sanctuaries, for example. NMFS may also deny a proposed site if it is found to pose significant risks to EFH or is otherwise inconsistent with FMP objectives and applicable Federal law.

Comment 53: The proposed rule states that a proposed aquaculture site could be denied if it would result in user conflicts with recreational or commercial fishing or other marine users (*e.g.,* oil and gas infrastructure) and this could displace aquaculture operations to less desirable areas.

Response: NMFS recognizes that user conflicts may result in the denial of certain sites, however, this is not expected to result in displacement of aquaculture operations to areas considered to be less desirable. NMFS will work with other Federal agencies and the public to balance the various uses of the Gulf EEZ and develop processes to identify potential siting conflicts early in the permitting process.

Harvest and Landing Requirements

Comment 54: The requirement to land cultured fish between 6 a.m. to 6 p.m. local time is unreasonable. Restricting landing times to daylight hours may increase production losses due to predators or environmental factors. The ability to land at night should be allowed.

Response: NMFS agrees that restricting the time a vessel can arrive at a dock (*i.e.,* ''land'') with cultured fish is overly restrictive. The regulations at 50 CFR 600.10 define ''land'' as begin offloading fish, to offload fish, or to arrive in port or at a dock, berth, beach, seawall, or ramp. The FMP, and the codified text in the proposed rule, stated that species cultured at an aquaculture facility must be ''landed ashore'' between 6 a.m. and 6 p.m., local time. However, the preamble to the proposed rule stated that permittees participating in the aquaculture program would be allowed to ''offload'' cultured animals at aquaculture dealers only between 6 a.m. and 6 p.m., local time. NMFS has determined that using the more precise term ''offload'' in this context is consistent with the objective of the requirement, which is to aid enforcement, while also allowing vessels the flexibility to arrive at the dock at any time. By restricting offloading times, law enforcement will be able to ensure that vessels are landing only cultured species (*e.g.,* secure tissue samples to be tested against broodstock DNA). For the purposes of this requirement, NMFS is defining the terms ''offload'' in § 622.106(a)(14) to mean ''to remove cultured animals from a vessel.''

Comment 55: The requirement that cultured fish be landed whole (with heads and fins intact) is inappropriate and should be removed.

Response: NMFS disagrees the requirement that cultured fish be landed whole is inappropriate. Landing cultured fish with heads and fins intact will assist enforcement agents in properly identifying cultured species, promoting effective implementation and oversight of program rules and regulations.

Comment 56: The requirement for permittees to notify NMFS at least 72 hours prior to harvesting fish from offshore aquaculture systems is problematic as harvest timeframes can change due to weather and other factors.

Response: The Council determined, and NMFS agrees, the 72-hour notification window is necessary to allow law enforcement and NMFS staff the opportunity to be present at a facility when harvesting occurs to verify that permittees remain within their production cap and that only cultured species are harvested. If the anticipated harvest times are delayed or change due to inclement weather or other circumstances, then permittees can update NMFS by phone or web-based form.

Comment 57: The proposed rule states that permittees must notify NMFS within 72 hours of landing to ensure that only cultured animals are landed. Another way to verify that only cultured animals are landed is by conducting tissue analysis (*e.g.,* fatty acid composition) on landed fish.

Response: NMFS is aware of studies which have demonstrated that commercial feed diets fed to cultured animals can help to distinguish these fish from their wild counterparts. However, the 72-hour notification requirement is different as it allows law enforcement the opportunity to intercept fish at the time of landing. NMFS will employ genetic verification techniques, when necessary, to verify that only cultured fish are landed.

Allowable Aquaculture Species and Systems

Comment 58: The final rule should explicitly state that only federally managed species are allowed to be cultured in the Gulf EEZ and explain the mechanism for managed species in the Gulf EEZ.

Response: Section 622.105(b) of the final rule states that the only species that may be cultured in the Gulf EEZ under the FMP are species of coastal migratory pelagic fish, Gulf reef fish, red drum, and spiny lobster that are managed by the Council. As explained in the preamble, anyone wishing to culture species in the Gulf EEZ that are not managed by the Council would have to apply for an EFP. Information on applying for an EFP can be found at 50 CFR 600.745.

Comment 59: The states should play a role in determining the type and amount of species allowed for culture.

Response: NMFS agrees. During the development of the FMP, Council representatives from all five Gulf states were involved in decisions related to

the type and amount of species that could be cultured under a Gulf aquaculture permit. The Council has continuing authority over aquaculture operations in the EEZ and may modify the types and amounts of species authorized to be cultured at any time, consistent with the requirements of the Magnuson-Stevens Act. In addition, the RA will consult with the Council during the public comment period on specific permit applications as required in § 622.101(d)(2)of this final rule.

Comment 60: NMFS should require the use of advanced aquaculture systems that avoid and minimize environmental harm.

Response: The Council determined, and NMFS agrees, that requiring use of specific aquaculture systems is not ideal as there is a wide array of offshore aquaculture systems that are used. Allowing flexibility regarding aquaculture systems is necessary to ensure systems have sufficient structural integrity and allow for innovation as aquaculture system technology develops.

To minimize or avoid the risk of environmental harm from aquaculture systems, the RA will review the structural integrity and other aspects of each proposed system on a case-by-case basis. The RA may deny use of a proposed system, or specify conditions for using a proposed system, if it is determined to pose a significant risk to EFH, endangered or threatened marine species, marine mammals, wild fish or invertebrates, public health, and safety. This case-specific approach will help improve the potential economic viability and returns of aquaculture operations by ensuring each operation the opportunity to use the system that best meets its production goals without compromising environmental standards and objectives.

Comment 61: The requirement that aquaculture systems be fitted with a locating device should be removed.

Response: NMFS disagrees. Locating devices will allow operators to locate, and potentially retrieve, aquaculture structures in the event that they break free or are transported away from the permitted site. The Council determined, and NMFS agrees, this requirement is necessary to help prevent long-term damage to habitat and increase navigational safety.

Reportable Pathogens and Animal Health

Comment 62: Permittees should report pathogen episodes directly to APHIS so that APHIS can confirm the presence of reportable pathogens and take the appropriate steps to implement control or eradication measures.

Response: NMFS disagrees that it is necessary for permittees to report pathogen episodes directly to APHIS rather than NMFS. Section 622.102(a)(1)(i)(C) of this final rule requires permittees to report all findings or suspected findings of any OIE or NAAHP reportable pathogen episodes to NMFS within 24 hours of diagnosis. Upon confirmation by an APHIS-approved reference laboratory that a reportable pathogen exists and the determination that the pathogen poses a significant risk to the health of wild or farmed aquatic organisms, NMFS, in cooperation with APHIS, will take appropriate actions, which may include the removal of all cultured animals from the offshore aquaculture systems. The Council determined, and NMFS agrees, this process provides the necessary safeguards to adequately address any pathogen episodes.

Comment 63: NOAA should defer primary regulatory responsibility and oversight of all animal health and pathogen related issues to APHIS and address these issues in an interagency MOU.

Response: NMFS disagrees that primary regulatory responsibility for cultured animals should be deferred to APHIS. NMFS will work in cooperation with APHIS and aquaculture facility staff to sample cultured animals for testing, conduct testing at APHIS-approved laboratories, and take any actions needed to address pathogen episodes. In regard to issuing health certificates and assisting growers with their animal health plans for cultured animals, NMFS has determined that these activities may be carried out by an aquatic animal health expert as defined in § 622.2 of this rule. Oversight of broader animal health and pathogen issues for wild fish is outside of the scope of this rule and is not addressed further.

A current MOU already exists between NMFS, APHIS and the United States Fish and Wildlife Service (USFWS) which outlines the legal authorities and mandates and roles and responsibilities of the three agencies with respect to animal health.

Comment 64: NMFS should define an ''aquatic animal health expert'' as a licensed veterinarian. NMFS should also require that only accredited veterinarians be allowed to issue health certificates and these veterinarians should be required to have fish health experience.

Response: NMFS disagrees. Many state and Federal agencies recognize that experts other than veterinarians are qualified to carry out inspections, test for pathogens, issue health certificates, and assist growers in their respective overall animal health plans. The broader definition of ''aquatic animal health expert'' in § 622.2 of this final rule will provide the fishery greater flexibility by enabling persons certified by the American Fisheries Society, Fish Health Section, as a ''Fish Pathologist'' or ''Fish Health Inspector'', to perform those general animal health functions. There is no requirement under the Veterinary Accreditation regulations for veterinarians to have specific experience for the animal they are working with (*e.g.,* fish).

Comment 65: The final rule should include details regarding health screening of cultured animals and specify which criteria will be used to certify that cultured animals are free of OIE-reportable pathogens prior to stocking.

Response: NMFS disagrees that the final rule needs to provide additional details regarding diagnostic testing (*i.e.,* health screening) as these methods will vary for each cultured species and may change over time. In regard to diagnostic techniques used to detect OIE-reportable diseases, methods relevant to the OIE-listed diseases can be found in the Manual of Diagnostic Tests for Aquatic Animals at: *http://www.oie.int/international-standard-setting/aquatic-manual/.*

NMFS and APHIS staff will work closely with the permittee and designated aquatic animal health expert for each facility to ensure that appropriate diagnostic testing is conducted prior to each stocking event. NMFS believes this process provides sufficient safeguards against the potential spread of pathogens and disease from cultured to wild fish at an aquaculture facility.

Comment 66: When reporting an OIE or NAAHP pathogen, notification should be made within 48 hours of the discovery of a mortality rate of 5 percent or more that occurs within a 7-day period. NMFS should also require that epidemiological samples be submitted to a certified aquatic animal health expert for diagnosis.

Response: The Council determined, and NMFS agrees, the current requirement to report all reportable pathogens within 24 hours of diagnosis, regardless of the mortality rate of the cultured animals affected, is necessary to ensure wild stocks and other marine resources are appropriately safeguarded. The less conservative threshold and reporting timeframe suggested could result in a longer period of time before the reportable pathogen issue is

addressed. The current requirement will allow NMFS and other agencies to more quickly and efficiently respond to reportable pathogen events.

NMFS will work in cooperation with APHIS and the aquaculture facility staff to collect samples for testing, conduct testing at APHIS-approved laboratories, and take any actions needed to address pathogen episodes.

Aquaculture Feeds, Antibiotics, and Other Chemicals

Comment 67: NMFS should cap the amount of fish meal and fish oil used by aquaculture operations and require the use of alternative feeds which do not contain these ingredients.

Response: NMFS disagrees that it is necessary to specify which feeds can and cannot be used in aquaculture. The percentage of fish meal and fish oil used in aquaculture feeds has decreased in recent years and continues to decrease, in part because many feeds which are free of or low in fish meal and oil are now commercially available. The world supply of fish meal and fish oil from pelagic fisheries has remained relatively constant over the past 20 years at around 6 million metric tons, even as aquaculture operations continue to expand. Alternate ingredients being used in aquaculture feeds include soybeans, barley, rice, peas, canola, lupine, wheat gluten, corn gluten, algae, as well as seafood and farm animal processing co-products.

Comment 68: Farmed fish often receive large doses of antibiotics and other chemicals to protect them from diseases and parasites. These chemicals can have a negative impact on the marine environment as well as human health. The use of aquaculture feeds made from wild-caught fish could also have human health consequences.

Response: NMFS disagrees that farmed fish generally receive large doses of antibiotics or other chemicals, and has determined that the requirements in this final rule and the regulations promulgated by other Federal agencies will minimize the risk of negative impacts on the marine environment and human health. The use of antibiotics and other therapeutant chemicals in marine aquaculture has drastically decreased over the past several decades. In fact, the use of vaccines to prevent bacterial diseases has in the past 20 years reduced the use of antibiotics in marine farming by 95 percent. Effective vaccines have significantly reduced the use of antibiotics in certain sectors of the U.S. aquaculture industry (*e.g.,* salmon farming). In addition to vaccines, good nutrition and improved husbandry have continued to play an important role in protecting cultured fish from disease and have thus significantly reduced the use of all types of therapeutants (*i.e.,* a healing or curative agent or medicine) in aquaculture. Additionally, the use of drugs, pesticides, and biologics by NMFS permittees must comply with all applicable FDA, EPA, and United States Department of Agriculture (USDA) regulations, which are meant to minimize or avoid negative impacts on the marine environment and human health.

In regard to the impact of aquaculture feeds on human health, FDA regulates fish feeds and ingredients under the Federal Food, Drug, and Cosmetic Act and requires animal feed to be safe and to be truthfully labeled. To be approved by FDA for use in animal feeds, additives must be demonstrated to be useful and to be safe to both the target animal (fish) and human consumers.

Comment 69: The proposed rule and the FMP allow the use of potentially harmful drugs and chemicals, including extra-label drugs, which can negatively impact the marine environment.

Response: NMFS disagrees. This final rule and the FMP require the use of drugs, pesticides and biologics to comply with FDA, EPA, and USDA regulations, which are designed to prevent or minimize negative environmental impacts. The list of drugs FDA has approved for aquaculture can be found at: *http://www.fda.gov/animalveterinary/developmentapprovalprocess/aquaculture/ucm132954.htm.* The extra-label use of drugs for aquaculture purposes is strictly regulated by FDA and must be on the order of a licensed veterinarian.

Comment 70: The public should have access to records on the type and quantity of drugs and other chemicals used in offshore aquaculture as well as ongoing monitoring data for water quality and benthic sampling. In addition, states should play a role in determining monitoring protocols for aquaculture facilities.

Response: NMFS does not regulate drugs or chemicals used in offshore aquaculture operations. The use of drugs, pesticides, and biologics are under the authority of FDA, EPA, and USDA, respectively. The EPA sets water quality monitoring protocols for offshore aquaculture operations and collects monitoring data. Dissemination of information collected by other Federal agencies would be subject to data disclosure provisions that are applicable to those agencies.

NMFS may coordinate the development of monitoring protocols with other Federal agencies or defer to other agencies if those agencies have primary authority. In developing such protocols, NMFS may decide to solicit input from the states and the public.

Comment 71: Aquaculture will pollute the environment.

Response: NMFS disagrees that aquaculture, if properly regulated, will pollute the environment. The FMP and this final rule establish numerous environmental safeguards, including siting restrictions, monitoring and reporting requirements, and requirements to abide by regulations of other Federal agencies (*e.g.,* use of drugs, pesticides, and biologics must comply with all applicable FDA, EPA, and USDA regulations), which are designed to minimize any potential adverse environmental effects of aquaculture operations. NMFS will review proposed sites and systems, and may deny those that are found to pose significant risks to marine resources or otherwise inconsistent with all applicable law. NMFS will work with permittees to resolve any unanticipated environmental problems or impacts that are identified after an operation is permitted. Permits are also subject to revocation when appropriate.

Assurance Bond

Comment 72: The assurance bond should cover costs associated with finding, securing, and removing systems and impacts to natural resources caused by equipment or by escaped organisms. The final rule should also specify how much the assurance bond requirement will cost Gulf aquaculture permit holders. Additionally, the rule should indicate how states will be compensated for any impacts from aquaculture operation on state resources.

Response: The assurance bond required by the FMP and this final rule will be used to remove aquaculture structures or cultured animals if permittees fail to do so when ordered to by NMFS. The assurance bond cannot be used to compensate for natural resource impacts caused by equipment or by escaped cultured animals. The Council determined, and NMFS agrees, that it is difficult to identify and define the added cost that would be required to compensate for such impacts, and that it is unnecessary to do so because the FMP and this final rule include numerous environmental safeguards (*e.g.,* prohibitions on genetically engineered and transgenic animals) to prevent or minimize such damage. Additionally, the FMP and rule specify that NMFS will review the structural integrity of proposed aquaculture systems and may deny use of a

proposed system or specify conditions for its use if it is determined to pose a significant risk to EFH, endangered or threatened marine species, marine mammals, wild fish or invertebrate stocks, public health, or safety.

The cost of the assurance bond will vary depending on the size and scale of the aquaculture facility and must be enough to cover the costs of removal of all components of the facility and cultured animals. NMFS will publish guidance on how to comply with the assurance bond requirement on its Web site when the rule becomes effective.

The FMP and rule do not contain a compensatory mechanism for impacts to state marine resources resulting from aquaculture operations. However, the FMP and rule do contain several regulatory requirements which aim to prevent and manage adverse impacts to marine resources from aquaculture operations. These include disease testing prior to stocking juveniles into offshore aquaculture systems, reporting incidences of OIE and NAAHP reportable pathogens within 24 hours, requiring that only local, native broodstock be used to produce juveniles for stocking in offshore systems, prohibiting the use of genetically engineered and transgenic animals for culture purposes, and reviewing potential sites for habitat concerns prior to permitting aquaculture operations.

In addition, § 622.102 in this final rule lists various recordkeeping and reporting requirements that will allow NMFS to work with a permittee to resolve potential problems and environmental impacts. Permits are also subject to revocation when appropriate.

Aquaculture Facility Inspections

Comment 73: The inspection requirement and requirements to report the average price and weight of fish produced should be removed as it will result in the loss of intellectual proprietary information.

Response: NMFS disagrees. The information NMFS employees and authorized officers access during the inspection process is needed to ensure aquaculture facilities operate in compliance with the applicable regulations relating to aquaculture in the Gulf EEZ. All private or intellectual property information which is required to be submitted in compliance with the requirements of this final rule is protected by the confidentiality of information provisions in section 402(b) of the Magnuson-Stevens Act and 50 CFR part 600, subpart E (§§ 600.405 through 600.425).

Broodstock and Cultured Animals

Comment 74: The final rule should define ''population'' and ''subpopulation'' for purposes of broodstock collection.

Response: NMFS disagrees that it is necessary to define ''population'' and ''subpopulation'' in the final rule. The precise meaning of these terms may vary depending on the species or stock at issue and will be based on the best scientific information available. NMFS will provide guidance on the meaning of the terms ''population'' and ''subpopulation'' as it relates to broodstock collection in a separate document which outlines specific broodstock sourcing requirements. This document will be made available on the Web site when the rule becomes effective.

Comment 75: Broodstock should be collected from the same population or sub-population unless it can be shown that genetic homogeneity exists for that species in the Gulf.

Response: NMFS agrees. The FMP and this final rule require that all broodstock, or progeny of such broodstock, must be originally collected from the same population or subpopulation where the aquaculture facility is located. This requirement ensures that the genetic make-up of cultured animals originates from the same stock where the facility will operate. Species that are found to be genetically homogeneous would, for all intents and purposes, be considered to be the same population.

Comment 76: The final rule should specify requirements regarding the frequency of broodstock collection and hatchery breeding practices.

Response: NMFS disagrees there is a need to regulate the frequency of broodstock collection. The appropriate collection frequency will vary depending on the size and scale of individual operations and the species being cultured.

The FMP and this final rule allow NMFS to monitor the frequency of broodstock collection and minimize any potential adverse impacts of broodstock collection by requiring permittees to obtain the RA's approval prior to each collection event. Collection requests must include information on the number, size, and species to be harvested, the methods, gear, and vessels to be used for capturing, holding, and transporting broodstock, the date and specific location of the intended harvest, and the location where the broodstock will be delivered. The RA may deny a request to harvest broodstock if allowable methods or gear are not proposed for use, the number of broodstock is larger than necessary for spawning and rearing activities, or if the proposed activity is inconsistent with FMP objectives or Federal laws.

Additionally, if a broodstock harvest request is approved, the permittee will be required to submit a report to the RA within 15 days of the date of harvest summarizing the number, size, and species to be harvested, and identifying the location where the broodstock were captured. If this information suggests that more specific requirements pertaining to frequency of broodstock collection are necessary, the Council may consider modifying the FMP to include such requirements.

NMFS also disagrees that hatchery breeding practices should be regulated by this rulemaking. NMFS has determined it is more appropriate to develop guidance on hatchery breeding protocols separately as this will allow for the guidance to be adapted in a more timely manner as information evolves. This guidance will be available on the Web site when the rule becomes effective.

Comment 77: The final rule should allow cultured juveniles to be sourced from hatcheries in foreign countries.

Response: NMFS disagrees. As stated in the preamble to this final rule and discussed in the FMP, allowing organisms to be obtained from non-U.S. hatcheries for grow-out would make it difficult to enforce regulatory requirements that are intended to prevent or minimize the environmental impacts of potential escapements (*e.g.,* animals cannot be genetically engineered or transgenic, must be sourced from the same population or subpopulation that occurs where the facility is located, must be certified as pathogen-free prior to stocking in offshore systems, etc.). Therefore, no changes have been made to this requirement.

Comment 78: The proposed rule states that permittees would be required to submit a request to NMFS to harvest broodstock from the Gulf, including state waters. The final rule should specify that this requirement is for federally managed species only as states may have requirements specific to state-managed species.

Response: NMFS agrees. Submission of requests to collect broodstock is a requirement of the Gulf aquaculture permit, which allows the culture of only those federally managed species specified in § 622.105(b) of this rule. Nothing in this rule imposes requirements on the collection of broodstock of those species that are exclusively managed by the states.

However, if broodstock for allowable aquaculture species are harvested from state waters, § 622.106(a)(16)(iv) of this rule requires that harvest also comply with all applicable state laws.

Comment 79: NMFS should monitor broodstock collection and establish requirements to reduce or eliminate bycatch.

Response: Permittees must submit a request to NMFS to collect broodstock which will allow NMFS to monitor broodstock collection. In this request, permittees will specify the number and size of broodstock proposed for capture and the gear used for capture and these requests will need to be authorized by NMFS. Although bycatch may occur during the capture of broodstock, the amount of bycatch is expected to be small and negligible relative to overall bycatch occurring in each fishery. NMFS may also deny a proposal to harvest broodstock if it was determined that broodstock collection activities would be inconsistent with FMP objectives related to bycatch.

Recordkeeping and Reporting Requirements

Comment 80: Permittees should be required to monitor and report abundance and prevalence of ectoparasites on cultured and nearby wild fish.

Response: NMFS disagrees. Ectoparasites are common in marine ecosystems and are generally not considered a significant enough threat to fish and human health to require additional monitoring and reporting. If new information indicates that ectoparasites are a greater threat to fish and human health than previously determined, the Council may require reporting of ectoparasites in the future.

Comment 81: Permittees should be required to record and report stocking and harvest information.

Response: NMFS agrees. Section 622.102(a)(1)(i)(A) and (D), require permittees to report stocking and harvest information, respectively, to NMFS at least 72 hours prior to these activities.

Comment 82: The requirement to comply with all monitoring and reporting requirements of other Federal agencies' permits should be removed.

Response: NMFS disagrees. Such requirements are necessary to maintain other Federal permits which, in addition to NMFS' permit, are necessary in order to operate offshore aquaculture facilities. Should permittees be unable to secure the appropriate permits or comply with applicable requirements, they would be unable to operate and thus their Gulf aquaculture permit could be revoked or suspended.

Comment 83: The requirement to report landing transactions of cultured animals to NMFS is duplicative to state commercial trip ticket programs.

Response: NMFS disagrees. Currently, state trip ticket programs only cover wild caught fish, and not cultured animals, therefore this information is not captured at the state level. Landings and transactions of cultured species harvested from the Gulf EEZ will be tracked using an electronic reporting system developed by NMFS. This system will allow NMFS to cross-check landings reported by permit holders with dealer transactions after cultured animals are sold.

Comment 84: The final rule should require monitoring and reporting of environmental impacts such as the discharge of feed and waste as well as the use of antibiotics or therapeutants. The final rule should also set limits for water quality impacts.

Response: NMFS disagrees. The use of feed, antibiotics and therapeutants is regulated by the EPA under the Clean Water Act and is not under the purview of NMFS. The EPA will establish limits for water quality impacts as part of their NPDES permitting process for individual aquaculture operations.

Socio-Economic Impacts

Comment 85: The FMP and rule should assess the impacts of offshore aquaculture on Gulf local economies.

Response: NMFS agrees. Section 7.5 of the FMP and the Final Regulatory Flexibility Act (FRFA) contained in this final rule assess the economic impacts of the FMP, as required by the Magnuson-Stevens Act, NEPA, Executive Order 12866, the RFA, and other applicable laws.

Comment 86: Aquaculture operations create few jobs and negatively impact communities that depend on domestic wild fisheries (*e.g.,* decreased market prices for wild species).

Response: It is unknown at this time to what extent Gulf offshore aquaculture operations will directly compete with domestic wild fisheries regionally and nationally in the long term. Should offshore aquaculture directly compete with Gulf and other domestic wild fisheries in the long term, there could be significant adverse economic impacts on fishing communities (*e.g.,* loss of jobs, and loss of revenue due to decreased prices, value of individual fishing quota (IFQ) shares. However, the likelihood of such adverse impacts occurring would depend on the price, quality, and many other factors influencing market demand of both farmed and wild-caught species.

Nonetheless, foreign imports represent a significant amount of the current U.S. seafood, therefore, NMFS does not expect that domestically cultured species will have a significant economic impact on traditional fishing businesses or communities over the short term. Conversely, aquaculture operations could provide additional means of employment, thereby, benefitting local communities. Further discussion of the potential economic and social impacts of aquaculture can be found in Section 6.1.6 of the FMP.

Comment 87: The Fishery Impact Statement (FIS) in the FMP is inadequate regarding the potential impacts of offshore aquaculture on fishing communities.

Response: NMFS disagrees. The FIS in Section 9.0 of the FMP summarizes detailed discussion and analysis in Section 6.0 of the FMP of the expected impacts of all the FMP's permitting and operational requirements and restrictions on fishing communities. The FIS concludes permitting requirements and restrictions may adversely impact those who are denied access to approved aquaculture sites for traditional fishing and/or other purposes and create other adverse socioeconomic consequences. Also, the FIS concludes that required restricted access zones may reduce the area available for fishing and vessel transit.

The potential economic and social impacts of the FMP on domestic fisheries are further detailed in Section 6.1.6 of the FMP. The FMP could adversely impact fishing communities by reducing prices for domestic wild caught product, and could benefit fishing communities by creating new jobs in local communities related to aquaculture operations.

EFH and Protected Resources

Comment 88: The FMP and proposed rule fail to minimize the adverse effect of offshore aquaculture on EFH.

Response: NMFS disagrees. NMFS completed an EFH consultation on the FMP on April 30, 2009, and concluded that the actions in the FMP would not adversely affect EFH because of environmental safeguards such as siting criteria (Sections 4.6 and 6.7 of the FMP) and aquaculture system requirements (Sections 4.5 and 6.6 of the FMP) which are intended to avoid and minimize adverse impacts of offshore aquaculture operations on EFH and other sensitive marine habitats. For example, offshore aquaculture would be prohibited from occurring in numerous areas identified as EFH such as HAPCs,

marine reserves, marine protected areas and coral areas, and other critical habitats would be considered during a case-by-case review of the proposed site. The requirement to have locating devices on offshore systems will also reduce long-term damage to EFH and marine resources that could result from derelict gear. Additionally, NMFS will review each individual Gulf aquaculture permit application to determine potential impacts on EFH and consult on individual activities with adverse impacts as required by the Magnuson-Stevens Act. As explained in the preamble of this final rule, and in Action 6 of the FMP, NMFS may deny an application for a Gulf aquaculture permit if it is determined that the use of a site or system, or the aquaculture operation as a whole, poses significant risks to EFH. Such a determination shall be based on consultations with NMFS offices and programs and siting and other information submitted by the permit applicant, including the required baseline environmental survey.

Comment 89: NMFS failed to complete EFH and ESA consultations on the FMP.

Response: NMFS disagrees. NMFS completed the EFH consultation processes on April 30, 2009, and determined that the actions in the FMP would not adversely affect EFH. NMFS reviewed that determination on April 30, 2013, following preparation of the draft SFPEIS and came to the same conclusion.

NMFS completed an ESA consultation on the FMP on May 5, 2009, and determined that the action was not likely to adversely affect any listed species under NMFS' purview. After reviewing new information relating to the Deepwater Horizon MC252 oil spill that occurred in April 2010, NMFS' Sustainable Fisheries Division determined, in a memo dated April 18, 2013, that reinitiation of the consultation is not required. However, in June 2015, NMFS reinitiated ESA consultation to evaluate the effects of the FMP on three newly listed coral species, newly designated loggerhead sea turtle critical habitat, and proposed green sea turtle distinct population segments. That consultation, completed on June 24, 2015, similarly determined that the fishing activities conducted under the FMP are not likely to adversely affect these species or critical habitat.

Comment 90: Aquaculture systems should be properly sited to avoid blocking migratory pathways or altering habitat of ESA-listed species.

Response: As explained in the response to Comment 89, in the completed ESA consultations, NMFS concluded that the fishing activities conducted under the FMP will not adversely affect listed species or their critical habitat. However, when evaluating a proposed site, NMFS will evaluate and consider, among other things, the proximity of the site to marine mammal migratory pathways and important habitats and will evaluate each proposed aquaculture system and its operations for potential risks endangered and threatened marine species and can deny a system or specify conditions for using a system if it is determined to pose significant risk to these species.

Comment 91: Aquaculture facilities may threaten marine animals, including ESA-listed species, by posing an entanglement risk or resulting in harassment or death. The final rule should address whether there are penalties for failure to remedy or redress entanglement or interaction issues. It should also mention if independent (*i.e.,* third party) monitoring or auditing is required for entanglements or interactions, how often inspections for entanglements or interactions should occur and who will conduct these inspections.

Response: NMFS disagrees that these facilities pose an entanglement risk or are likely to result in harassment or death of marine animals. As explained in the response to Comment 89, in the completed ESA consultations, NMFS concluded that the fishing activities conducted under the FMP will not adversely affect listed species. With respect to entanglement risks, the consultations explained that entanglement can be greatly reduced through the use of rigid, durable materials and by keeping lines taut, and that in practice, most offshore marine aquaculture facilities are constructed under these specifications. The consultations also noted that the FMP requires applicants to provide documentation sufficient to evaluate a system's ability to withstand physical stresses and that there is anecdotal evidence that supports the conclusion that interactions are rare. Consultation will be reinitiated if new information reveals entanglement or other effects of the action not previously considered or the identified action is modified in a manner that may cause effects to listed species in a manner or to an extent not previously considered.

Safeguards to minimize risks to ESA-listed species and other wildlife are specified in §§ 622.103(a)(4) and 622.105(a). For example, NMFS will evaluate each proposed site, and each proposed system and its operations, based on a number of factors including potential risks to endangered or threatened marine species, marine mammals, and wild fish or invertebrate stocks and can deny the use of a site or a system based on a determination of such significant risks or inconsistency with FMP objectives or other applicable law. The RA may also specify conditions for using an aquaculture system based on the determination of significant risk.

As specified in § 622.106(a)(9), permittees must regularly inspect approved aquaculture systems, including mooring and anchor lines, for entanglements or interactions with marine mammals, protected species, and migratory birds. Inspections will be conducted by the permittees and the frequency of inspections will be specified as a condition of their Gulf aquaculture permit. No independent (*i.e.,* third party) monitoring or auditing is required for entanglement or interaction purposes.

Permittees are required to report to NMFS specific details of any entanglement or interaction, within 24 hours, with marine mammals, protected species or migratory birds, including any actions being taken to prevent future entanglements or interactions, as specified in § 622.102(a)(1)(i)(G). Violating this requirement could result in NMFS modifying, suspending, or revoking a permit in accordance with subpart D of 15 CFR part 904. If new information reveals entanglement or other effects of the action not previously considered or the identified action is modified in a manner that may cause effects to listed species in a manner or to an extent not previously considered, NMFS will reinitiate Section 7 consultation.

With respect to the potential harassment of marine mammals by fish farmers, NMFS notes that this would be a violation of the Marine Mammal Protection Act (MMPA). Permittees must comply with the MMPA and other applicable laws.

Comment 92: NMFS should have completed a Biological Assessment or Biological Opinion on the FMP.

Response: As explained in the response to Comment 89, NMFS completed ESA consultations that concluded that the fishing activities conducted under the FMP will not adversely affect listed species. These consultations included a Biological Assessment, which is defined at 50 CFR 402.02 as the information prepared by the Federal agency concerning listing and proposed species and designated and proposed critical habitat that may be present in the action area and the

evaluation of potential effects of the action on such species and habitat.

A Biological Opinion is required only when a proposed action is likely to adversely affect a listed species or designated critical habitat. Because NMFS determined the FMP is not likely to adversely affect ESA-listed species or designated critical habitat, a Biological Opinion was not prepared.

Comment 93: The FMP and proposed rule do not assess whether the aquaculture facilities will ''take'' marine mammals or migratory birds.

Response: Section 6.1.4 of the FMP discusses physical interactions of aquaculture facilities with wildlife, including marine mammals and birds.

There is evidence to show that marine mammals can interact with aquaculture facilities. Marine mammals can become entangled in offshore aquaculture gear resulting in injury or death. Depredation (*i.e.,* taking cultured fish from pens or other aquaculture gear) may occur at aquaculture facilities, which can lead to an increased risk of entanglement and may further result in retaliation by aquaculture operators. Some marine mammal interactions have occurred at aquaculture facilities currently operating in other areas of the United States. Documented interactions include depredation from aquaculture pens by wild bottlenose dolphins, aquaculture workers illegally feeding wild bottlenose dolphins, and a depredating wild bottlenose dolphin that became entangled by a fisherman fishing at an aquaculture pen.

Aquaculture is considered a commercial fishery under the MMPA. As such, it will be designated on the MMPA's List of Fisheries (LOF) per section 118 of the MMPA. The Marine Mammal Authorization Program (MMAP) allows commercial fishing entities designated on the LOF to lawfully incidentally take marine mammals in a commercial fishery in certain cases: (1) A fishery classified as a Category I or II registers for and maintains a valid MMAP certificate from NMFS (50 CFR 229.4); (2) an observer is accommodated upon request (50 CFR 229.7); and (3) any incidental marine mammal mortality or injury occurring in a Category I, II, or III fishery is reported within 48 hours of the occurrence (50 CFR 229.6). NMFS previously determined that aquaculture fishing activities would have no adverse impact on marine mammals and aquaculture was classified as a Category III fishery in the 2015 LOF (79 FR 77919, December 29, 2014). This classification indicates the annual mortality and serious injury of a marine mammal stock resulting from any fishery is less than or equal to 1 percent of the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock, while allowing that stock to reach or maintain its optimum sustainable population. While the listed fisheries do not specifically include the FMP or this rule, they involve gear similar to what is expected to be used in the Gulf.

With respect to marine mammals that are listed under the ESA, NMFS has determined that the fishing activities conducted under the FMP are not likely to adversely affect these species because they are extremely unlikely to overlap geographically with anticipated aquaculture sites. Any ''takes'' of threatened and endangered marine mammals would trigger reinitiation of the consultation.

In regard to migratory birds, there is currently no information that would indicate that offshore marine aquaculture will result in the ''take'' of migratory birds. Section 622.102(a)(1)(i)(G) of this rule requires permittees to regularly inspect approved aquaculture systems and report, within 24 hours, any entanglement or interaction with marine mammals, endangered species, or migratory birds within 24 hours of the event. This reporting will allow NMFS to determine if there are unanticipated interactions with migratory birds, assess the severity of any interactions, and identify solutions for addressing and preventing interactions.

Comment 94: Guidance documents should be reviewed regularly and include specific criteria such as the frequency of inspections for entanglement and interactions with protected species.

Response: NMFS agrees that guidance documents should be reviewed on a regular basis and will coordinate with other federal agencies, as needed, to do so. NMFS disagrees that guidance documents need to include criteria related to the frequency of inspections for entanglement and other interactions with protected species because those criteria are case-specific, and will be determined on a case-by-case basis and included as a condition in individual permits.

Escapements

Comment 95: One commenter stated that NMFS should require reporting of all escapes, while another stated that NMFS should require reporting when escapes exceed 5 percent of the admixed stock (wild and cultured animals).

Response: NMFS disagrees that it is necessary to require reporting of all escapes. Permittees are already required to report the escape, within a 24-hour period, of 10 percent of the fish from a single approved aquaculture system (*e.g.,* one cage or one net pen) or 5 percent or more of the fish from all approved aquaculture systems combined, or the escape, within any 30-day period, of 10 percent or more of the fish from all approved aquaculture systems combined. These amounts should allow operations to effectively quantify whether or not losses have occurred. Specifying lower percentages would make it difficult for permittees to quantify when and if escapement has occurred. In addition, the current reporting requirement for escapes is in line with escape reporting requirements of other states with aquaculture facilities (*e.g.,* Maine).

NMFS also disagrees that escapes should only be reported when they exceed 5 percent of the admixed stock for that species. The number of escapes needed to trigger reporting suggested by the commenter is much higher than that approved in the FMP and this final rule and could result in many more fish escaping without requiring permittees to report to NMFS.

Comment 96: Escaped fish can displace other marine species and pollute wild fish genetics. Escapees will also compete with wild fish and other aquatic animals, and transmit disease and parasites to wild stocks.

Response: NMFS agrees that escaped fish have the potential to negatively impact wild stocks. However, as discussed in section 6.1. of the FMP, impacts of cultured escapees on wild stocks are expected to be minimal because this final rule requires that only native species are allowed for culture and broodstock must be sourced from the same population or sub-population that occurs where the operation is located. Further, prior to stocking fish in an approved aquaculture system, the permittee must provide documentation certifying that the fish are pathogen free.

Comment 97: Escaped fish should be treated as a pollutant, which would enable EPA to assess civil fines on facilities for escapes.

Response: Neither the FMP nor this final rule address the definition of pollutant under the Clean Water Act or the EPA's authority to assess fines under that Act. Therefore, this comment is outside the scope of this rulemaking and will not be addressed further.

Fallowing of Aquaculture Systems

Comment 98: Permittees should have access to several marine sites to fallow properly.

Response: NMFS disagrees that several distinct aquaculture sites are

necessary to fallow properly. The Council determined, and NMFS agrees, that the requirement in § 622.103(a)(3) of this final rule is sufficient to support any needed fallowing. That requirement specifies that permitted sites must be at least twice as large as the combined area encompassed by the aquaculture systems to allow operations to conduct fallowing at a different location within the designated site complex. If separate distinct sites were chosen for fallowing purposes, permittees would be required to repeat the siting process multiple times, which would include conducting multiple baseline environmental surveys and securing additional ACOE Section 10 and EPA NPDES permits. Thus, choosing separate fallowing sites would increase the time and cost associated with the permitting process while fallowing at a different location within the designated site complex would achieve the same environmental objective at less cost.

Comment 99: Fallowing and rotation should be mandatory.

Response: NMFS disagrees. Nutrient loading and other impacts of aquaculture on the surrounding environment can be reduced or eliminated with proper siting of an operation. Should water quality and benthic data indicate that fallowing is necessary to reduce or eliminate nutrient loading, NMFS recommends the permittee implement fallowing and rotation as a best management practice. Section 622.103(a)(4) of this final rule also allows the RA to deny the use of a proposed site that will inhibit the dispersal of wastes and effluents.

Genetically Engineered Animals

Comment 100: Section 622.101(a)(2)(xv) of the proposed rule would require the applicant to certify that no genetically modified animals (changed to ''genetically engineered animals'' in § 622.2 and throughout this final rule) or transgenic animals are used or possessed for culture purposes at the aquaculture facility. This language should specify that ''use'' specifically applies to the propagation process and indicate that it applies to the act of propagation regardless of where it occurs.

Response: NMFS agrees the FMP and this final rule prohibit the use of genetically engineered and transgenic animals in propagation activities used to stock aquaculture facilities. The term ''aquaculture facility'', as defined in § 622.2 of this final rule, includes all infrastructure used to ''hold, propagate or rear aquaculture species''. Thus, the prohibition on the ''use'' of genetically engineered and transgenic animals applies to the holding, propagation, or rearing of allowable aquaculture species regardless of where in the EEZ these activities occur.

Comment 101: NMFS should develop specific standards for the use of non-native species and genetically engineered animals for aquaculture.

Response: NMFS disagrees it is necessary to specify standards for use of genetically engineered animals because § 622.105(b) of this rule prohibits the culture of non-native species and genetically engineered animals in the Gulf EEZ.

Comment 102: Genetic testing should be required as a condition of permit approval to ensure that no genetically engineered animals are being cultured.

Response: NMFS disagrees. The Council determined, and NMFS agrees, the certifications required as part of the application process, along with the authority provided NMFS to conduct genetic testing at any time, are sufficient to safeguard against genetic engineering activities. Specifically, applicants must certify that no genetically engineered or transgenic animals are used or possessed in the aquaculture facility, as specified in § 622.101(a)(2)(xv) of this rule. Applicants must also certify that they agree to immediately remove cultured animals remaining in allowable aquaculture systems from the Gulf EEZ, as required by NMFS, if it is discovered that the animals are genetically engineered or transgenic, as specified in § 622.101(a)(2)(xii)(A). At any time, NMFS may sample cultured animals to determine genetic lineage and will order the removal of all cultured animals upon a determination that genetically engineered or transgenic animals were used or possessed at the aquaculture facility, in accordance with § 622.108(a)(2).

Comment 103: NMFS should prohibit the use of animals that have been artificially altered, including, those altered by changes in ploidy, chemical or radiation mutagenesis, any selective breeding or assisted reproductive technologies (ART).

Response: NMFS disagrees that it is necessary to further restrict the use of artificially altered fish. The FMP and this final rule prohibit Gulf aquaculture operations from culturing genetically engineered or transgenic animals to reduce the potential impacts of cultured fish escapes on wild populations. Section 622.2 of this final rule defines the term ''genetically engineered animal'' to be consistent with FDA's definition, which is ''modified by rDNA techniques, including the entire lineage of animals that contain the modification''. This definition does not prohibit the use of animals that have been artificially altered by changes in ploidy, chemical, or radiation mutagenesis, or any selective breeding or assisted reproductive technologies, unless these animals contain genes that have been introduced or otherwise altered by modern biotechnology. Broadening this definition to encompass changes in ploidy, chemical or radiation mutagenesis, any selective breeding or ART would restrict the ability to produce specific phenotypes suitable for aquaculture. Such techniques are commonly used in aquaculture and are not expected to result in significant risks to wild populations should escapement occur.

Management Reference Points and Annual Production

Comment 104: NMFS should assist the Councils in developing compliant processes by amending the National Standard 1 Guidelines under the Magnuson-Stevens Act to set forth a reasoned and scientifically rigorous process for determining reference points for aquaculture.

Response: Comments regarding changes to the National Standard 1 guidelines are outside the scope of this rulemaking. However, NMFS notes that it is necessary to amend the National Standard 1 Guidelines to specifically address reference points for aquaculture. Section 600.310(h)(3) of National Standard 1 Guidelines recognizes that harvest from aquaculture operations may not fit the standard approaches to specifying reference points and management measures set forth in the guidelines and allows the Councils to propose alternative approaches for satisfying the National Standard 1 requirements. As explained in the preamble to the proposed rule, the Council selected an alternative approach to specifying reference points and management measures for the aquaculture fishery. NMFS has determined that the alternative approach selected by the Council is consistent with National Standard 1.

Comment 105: Both the 64-million lb (29-million kg) annual production limit and 20-percent production cap on a business, individual or entity should be increased or removed.

Response: The Council determined, and NMFS agrees, these production caps are needed to properly manage the development of the aquaculture fishery consistent with the provisions of the Magnuson-Stevens Act.

Theoretically, the Gulf has an offshore aquaculture production capacity threshold which, if exceeded, could adversely affect wild stocks or the

marine environment (*e.g.,* water quality and habitat). When developing the FMP, the Council considered capping annual production (or OY/ACL) at various levels, ranging from 16 million lb (7.3 million kg) to 190 million lb (86 million kg), to constrain production below that threshold level.

As explained in the FMP, the Council set the production cap equal to 64 million lb (29 million kg), which represents the average landings of all marine species in the Gulf, except menhaden and shrimp, during 2000–2006. In the absence of specific information on the threshold level above which aquaculture could adversely affect wild stocks or the marine environment, the Council determined that setting an annual production cap based on the productivity of wild stocks would enable the fishery to proceed with caution while we obtain more information about the number and size of aquaculture operations, the production capacity of various aquaculture systems, and the environmental impacts and economic sustainability of aquaculture.

Although 64 million lb (29 million kg) is likely substantially less than the yield that can be achieved by aquaculture operations over the long-term, this annual production cap is considered to be a short-term proxy and can be revisited by the Council at any time as new information becomes available. If planned production exceeds the cap in a given year, then NMFS will publish a control date to notify future participants that entry into the aquaculture fishery may be limited or restricted after the control date, and the Council will initiate review of the aquaculture program, and the annual limit, to determine whether the cap should be increased or some other action is appropriate.

The Council also evaluated various entity-specific production caps, ranging from 5- to 20-percent of the OY/ACL, to ensure entities do not obtain an excessive share of the OY/ACL, consistent with National Standard 4 of the Magnuson-Stevens Act. The Council determined that capping the production of businesses, individuals, and other entities at 20 percent of the OY/ACL will effectively ensure against possible anti-competitive effects resulting from a small number of entities accounting for most or all of the aquaculture production. The 20-percent entity-specific production cap will allow each business, individual, or other entity to produce up to 12.8 million lb (5.8 million kg) annually, and may be revisited in the future as needed and appropriate.

Comment 106: The FMP should discuss what data or processes are needed to determine a meaningful MSY and OY for cultured animals. OY must be set at a level equal to or less than MSY to account for ''any relevant social, economic, or ecological factors'' and it (like other reference points) must account for risk as directed by National Standard 6. The FMP should also discuss how overfished and overfishing status will be determined for cultured fish and how this will be linked to the status of wild stocks.

Response: Section 4 of the FMP explains the challenge in applying management reference points and status determination criteria to cultured species because those parameters are designed to inform decisions about the level at which wild fish stocks can be routinely exploited without resulting in long-term depletion.

As discussed in the FMP, the Magnuson-Stevens Act was written in part to establish the legal framework for managing wild fisheries resources of the United States, and many of the principles and concepts that guide wild stock management are not generally applicable to the management of an aquaculture fishery. However, aquaculture falls within the definition of ''fishing'' in the Magnuson-Stevens Act and is therefore subject to regulation by the fishery management councils and to the legal requirements to define management reference points and status determination criteria that will be used to assess fishery performance and status relative to the Magnuson-Stevens Act's mandates to prevent overfishing and achieve the OY from managed fisheries.

The FMP explains that all animals cultured are intended for harvest and there is no need to leave cultured animals in aquaculture systems to support future generations and guard against long-term depletion. However, it is conceivable that some level of aquaculture in the Gulf could adversely impact wild stocks or the marine environment. Therefore, the Council determined the most logical approach was to use proxies and define management reference points and status determination criteria for the aquaculture fishery in a way that is intended to constrain production below that critical threshold level.

The Council set the MSY of the Gulf aquaculture fishery at 64 million lb (29 million kg). This value is based on the productivity of wild stocks and equals the average landings of all marine species in the Gulf except menhaden and shrimp during 2000–2006. In the absence of specific information on the threshold level above which aquaculture could adversely affect wild stocks or the marine environment, the Council determined that setting MSY based on the productivity of wild stocks would enable the fishery to proceed with caution while we obtain more information about the number and size of aquaculture operations, the production capacity of various aquaculture systems, and the environmental impacts and economic sustainability of aquaculture.

NMFS guidance at 50 CFR 600.310 states OY should be based on MSY as reduced by social, economic, and biological factors, with the most important limiting factor being that the choice of OY and the conservation and management measures proposed to achieve it must prevent overfishing. To the extent that harvesting MSY would result in adverse impacts to resources in the Gulf, OY may be reduced to a level where such adverse impacts do not occur. Because MSY is specified at a level that is believed to avoid such impacts, and all animals cultured are intended for harvest, the Council determined there are no social, economic, or ecological factors that support setting OY below MSY at this time.

Although 64 million lb (29 million kg) is likely substantially less than the yield that can be achieved by aquaculture operations over the long-term, the FMP explains that both the MSY and OY values are considered to be short-term proxies, which the Council may revise at any time in the future as the aquaculture fishery develops and provides additional information on the number and size of aquaculture operations, the production capacity of various aquaculture systems, and the environmental impacts and economic sustainability of aquaculture. This precautionary and adaptive approach is consistent with NMFS guidance for implementing National Standard 6 at 50 CFR 600.335.

Also, because it is not possible to overharvest cultured animals, the Council determined the most logical way to assess the impacts of overharvest in aquaculture operations is not on the cultured fish actually harvested, but on the wild stocks remaining in the surrounding environment. The FMP specifies that NMFS will use overfished and overfishing criteria established in existing FMPs for wild stocks to determine if offshore aquaculture in the Gulf EEZ is adversely affecting wild fish populations, causing them to become overfished or undergo overfishing. If aquaculture operations are determined

to cause such effects, then the Council and NMFS will take action(s) that could include, but are not limited to, reducing aquaculture production levels, removing cultured animals containing pathogens, and reevaluating facility siting locations to avoid habitat degradation.

State Involvement

Comment 107: NMFS must acquire Coastal Zone Management Act (CZMA) consistency determinations from all of the Gulf states before the final rule is issued.

Response: NMFS agrees and determined the FMP is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of Florida, Alabama, Mississippi, Louisiana, and Texas. This determination was submitted on February 24, 2009, for review by the responsible state agencies under section 307 of the CZMA. Florida, Alabama, Mississippi, and Louisiana responded that the measures in the FMP are consistent with their coastal management program. Texas has previously informed NMFS that the state's Coastal Coordination Council no longer reviews fishery management issues, therefore, in accordance with the provisions of 15 CFR 930.41, NMFS presumes concurrence.

Comment 108: NMFS should provide states advance notice of when animals are harvested or transported as these activities require transit across state waters. States should also have access to monitoring and reporting records required by NMFS, and should be promptly notified of any pathogen or escape event, or other event that may pose a risk to state resources.

Response: NMFS will notify state law enforcement agencies in advance of aquaculture harvest and transport activities. Also, NMFS will notify the appropriate state agencies upon confirmation that a reportable pathogen discovery, major escapement event, or other event that may pose a risk to state resources, has occurred. Monitoring and reporting records are generally confidential under section 402(b) of the Magnuson-Stevens Act. However, the Magnuson-Stevens Act provides an exception that allows disclosure of confidential information to state employees, as necessary, to further the Department of Commerce's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity or business of any person. The Magnuson-Stevens Act also provides an exception for employees of states that have entered into a fishery enforcement agreement with the Secretary of Commerce and that agreement is in effect. All of the Gulf states have confidentiality agreements and joint enforcement agreements in place and would therefore be authorized access to monitoring and reporting records, as needed, and consistent with those exceptions.

Comment 109: States should have the ability to approve or deny an application before NMFS' final approval.

Response: NMFS disagrees. States may provide comments on individual permits during the public comment period, but as with other NMFS permits, states will not have the ability to approve or deny an application. The RA will consult with the Council during the public comment period on specific permit applications as required in § 622.101(d)(2) of this final rule. Each state has a representative on the Council and NMFS will consider Council input and comments received when deciding whether to approve or deny a permit.

Comment 110: The proposed rule does not mention an ''opt-out'' provision for states, which means aquaculture may occur within 3 miles (5 km) of shore.

Response: NMFS disagrees. The FMP and rule pertain only to the Gulf EEZ which starts at 3 nautical miles from shore off the coast of Louisiana, Mississippi and Alabama and 9 nautical miles from shore off the coast of Texas and the west coast of Florida. Although some Gulf states have promulgated regulations to conduct aquaculture in state waters (*e.g.,* Florida) others would need to do so before establishing a permitting system for aquaculture operations.

Restricted Access Zones

Comment 111: NMFS should remove the prohibition on commercial or recreational fishing inside the ''restricted access zone''. Permittees should have the ability to negotiate access to their sites for fishing purposes if they so choose.

Response: The Council determined, and NMFS agrees, that restricted access zones are needed to afford some protection to an operation's equipment and the product being cultured, and to promote safety by reducing encounters between vessels and aquaculture equipment.

Comment 112: Restricted access zones will displace commercial and recreational fishermen from large areas of the ocean. Aquaculture operations will also attract fish away from their usual habitats and this will impact fishermen who cannot fish for these species within the boundaries of restricted access zones.

Response: NMFS recognizes that restricted access zones would displace fishermen from certain areas; however, the area utilized by the estimated 5–20 offshore aquaculture operations envisioned under the FMP is not expected to be significant considering the total area of the Gulf EEZ and is therefore not expected to result in significant displacement issues. NMFS will consider the location of a proposed site relative to traditional fishing grounds during the permit review process and may deny use of a proposed site if it may result in user conflicts with commercial or recreational fishermen. Information used by NMFS for siting a facility in regard to proximity to commercial and recreational fishing grounds would include, but is not limited to, electronic logbooks from the shrimp fishery, logbook reported fishing locations, siting information from previously proposed or permitted aquaculture facilities, and other data that would provide information regarding how the site would interact with other fisheries, including public comments on the application.

Restricting access around a facility may protect species known to aggregate around aquaculture systems. However, the area encompassed by aquaculture systems is not expected to be significant compared to the Gulf EEZ as a whole. Although fishermen would be prohibited from fishing within restricted access zones, they could fish along the periphery of the operation, which would provide access to species which aggregate in the general area.

Comment 113: The size of the restricted access zone should be determined by NMFS and not correspond to the coordinates specified in the ACOE Section 10 permit. The final rule should also specify how large restricted access zones should be and who will enforce them.

Response: The Council determined, and NMFS agrees, that setting the restricted access zone corresponding to the coordinates on the ACOE Section 10 permit is appropriate.

Per § 622.2 of this final rule, an aquaculture facility is defined as an installation or structure, including any aquaculture systems (including moorings), hatcheries, equipment, and associated infrastructure used to hold, propagate, or rear allowable aquaculture species. The Council wanted to establish a narrow area around the aquaculture facility that would afford some protection to aquaculture equipment and cultured animals as well as well as increase safety by reducing encounters between vessels and aquaculture equipment. While the

ACOE Section 10 permit will delimit where aquaculture systems may be anchored to the sea floor, the Council action and this rule require that the applicant apply for an ACOE Section 10 permit that is twice as large as the combined area of the aquaculture systems in order to allow for best management practices such as the rotation of systems for fallowing. As such, the facility will be twice as large as the combined area of the aquaculture systems within it but the boundary of the facility will be the same as the boundary of the ACOE Section 10 permit because this final rule requires that the applicant apply for an ACOE permit of that size.

NMFS anticipates that the ACOE will issue and enforce its Section 10 permit under its own authorities. NMFS is establishing and will enforce the restricted access zone under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The two processes are separate but, because, NMFS is requiring the applicant to apply for an ACOE Section 10 permit of a size that is coextensive with the definition of a facility (including being twice the size of the combined area of the aquaculture systems within it), NMFS is choosing to use the ACOE Section 10 permit coordinates as the same coordinates for the restricted access zone.

There is no predetermined size of the restricted access zone as it depends on the information contained in each permittee's Section 10 permit. Authorized officers have the authority to enforce restricted access zones. An ''authorized officer'' is defined in 50 CFR 600.10 as: (1) Any commissioned, warrant, or petty officer of the USCG; (2) any special agent or fishery enforcement officer of NMFS; (3) any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson-Stevens Act or any other statute administered by NOAA; or (4) any USCG personnel accompanying and acting under the direction of any person described in (1).

Comment 114: NMFS should coordinate with the USCG in regards to siting offshore aquaculture facilities and marking ''restricted access zones.''

Response: NMFS agrees and is working with USCG and other Federal agencies as part of the Interagency Working Group's Aquaculture Regulatory Task Force to coordinate the siting, review and permitting of offshore aquaculture facilities, including marking of offshore aquaculture facilities and restricted access zones.

Comment 115: The USCG requests that § 622.104(a) be amended to state that the boundaries of the restricted access zone will correspond with the coordinates listed on the approved ACOE Section 10 permit associated with the aquaculture facility ''and in addition, must ultimately be approved by the U.S. Coast Guard''. The USCG also requests that § 622.104(c) be amended to state that the permittee must mark the restricted access zone with a floating device such as a buoy at each corner of the zone ''as authorized by the U.S. Coast Guard.''

Response: NMFS disagrees that it is appropriate to require that the U.S. Coast Guard provide approval of the restricted access zone. As stated in the response to Comment 113, the Council determined, and NMFS agrees that a restricted access zone equal to coordinates on the ACOE Section 10 permit is appropriate because these coordinates define the boundary of the site where aquaculture operations may occur.

NMFS also agrees with the second part of this comment and has made the suggested change to § 622.104(c).

Changes From the Proposed Rule

In June 2015, NMFS consulted with the Council on the following fourteen changes from the proposed to final rule. At that time, the representative from Florida expressed concern about using FDA's definition of ''genetically engineered animal'' and submitted a comment on behalf of the Florida Fish and Wildlife Commission (FWC). FWC's comment stated that FDA's definition of ''genetically engineered animal'' was too narrowly defined because it did not encompass the use of ''in vitro'' nucleic acid techniques. NMFS consulted with FDA and has determined that the definition of ''transgenic animal'' in the FMP and this final rule encompasses the use of ''in vitro'' techniques. Both ''genetically engineered'' and ''transgenic'' animals are prohibited for culture purposes in this final rule, therefore no change to the definition of ''genetically engineered animal'' is necessary.

The term ''genetically modified organism'' has been revised to ''genetically engineered animal'' throughout this final rule. The term ''genetically engineered animal'' is a more scientifically precise term, more accurately describes the use of modern biotechnology and is consistent with FDA terminology. In addition, the definition for ''genetically engineered animal'' has been added to § 622.2 and the definition for ''genetically modified organism'' has been removed from § 622.2. See NMFS response to Comment 2 above for the complete explanation.

Also, in § 622.2, the definition for ''aquaculture'' is modified slightly based on public comment. In the proposed rule, the definition stated, ''*aquaculture* means all activities, including the operation of an aquaculture facility, involved in the propagation and rearing, or attempted propagation and rearing, of allowable aquaculture species in the Gulf EEZ.'' This wording can be interpreted to mean that to engage in ''aquaculture,'' both propagation and rearing need to be conducted. In this final rule, NMFS revises the definition of ''*aquaculture*'' by changing an ''and'' to an ''or'' in two places in this definition in § 622.2. This change clarifies that to engage in ''aquaculture'' requires only that propagation or rearing need to be conducted.

The definition of ''aquaculture facility'' in § 622.2 is modified based on public comment. In the proposed rule, the definition stated, ''*Aquaculture facility* means an installation or structure, including any aquaculture system(s) (including moorings), hatcheries, equipment, and associated infrastructure used to hold, propagate, and rear allowable aquaculture species in the Gulf EEZ under authority of a Gulf aquaculture permit.'' This wording can be interpreted to mean that all three of these activities need to be conducted (holding, propagating, and rearing) to be considered an aquaculture facility. However, NMFS has determined that only one of these activities needs to be conducted to be considered an aquaculture facility. Therefore, in this final rule, NMFS revises ''hold, propagate, and rear'' to ''hold, propagate, or rear.''

NMFS is revising the definition of ''significant risk'' in § 622.2. When the Council reviewed and deemed this definition in February 2013, it stated: ''Significant risk means is likely to adversely affect endangered or threatened species or their critical habitat; is likely to seriously injure or kill marine mammals; is likely to result in un-mitigated adverse effects on essential fish habitat; is likely to adversely affect wild fish stocks, causing them to become overfished or undergo overfishing; or otherwise may result in harm to public health or safety, as determined by the RA.'' The proposed rule contained a modification to this definition with respect to endangered and threatened species, defining ''significant risk,'' in part, as ''likely to jeopardize the continued existence of endangered or threatened species or adversely modify their

critical habitat.'' The proposed rule also expressly solicited comments on this part of the definition. After considering public comments, and further internal review, NMFS has determined that the definition of ''significant risk'' as it relates to endangered and threatened species should be modified to reflect the text originally deemed by the Council. As explained in the response to Comment 1, this change will better align the ESA-related criterion in the definition with the criteria for marine mammals, EFH, wild fish stocks and public health and safety.

A prohibition has been added to § 622.13 to state that it is unlawful to land allowable aquaculture species cultured in the Gulf at non-U.S. ports, unless first landed at a U.S. port. This prohibition was reasonably foreseeable because it was contained in the FMP and because the proposed rule included the requirement that a Gulf aquaculture dealer permit is necessary to first receive fish cultured at an aquaculture facility. Section 622.101(b) in the proposed rule provided that to obtain a Gulf aquaculture permit, ''the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).'' The references to a state wholesaler's license and physical facility at fixed location in the state are a clear indication that those authorized to first receive allowable aquaculture species must be located in the U.S.

In § 622.101, the requirement in paragraph (a)(2)(viii) is moved to paragraph (d)(3) of that section in this final rule, because the requirement to submit to NMFS a copy of currently valid Federal permits (*e.g.,* ACOE Section 10 permit, and EPA NPDES permit), prior to issuance of a Gulf aquaculture permit, better fits in the permit issuance paragraph of the permits section of the aquaculture regulations.

In § 622.101(a)(2)(xiii), language is added that when permittees provide certification information that all broodstock being used were originally harvested from U.S. waters of the Gulf, they must also certify that the broodstock came from the same population or subpopulation (based on the best scientific information available) where the facility is located, and that each individual broodstock was marked or tagged at the hatchery to allow for identification of those individuals used in spawning. This language was contained in the FMP and discussed in the preamble of the proposed rule; however, it was not in the proposed codified text. Based on public comment, NMFS determined this should be added to the regulations in the final rule. Also in this section, NMFS is changing ''were originally harvested'' to ''will be or were originally harvested.'' This is intended to clarify that the applicant is not required to know the location of broodstock harvest at the time the application is submitted to NMFS but still ensures any broodstock used in the future will be from U.S. waters in the Gulf and from the same population or subpopulation where the facility is located.

In § 622.101(d)(2)(ii)(B), the language is revised. In the proposed rule, grounds for denial of a Gulf aquaculture permit include, ''based on the best scientific information available, issuance of a permit would pose significant risk to the well-being of wild fish stocks . . .'' However, in this final rule, NMFS has removed ''to the well-being of'' to be consistent with the language in the preamble which states that NMFS may deny a permit that would ''pose significant risk'' to marine resources.

Throughout this final rule, NMFS changes ''baseline environmental assessment'' to ''baseline environmental survey.'' Some public comments indicated that using the term ''baseline environmental assessment'' is confusing to the public because the term ''environmental assessment'' is used to refer to a document that may be prepared under the National Environmental Policy Act. To make it clear that the ''baseline environmental assessment'' required by this final rule is not the same as an ''environmental assessment'' that may be prepared under NEPA, the term is revised to ''baseline environmental survey'' in §§ 622.101(a)(2)(v) and 622.103(a)(4) of the regulations. In addition, this final rule clarifies that permittees are required to submit baseline environmental survey data to NMFS in accordance with procedures specified by NMFS in guidance which will be available on the Web site when the rule becomes effective.

Language has been added to § 622.102(a)(1)(i)(A) regarding record keeping and reporting requirements for aquaculture facility owners and operators that permittees are to maintain and make available to NMFS or an authorized officer upon request a written or electronic daily record of the number of cultured animals introduced into and the total pounds and average weight of fish removed from each approved aquaculture system, including mortalities, for the most recent 3 years. This language was contained in the FMP and discussed in the preamble of the proposed rule but was not specifically contained in the codified text in the proposed rule. Therefore, NMFS adds this language to the regulations in this final rule.

Paragraph (D) has been added to § 622.102(a)(1)(i) regarding a harvest notification. NMFS is requiring that permittees record the date, time, and weight of cultured animals to be harvested and report this information to NMFS at least 72 hours prior to harvesting cultured animals from an aquaculture facility. This harvest notification is intended to aid law enforcement efforts. The notification would alert law enforcement in the case they wish to be present at the time of harvest at an aquaculture facility to verify that permittees are harvesting only cultured species and remain within their production cap. This 72-hour harvest notification was contained in the FMP and the preamble to the proposed rule but was not contained in the codified text in the proposed rule. NMFS adds it to the codified text in this final rule.

Paragraph (H) has been added to § 622.102(a)(1)(i) regarding feed invoices for aquaculture operations. The preamble in the proposed rule stated that the original or copies of purchase invoices for feed must be provided to NMFS or an authorized officer upon request, and be maintained for a period of 3 years. However, this requirement was not included in the codified text in the proposed rule because NMFS included the reference to the EPA regulations at 40 CFR 451.21, which NMFS believed covered these feed reporting requirements. After further evaluation, NMFS has determined that the 3-year requirement to maintain the feed purchase invoices is not contained in the EPA regulations; therefore, NMFS has added that requirement to the regulations in this final rule.

In § 622.104(c), the caveat ''as authorized by the USCG'' is added to the requirement that the permittee must mark the restricted access zone with a floating device such as a buoy at each corner of the zone. This is intended to clarify that the floating devices used to mark the restricted access zone must be authorized by USCG.

NMFS is replacing the phrase ''landed ashore'' to the term ''offload''. The proposed rule preamble stated that permittees participating in the aquaculture program would be allowed to ''offload'' cultured animals at aquaculture dealers only between 6 a.m. and 6 p.m., local time. However, the codified text in the proposed rule, and language in the FMP, stated that species cultured at an aquaculture facility can

only be ''landed ashore'' between 6 a.m. and 6 p.m., local time, because at the time the FMP was written, it was determined that ''land'' was the appropriate term. NMFS has determined that using the more precise term ''offload'' in this context is consistent with the objective of the requirement, which is to aid enforcement, while allowing vessels the flexibility to arrive at the dock at any time. By restricting offloading times, law enforcement will be able to ensure that vessels are landing only cultured species (*e.g.,* secure tissue samples to be tested against broodstock DNA). Using the term ''offload'' is also consistent with similar requirements in the Gulf red snapper and grouper/tilefish individual fishing quota programs. For the purposes of this requirement, NMFS is defining the terms ''offload'' in § 622.106(a)(14) to mean to remove cultured animals from a vessel.

In addition to the changes described above, NMFS is making an administrative change to the permitting process in response to several comments regarding the permit duration, some of which stated that the initial 10-year permit term is not long enough to secure financing and others which stated that the permit term should be a shorter period to ensure permits are thoroughly reviewed on a more frequent basis. NMFS is modifying the requirements in § 622.101(d)(3)(iii) to allow the applicant to defer initial issuance of a Gulf aquaculture permit for up to 2 years from the date the RA notifies the applicant of the decision to grant the permit. Specifically, NMFS is adding language to the end of this provision which states that the initial permit will be issued 30 days after the RA notifies the applicant of the decision to grant the permit, unless NMFS receives a written request from the applicant before the end of the 30 day period to defer issuance of the permit. If the applicant requests a deferral, NMFS will include this information in the notification of permit approval published in the **Federal Register** as specified in paragraph (d)(2)(ii) and will publish a **Federal Register** notice upon permit issuance. Permit issuance will be deferred for two years from the date of the RA notification unless the applicant sends a written request to NMFS to issue the permit at an earlier date. This written request must be received by NMFS at least 30 days prior to the date the applicant desires the permit to be effective.

This change is intended to allow permit holders additional time to secure financing and prepare for production without changing the 10-year effective period of the initial issuance. This change will not modify the requirement to have a valid permit to engage in the activities specified in the rule, such as deploying or operating an aquaculture facility in the Gulf EEZ, harvesting wild broodstock, and selling allowable aquaculture species. This change was reasonably foreseeable because the 10-year initial permit term has been subject to substantial public debate, putting interested persons on notice that NMFS may revise the regulations to address concerns that it may take several years for an applicant to be ready to start operations once the permit is granted while maintaining the 10-year permit term specified in the FMP and included in the proposed rule. The proposed rule did not specify when permits would be issued. The public may have inferred that a permit would be issued contemporaneously with the decision to grant the permit. However, the proposed rule provided for an extended review time and required that applicants submit complete application materials at least 180 days prior to the date they wished the permit to become effective. The proposed rule also required that the applicant obtain other Federal permits applicable to the proposed aquaculture site before issuance of the Gulf aquaculture permit. Therefore, the concept of a permit being issued and effective well after completion of the application was part of both the agency's and the public's deliberation on this issue.

In the proposed rule, NMFS estimated the time to prepare a Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico, including the supporting documentation (baseline environmental survey, assurance bond, contract with aquatic animal health expert, emergency disaster plan) to be approximately 33 hours. However, based upon public comment received, NMFS understands that the time to complete these requirements was underestimated. The time to complete the Federal Permit application for Offshore Aquaculture in the Gulf of Mexico remains 3 hours, however, NMFS has recalculated the time to complete the assurance bond, contract with aquatic animal health expert, and emergency disaster plan to be 39 hours total, not including the baseline environmental survey. NMFS estimates the time to complete the baseline environmental survey (collecting data and analyses) could take up to 320 hours (the proposed rule had included an estimate of 24 hours), depending on the location and size of the proposed site. NMFS also added the following to the collections and associated public time burden table: Notification to delay permit issuance, Marine Mammal Authorization Program form (OMB Control No. O648–0292), pinger/location device, marking restricted access zone, and genetic testing requirements.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of wild and cultured fisheries in the Gulf EEZ and is consistent with the FMP, the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be significant, but not economically significant, for purposes of Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In compliance with section 604 of the RFA, NMFS prepared a FRFA for this final rule. The FRFA uses updated information, when available, and analyzes the anticipated economic impacts of the final actions and any significant economic impacts on small entities. The FRFA is below.

(1) *A statement of the need for, and objections of, the rule.*

The description of the action, why it is being considered and the legal basis for the rule are contained in the preamble of the proposed rule and in the **SUPPLEMENTARY INFORMATION** section of the preamble of this final rule.

(2) *A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.*

NMFS did not receive any comments in response to the IRFA.

(3) *The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.*

NMFS consulted with the Small Business Administration's (SBA) Chief Counsel for Advocacy during drafting of the proposed rule; NMFS addressed the Chief Counsel's comments within the proposed rule. No comments were filed by the Chief Counsel in response to the published proposed rule.

(4) *A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.*

First, this rule will apply to businesses that seek to locate

aquaculture or hatchery operations in the Gulf EEZ. These businesses engage in finfish farming and hatcheries (NAICS 112511) and shellfish farming and hatcheries (NAICS 112512). Second, this rule will apply to businesses that seek to purchase cultured animals from the Gulf EEZ. These businesses are expected to be fish and seafood merchant wholesalers (NAICS 424460), fresh and frozen seafood processors (NAICS 311712), supermarkets and other grocery (NAICS 445110), fish and seafood markets (NAICS 445220), warehouse clubs and superstores (NAICS 452910), and full-service restaurants (NAICS 722110). Third, this rule will apply to businesses that engage in commercial and for-hire finfish and shellfish fishing (NAICS 114111, 114112, 114119, and 487210) in the Gulf EEZ because this final rule establishes restricted access zones. The SBA small business size standards for these industries are stated in the following table.

Industry	NAICS code	SBA small business size standard
Aquaculture and Hatchery Permit		
Finfish Farming & Hatcheries	112511	$0.75 million.
Shellfish Farming & Hatcheries	112512	$0.75 million.
Dealer Permit		
Seafood Product Preparation & Packaging	311712	500 employees
Fish and Seafood Merchant Wholesalers	424460	100 employees
Supermarkets and Other Grocery	445110	$32.5 million.
Fish and Seafood Markets	445220	$7.5
Warehouse Clubs and Superstores	452910	$29.5 million.
Full Service Restaurants	722511	$7.5 million.
Restricted Access Zones		
Finfish Fishing	114111	$20.5 million.
Shellfish Fishing	114112	$5.5 million.
Other Marine Fishing	114119	$7.5 million.
Charter boat fishing	487210	$7.5 million.

At present, there are no businesses, large or small, with offshore aquaculture or hatchery operations in the Gulf EEZ and none that purchase cultured animals from the Gulf EEZ.

Although unused oil and gas platforms in the Gulf EEZ could provide initial structures for offshore hatcheries, it is expected that hatcheries used by offshore aquaculture operations will be land-based, and the start-up and operating costs of offshore hatcheries, if any, would greatly exceed the SBA size standard of $0.75 million in average annual receipts.

NMFS estimates that because of distances from shore, depths of waters, Gulf weather and sea conditions, and other environmental factors, the smallest economically viable offshore aquaculture operation in the Gulf EEZ would raise finfish in 6 cages, requiring an initial investment of $2.89 million ($1.5 million for an aquaculture support vessel, $0.96 million for six cages and associated equipment, $0.33 million for land and onshore support facilities, and $0.1 million for service vessels). Total variable cost (feed, fingerlings, trips to and from cages, etc.) for one grow-out cycle is expected to exceed $1 million. These figures exceed the SBA size standard for businesses in finfish aquaculture which is no more than $0.75 million in average annual receipts. Although technological improvements, such as automated systems, selective breeding, and alternative feeds, have and will continue to reduce the above estimated costs, the changes have not reduced start-up and operating costs below the size standard.

Based on the above estimates of the magnitude of initial investment and operating costs, NMFS expects that any businesses that would seek to develop and locate an aquaculture or hatchery operation in the Gulf EEZ would not be considered small businesses under the SBA size standards.

As of March 31, 2015, there are 296 businesses with a Gulf and South Atlantic dealer permit. The numbers of vessels with a Gulf fishing permit are used to estimate that up to 7,352 vessels and businesses engaged in commercial fishing and up to 2,836 vessels and businesses engaged in for-hire fishing could be directly regulated by the rule. Although the actual number of businesses is expected to be less than those figures, NMFS expects a substantial number of the businesses that operate these fishing vessels have annual revenues less than the relevant SBA small business size standard, and, therefore, are small businesses.

(5) *A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

This rule will require any small business that intends to purchase farmed fish or shellfish from the Gulf EEZ at the first point of sale to apply for and be issued a Gulf aquaculture dealer permit. The additional annual cost to any of the existing dealers that applies for the aquaculture dealer permit will be $12.50, and the only additional information required by the dealer will be to check the box requesting a Gulf aquaculture permit.

The cost to any small business that is not currently a dealer will be $50.00 annually. It is estimated that the average time required by these businesses to complete the application for an annual Gulf aquaculture dealer permit will be 20 minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information. The Gulf aquaculture dealer application requirements are consistent with existing dealer application requirements and no special skills are required to prepare a dealer permit application.

This rule will also prohibit a small business's fishing vessel from fishing or transiting within the restricted access zone of an offshore aquaculture facility,

unless the vessel has a copy of that facility's aquaculture permit onboard.

(6) *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

As stated in the IRFA, NMFS expects this rule will not have a significant adverse economic impact on a substantial number of small entities. Although the rule could potentially reduce annual dockside revenues and increase transportation costs for small businesses in commercial and for-hire fishing if the zones are located in traditional fishing and transiting areas, NMFS may deny use of a proposed site if it is found to result in user conflicts with commercial or recreational fishermen or other marine resource users.

Three alternatives, including the status quo no-action alternative, were considered for the action to establish a Gulf aquaculture permit. This rule would support the development of a commercial offshore aquaculture industry in the Gulf EEZ by creating a transferrable permit that authorizes commercial offshore aquaculture and hatchery operations in Federal waters of the Gulf. The no-action alternative would not support the development of a commercial offshore aquaculture industry in the Gulf EEZ, because the only existing means of permitting similar activities, an Exempted Fishing Permit (EFP) or a Letter of Acknowledgment, are not viable options for authorizing commercial offshore aquaculture or hatchery operations. The third alternative would support the development of commercial offshore aquaculture in the Gulf EEZ by creating two transferrable permits—an operations permit and a siting permit—with separate processes. However, the separation of the permitting process would be expected to increase the time and costs required to obtain the necessary permits to engage in commercial offshore aquaculture and could generate unexpected negative consequences such as creating compatibility issues between approved operation plans and permitted sites (*e.g.,* aspects of a specific operation plan may only be appropriate if the operation is to occur at a certain site).

Three alternatives, including the status quo no-action alternative, were considered for the action to establish marine aquaculture and hatchery siting requirements and conditions. The rule would restrict the areas where aquaculture and hatcheries can occur, the distance between sites, and the total area of each site in the Gulf EEZ. The no-action alternative would allow offshore aquaculture and hatchery facilities to be located anywhere the ACOE would permit, potentially including historical or recently important fishing areas. This alternative would have the greatest potential of directly impacting fishing by allowing aquaculture and hatchery operations to be located in important harvest areas. The third alternative would establish marine aquaculture zones and restrict aquaculture and hatchery sites to these zones. Although the third alternative would establish zones that do not conflict with important fishing areas, this alternative would reduce the flexibility of site location, which could require the use of inferior sites with higher start-up and operational costs. Also, confining aquaculture and hatchery operations to designated zones could result in density problems with associated environmental and economic costs. The rule would give aquaculture and hatchery operations greater flexibility in locating their operations than the third alternative, and would be expected to reduce or eliminate the siting of aquaculture and hatchery facilities in important fishing areas, which would reduce or eliminate any direct costs this alternative would impose on commercial and for-hire fishing businesses that fish in these important areas.

Four alternatives, including the status quo no-action alternative, were considered for the action to specify the species allowed for aquaculture and included in the Aquaculture FMU. This rule would allow the aquaculture and inclusion in the Aquaculture FMU of all species native to the Gulf that are managed by the Council, except shrimp and corals. The no-action alternative would allow the aquaculture of any species native to the Gulf and not develop an Aquaculture FMU. The third alternative would restrict the set of allowable species for aquaculture and inclusion in the Aquaculture FMU to species native to the Gulf and in the reef fish, red drum, and coastal migratory pelagics FMPs. This alternative would allow the smallest number of species to be aquacultured among the alternatives considered, which could result in the smallest economic benefit to offshore aquaculture operations and, conversely, the smallest amount of direct competition with Gulf fishermen. The fourth alternative would allow the aquaculture and inclusion in the Aquaculture FMU of all species native to the Gulf that are managed by the Council, except goliath and Nassau grouper, shrimp, and corals. This alternative would allow the aquaculture of more species than the third alternative but fewer species than the no-action alternative. This rule will allow for the aquaculture of the second largest number of species among the alternatives considered, which represents, potentially, the second highest economic benefit to offshore aquaculture operations and second highest potential economic costs to Gulf fishermen as a result of market competition and other externalities. The species prohibitions of the rule, however, are consistent with the understanding that shrimp aquaculture is more appropriate for land-based systems, and coral harvest, except as allowed under a live rock permit or for scientific research, is prohibited in the Gulf EEZ.

Two alternatives, including the status quo no-action alternative, and multiple sub-alternatives were considered for the action to establish a production cap for individual entities. This rule will limit the annual production of an individual entity or corporation to 12.8 million lb (5.8 million kg), round weight, which is 20 percent of the maximum 64 million lb (29 million kg), round weight, OY. The no-action alternative would not limit the production of individual entities. The two sub-alternative production caps would establish lower caps than the rule, limiting the production by an individual entity to either 5 or 10 percent of the OY. Each of these sub-alternatives would be expected to result in lower economic benefits to aquaculture producers and associated businesses, because the lower caps may adversely affect the ability to take advantage of greater economies of scale. Conversely, the lower the cap, the greater the number of potential individual aquaculture producers and associated potential increase in economic and social benefits derived from increased competition. The 20-percent cap implemented in this final rule was selected by the Council as a reasonable limit on production concentration while still enabling the potential realization of economy-of-scale benefits.

This final rule contains collection-of-information requirements subject to the PRA, which have been approved by OMB under control number 0648–0703.

The collections and the associated estimated average public reporting

burden per response are provided in the following table.

Collection requirement	Estimated burden per response
Federal Permit Application for Offshore Aquaculture in the Gulf of Mexico (for new permits and renewals)	3 hours.
Notification to Delay Permit Issuance	10 minutes.
Annual Report	10 minutes.
Baseline Environmental Survey	320 hours.
Certification for Broodstock and Juveniles	10 minutes.
Request to Harvest Broodstock	30 minutes.
Broodstock Post-Harvest Report	30 minutes.
Request to Transfer Gulf Aquaculture Permit	3 hours.
Notification of Entanglement or Interaction	30 minutes.
Marine Mammal Authorization Program Form	10 minutes.
Notification of Major Escapement Event	30 minutes.
Notification of Reportable Pathogen Episode	30 minutes.
Notification to Transport Cultured Juveniles to Offshore Systems	10 minutes.
Harvest and Landing Notification	30 minutes.
Bill of Lading	5 minutes.
Dealer Permit Application	30 minutes.
Dealer Report for Landing and Sale	30 minutes.
Assurance Bond	16 hours.
Contract with Aquatic Animal Health Expert	16 hours.
Emergency Disaster Plan	4 hours.
Fin Clip Samples	10 hours.
Broodstock Marking Requirement	8 hours.
Pinger/Location Device	8 hours.
Marking Restricted Access Zone	8 hours.
Genetic Testing	8 hours.

NMFS has recalculated the estimated time it will take to prepare a permit application and supporting documents (assurance bond, contract with a certified aquatic animal health expert, emergency disaster plan) to be approximately 39 hours (3 hours for the application, 16 hours each for the assurance bond and contract with certified aquatic animal health expert, and 4 hours for the emergency disaster plan). This estimate does not include the time necessary to complete a baseline environmental survey.

NMFS estimates that the time to complete the baseline environmental survey (collecting data and analyses) could take up to 320 hours (the proposed rule had included an estimate of 24 hours), depending on the location and size of the proposed site.

These estimates of the public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections-of-information.

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

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

List of Subjects

50 CFR Part 600

Administrative practice and procedures, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 622

Aquaculture, Fisheries, Fishing, Gulf of Mexico, Reporting and recordkeeping requirements.

Dated: January 4, 2016.

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 600 and 622 are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, in paragraph (v), in the table under the heading ''IV. Gulf of Mexico Fishery Management Council'', the entry ''21. Offshore aquaculture (FMP)'' is added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
* * * * *	
IV. Gulf of Mexico Fishery Management Council	
* * * * *	
21. Offshore aquaculture (FMP).	Cages, net pens
* * * * *	

* * * * *

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 3. The authority citation for part 622 continues to read as follows:

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

■ 4. In § 622.1, in Table 1, an entry for ''FMP for Regulating Offshore Marine Aquaculture in the Gulf'' is added in alphabetical order to read as follows:

§ 622.1 Purpose and scope.

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * * *	* *	*
FMP for Regulating Offshore Marine Aquaculture in the Gulf	GMFMC	Gulf.
* * * *	* *	*

■ 5. In § 622.2, definitions for ''Aquaculture'', ''Aquaculture facility'', ''Aquaculture system'', ''Aquatic animal health expert'', ''Cultured animals'', ''Genetically engineered animal'', ''Significant risk'', ''Transgenic animal'' and ''Wild fish'' are added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Aquaculture means all activities, including the operation of an aquaculture facility, involved in the propagation or rearing, or attempted propagation or rearing, of allowable aquaculture species in the Gulf EEZ.

Aquaculture facility means an installation or structure, including any aquaculture system(s) (including moorings), hatcheries, equipment, and associated infrastructure used to hold, propagate, or rear allowable aquaculture species in the Gulf EEZ under authority of a Gulf aquaculture permit.

Aquaculture system means any cage, net pen, enclosure, structure, or gear deployed in waters of the Gulf EEZ for holding and producing allowable aquaculture species.

* * * * *

Aquatic animal health expert means a licensed doctor of veterinary medicine or a person who is certified by the American Fisheries Society, Fish Health Section, as a ''Fish Pathologist'' or ''Fish Health Inspector.''

* * * * *

Cultured animals means animals which are propagated and/or reared by humans.

* * * * *

Genetically engineered animal means an animal modified by rDNA techniques, including the entire lineage of animals that contain the modification. The term genetically engineered animal can refer to both animals with heritable rDNA constructs and animals with non-heritable rDNA constructs (*e.g.,* those modifications intended to be used as gene therapy).

* * * * *

Significant risk means likely to adversely affect endangered or threatened species or their critical habitat; is likely to seriously injure or kill marine mammals; is likely to result in un-mitigated adverse effects on essential fish habitat; is likely to adversely affect wild fish stocks and cause them to become overfished or undergo overfishing; or otherwise may result in harm to public health or safety, as determined by the RA.

* * * * *

Transgenic animal means an animal whose genome contains a nucleotide sequence that has been intentionally modified in vitro, and the progeny of such an animal.

* * * * *

Wild fish means fish that are not propagated or reared by humans.

* * * * *

■ 6. In § 622.4, in the introductory text, a sentence is added after the second sentence to read as follows:

§ 622.4 Permits and fees—general.

* * * See subpart F of this part for permit requirements related to aquaculture of species other than live rock. * * *

* * * * *

■ 7. In § 622.13, paragraphs (pp) and (qq) are revised and paragraphs (rr) and (ss) are added to read as follows:

§ 622.13 Prohibitions—general.

* * * * *

(pp) Fail to comply with any provision related to the Offshore Marine Aquaculture program in the Gulf of Mexico as specified in this part.

(qq) Falsify any information required to be submitted regarding the Offshore Marine Aquaculture program in the Gulf of Mexico as specified in this part.

(rr) Land allowable aquaculture species cultured in the Gulf at non-U.S. ports, unless first landed at a U.S. port.

(ss) Fail to comply with any other requirement or restriction specified in this part or violate any provision(s) in this part.

■ 8. Subpart F is added to read as follows:

Subpart F—Offshore Marine Aquaculture in the Gulf of Mexico

Sec.

622.100 General.
622.101 Permits.
622.102 Recordkeeping and reporting.
622.103 Aquaculture facilities.
622.104 Restricted access zones.
622.105 Allowable aquaculture systems and species.
622.106 Aquaculture operations.
622.107 Limitation on aquaculture production.
622.108 Remedial actions.
622.109 Adjustment of management measures.

§ 622.100 General.

This subpart provides the regulatory structure for enabling environmentally sound and economically sustainable aquaculture in the Gulf EEZ. Offshore marine aquaculture activities are authorized by a Gulf aquaculture permit or Gulf aquaculture dealer permit issued under § 622.101 and are conducted in compliance with the provisions of this subpart. Aquaculture of live rock is addressed elsewhere in this part and is exempt from the provisions of this subpart.

(a) *Electronic system requirements.* (1) The administrative functions associated with this aquaculture program, *e.g.,* registration and account setup, landing transactions and most reporting requirements, are intended to be accomplished online via the Southeast Regional Office's Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/aquaculture/* therefore, a participant must have access

to a computer and Internet access and must set up an appropriate online aquaculture account to participate. Assistance with online functions is available from the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m. eastern time; telephone: 1 (877) 376–4877. If some online reporting functions are not available at the time of initial implementation of this aquaculture program, this will be indicated on the Web site and participants may comply by submitting the required information via email using the appropriate forms that are available on the Web site. Once online functions are available, participants must comply by using the online system unless alternative methods are specified.

(2) The RA will mail each person who is issued a Gulf aquaculture permit or a Gulf aquaculture dealer permit information and instructions pertinent to using the online system and setting up an online aquaculture account. The RA also will mail each permittee a user identification number and will provide each permittee a personal identification number (PIN) in a subsequent letter. Each permittee must monitor his/her online account and all associated messages and comply with all online reporting requirements.

(3) During catastrophic conditions only, the RA may authorize use of paper-based components for basic required functions as a backup to what would normally be reported electronically. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. NMFS will provide each aquaculture permittee the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA. The paper forms also will be available from the RA. The program functions available to participants or geographic areas deemed affected by catastrophic conditions may be limited under the paper-based system. Assistance in complying with the requirements of the paper-based system will be available via the Permits Office, Monday through Friday between 8 a.m. and 4:30 p.m., eastern time; telephone: 1 (877) 376–4877.

(b) [Reserved]

§ 622.101 Permits.

(a) *Gulf aquaculture permit.* For a person to deploy or operate an aquaculture facility in the Gulf EEZ or sell or attempt to sell, at the first point of sale, an allowable aquaculture species cultured in the Gulf EEZ, a Gulf aquaculture permit must have been issued to that person for that aquaculture facility, and the permit must be prominently displayed and available for inspection at the aquaculture facility. The permit number should also be included on the buoys or other floating devices used to mark the restricted access zone of the operation as specified in § 622.104(c).

(1) *Eligibility requirement for a Gulf aquaculture permit.* Eligibility for a Gulf aquaculture permit is limited to U.S. citizens as defined in the Immigration and Nationality Act of 1952, as amended, and permanent resident aliens lawfully accorded the privilege of residing permanently in the U.S. in accordance with U.S. immigration laws.

(2) *Application for a Gulf aquaculture permit.* Application forms are available from the RA. A completed application form and all required supporting documents must be submitted by the applicant (in the case of a corporation, an officer; in the case of a partnership, a general partner) to the RA at least 180 days prior to the date the applicant desires the permit to be effective. An applicant must provide all information indicated on the application form including:

(i) Applicant's name, address, and telephone number.

(ii) Business name, address, telephone number, date the business was formed, and, if the applicant is a corporation, corporate structure and shareholder information.

(iii) Information sufficient to document eligibility as a U.S. citizen or permanent resident alien.

(iv) Description of the exact location (*i.e.,* global positioning system (GPS) coordinates) and dimensions of the proposed aquaculture facility and proposed site, including a map of the site to scale.

(v) A baseline environmental survey of the proposed aquaculture site. The assessment must be conducted, and the data, analyses, and results must be summarized and presented, consistent with the guidelines specified by NMFS. NMFS' guidelines will include methods and procedures for conducting diver and video surveys, measuring hydrographic conditions, collecting and analyzing benthic sediments and infauna, and measuring water quality characteristics. The guidelines will be available on the Web site and from the RA upon request.

(vi) A list of allowable aquaculture species to be cultured; estimated start up production level by species; and the estimated maximum total annual poundage of each species to be harvested from the aquaculture facility.

(vii) Name and address or specific location of each hatchery that would provide juvenile animals for grow-out at the proposed aquaculture facility located within the Gulf EEZ and a copy of all relevant, valid state or Federal aquaculture permits issued to the hatchery.

(viii) A description of the aquaculture system(s) to be used, including the number, size and dimensions of the aquaculture system(s), a description of the mooring system(s) used to secure the aquaculture system(s), and documentation of the aquaculture system's ability to withstand physical stress, such as hurricanes, wave energy, etc., including a copy of any available engineering analysis.

(ix) A description of the equipment and methods to be used for feeding, transporting, maintaining, and removing cultured species from aquaculture systems.

(x) A copy of the valid USCG certificate of documentation or, if not documented, a copy of the valid state registration certificate for each vessel involved in the aquaculture operation; and documentation or identification numbers for any aircraft or vehicles involved.

(xi) Documentation certifying that:

(A) the applicant agrees to immediately remove cultured animals remaining in approved aquaculture systems from the Gulf EEZ as ordered by the RA if it is discovered that the animals are genetically engineered or transgenic;

(B) the applicant agrees to immediately remove cultured animals remaining in approved aquaculture systems from the Gulf EEZ as ordered by the RA if fish are discovered to be infected with a World Organization of Animal Health (OIE) reportable pathogen that represents a new detection in the Gulf or a new detection for that cultured species in the U.S. is found at the facility, or additional pathogens that are subsequently identified as reportable pathogens in the National Aquatic Animal Health Plan (NAAHP), or any other pathogen determined by NMFS and APHIS to pose a significant threat to the health of wild aquatic organisms; and,

(C) the applicant agrees to immediately remove all components of the aquaculture system and cultured

animals remaining in approved aquaculture systems from the Gulf EEZ as ordered by the RA if there are any other violations of the permit conditions or regulations other than those listed in paragraphs (a)(2)(xi)(A) and (B) of this section which causes the RA to order such removal.

(xii) Documentation certifying the applicant has obtained an assurance bond sufficient to cover the costs of removal of all components of the aquaculture facility, including cultured animals remaining in approved aquaculture systems, from the Gulf EEZ. The assurance bond would not be required to cover the costs of removing an oil and gas platform. The RA will provide applicants a form and associated guidance for complying with the assurance bond requirement. The applicant must also provide documentation certifying the applicant has established a standby trust fund into which any payments made towards the assurance bond can be deposited. The trustee of the standby trust may not be the same entity as the permittee. The assurance bond is payable at the discretion of the RA to a designee as specified in the bond or to a standby trust. When the RA directs the payment into a standby trust, all amounts paid by the assurance bond provider must be deposited directly into the standby trust fund for distribution by the trustee in accordance with the RA's instructions. A permittee will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the assurance bond. The permittee must establish other financial assurance within 60 days after such an event.

(xiii) Certification by the applicant that all broodstock, or progeny of such wild broodstock, used to provide juveniles to the aquaculture facility will be or were originally harvested from U.S. waters of the Gulf, and will be or were from the same population or subpopulation (based on the best scientific information available) where the facility is located, and that each individual broodstock was marked or tagged at the hatchery to allow for identification of those individuals used in spawning.

(xiv) Certification by the applicant that no genetically engineered or transgenic animals are used or possessed for culture purposes at the aquaculture facility.

(xv) Copy of a contractual arrangement with an identified aquatic animal health expert to provide services to the aquaculture facility has been obtained. A copy of the license or certification also must be provided to NMFS.

(xvi) A copy of an emergency disaster plan, developed for and to be used by the operator of the aquaculture facility, that includes, procedures for preparing or if necessary removing aquaculture systems, aquaculture equipment, and cultured animals in the event of a disaster (*e.g.,* hurricane, tsunami, harmful algal bloom, chemical or oil spill, etc.);

(xvii) Any other information concerning the aquaculture facility or its operations or equipment, as specified on the application form.

(xviii) Any other information that may be necessary for the issuance or administration of the Gulf aquaculture permit, as specified on the application form.

(b) *Gulf aquaculture dealer permit.* For a dealer to receive fish cultured by an aquaculture facility in the Gulf EEZ, that dealer must first obtain a Gulf aquaculture dealer permit. However, an owner or operator of an aquaculture facility with a Gulf aquaculture permit may purchase juvenile fish for grow-out from a hatchery located in the Gulf EEZ without obtaining a dealer permit. To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(1) *Application for a Gulf aquaculture dealer permit.* Application forms are available from the RA. The application must be submitted by the owner (in the case of a corporation, an officer; in the case of a partnership, a general partner). Completed application forms and all required supporting documents must be submitted to the RA at least 30 days prior to the date on which the applicant desires to have the permit made effective. An applicant must provide the following:

(i) A copy of each state wholesaler's license held by the dealer.

(ii) Name, address, telephone number, date the business was formed, and other identifying information of the business.

(iii) The address of each physical facility at a fixed location where the business receives fish from an aquaculture facility in the Gulf EEZ.

(iv) Name, address, telephone number, other identifying information, and official capacity in the business of the applicant.

(v) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(2) [Reserved]

(c) *Permit requirements for other aquaculture-related activities.* For a person to do any of the following, such person must have in his/her possession and make available upon request by NMFS or an authorized officer, a copy of a valid Gulf aquaculture permit with an original (not copied) signature of the permit owner or owner's agent:

(1) Possess or transport fish in or from the Gulf EEZ to be cultured at an aquaculture facility (*e.g.,* brood stock, fingerlings) or possess or transport fish from an aquaculture facility for landing ashore and sale.

(2) Operate, in support of aquaculture related activities, any vessel, vehicle, or aircraft authorized for use in operations related to an aquaculture facility, *i.e.,* those registered for aquaculture operation use.

(3) Harvest and retain on board a vessel live wild broodstock for use in an aquaculture facility regardless of where the broodstock is harvested or possessed.

(d) *Permit-related procedures*—(1) *Fees.* A fee is charged for each application for a permit submitted under this section and for each request for renewal, transfer or replacement of such permit. The amount of each fee is calculated in accordance with the procedures of the NOAA Finance Handbook, available from the RA, for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application or request for renewal, transfer or replacement.

(2) *Review and notifications regarding a Gulf aquaculture permit.* (i) The RA will review each application and make a preliminary determination whether the application is complete. An application is complete when all requested forms, information, and documentation have been received. If the RA determines that an application is complete, notification of receipt of the application will be published in the **Federal Register** with a brief description of the proposal and specifying the intent of NMFS to issue a Gulf aquaculture permit. The public will be given up to 45 days to comment, and comments will be requested during public testimony at a Council meeting. The RA will consult with other Federal agencies, as appropriate, and the Council concerning the permit application during the period in which public comments have been requested. The RA will notify the applicant in advance of any Council meeting at which the application will be considered, and offer the applicant the

opportunity to appear in support of the application. The RA may consider revisions to the application made by the applicant in response to public comment before approving or denying it.

(ii) As soon as practicable after the opportunity for public comment ends, the RA will notify the applicant and the Council in writing of the decision to grant or deny the Gulf aquaculture permit. If the RA grants the permit, the RA will publish a notification of the permit approval in the **Federal Register**. If the RA denies the permit, the RA will advise the applicant, in writing, of the reasons for the denial and publish a notification in the **Federal Register** announcing the denial and the basis for it. Grounds for denial of a Gulf aquaculture permit include the following:

(A) The applicant has failed to disclose material information or has made false statements with respect to any material fact, in connection with the Gulf aquaculture permit application;

(B) Based on the best scientific information available, issuance of the permit would pose significant risk to wild fish stocks, marine mammals, threatened or endangered species, essential fish habitat, public health, or safety; or,

(C) Activities proposed to be conducted under the Gulf aquaculture permit are inconsistent with aquaculture regulations in this section, the management objectives of the FMP, or the Magnuson-Stevens Act or other applicable law.

(D) Use of the proposed site is denied based on the criteria set forth in § 622.103(a)(4).

(3) *Initial issuance.* (i) Upon receipt of an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 60 days of the date of the RA's letter of notification or request an extension of time by contacting the NMFS Southeast Regional Office before the end of the 60-day timeframe, the application will be considered abandoned.

(ii) Prior to issuance of a Gulf aquaculture permit, a copy of currently valid Federal permits (*e.g.,* ACOE Section 10 permit, and Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) permit) applicable to the proposed aquaculture site, facilities, or operations, must be submitted to NMFS.

(iii) The RA will issue an initial permit to an applicant after the review and notification procedures set forth in paragraph (d)(2)(i) of this section are complete and the decision to grant the permit is made under paragraph (d)(2)(ii) of this section. The initial permit will be issued 30 days after the RA notifies the applicant of the decision to grant the permit, unless NMFS receives a written request from the applicant before the end of the 30 day period to defer issuance of the permit. If the applicant requests a deferral, NMFS will include this information in the notification of permit approval published in the **Federal Register** as specified in paragraph (d)(2)(ii) of this section and will publish a **Federal Register** notice upon permit issuance. Permit issuance will be deferred for two years from the date of the RA notification unless the applicant sends a written request to NMFS to issue the permit at an earlier date. This written request must be received by NMFS at least 30 days prior to the date the applicant desires the permit to be effective.

(4) *Duration.* A Gulf aquaculture permit will initially be issued for a 10-year period and may be renewed in 5-year increments thereafter. An aquaculture dealer permit is an annual permit and must be renewed annually. A permit remains valid for the period specified on it unless it is revoked, suspended, or modified pursuant to subpart D of 15 CFR part 904 or the aquaculture facility is sold and the permit has not been transferred or the dealership is sold. Once the aquaculture permit is no longer valid, all components of the aquaculture facility, including cultured animals remaining in approved aquaculture systems, must be removed immediately from the Gulf EEZ.

(5) *Transfer.* (i) A Gulf aquaculture permit is transferable to an eligible person, *i.e.,* a U.S. citizen or permanent resident alien if the geographic location of the aquaculture site remains unchanged. An eligible person who acquires an aquaculture facility that is currently permitted and who desires to conduct activities for which a permit is required may request that the RA transfer the permit to him/her. At least 30 days prior to the desired effective date of the transfer, such a person must complete and submit to the RA or via the Web site a permit transfer request form that is available from the RA. The permit transfer request form must be accompanied by the original Gulf aquaculture permit, a copy of a signed bill of sale or equivalent acquisition papers, and a written agreement between the transferor and transferee specifying who is assuming the responsibilities and liabilities associated with the Gulf aquaculture permit and the aquaculture facility, including all the terms and conditions associated with the original issuance of the Gulf aquaculture permit. All applicable permit requirements and conditions must be satisfied prior to a permit transfer, including any necessary updates, *e.g.,* updates regarding required certifications, legal responsibility for assurance bond, other required permits, etc. The seller must sign the back of the Gulf aquaculture permit, and have the signed transfer document notarized. Final transfer of a Gulf aquaculture permit will occur only after the RA provides official notice to both parties that the transferee is eligible to receive the permit and that the transfer is otherwise valid.

(ii) An aquaculture dealer permit is not transferable.

(6) *Renewal.* An aquaculture facility owner or aquaculture dealer who has been issued a permit under this subpart must renew such permit consistent with the applicable duration of the permit specified in paragraph (d)(4) of this section. The RA will mail an aquaculture facility owner or aquaculture dealer whose permit is expiring an application for renewal at least 6 months prior to the expiration date of a Gulf aquaculture facility permit and approximately 2 months prior to the expiration date of an aquaculture dealer permit. An aquaculture facility owner or aquaculture dealer who does not receive a renewal application from the RA within the time frames indicated in this paragraph must contact the RA and request a renewal application. The applicant must submit a completed renewal application form and all required supporting documents to the RA at least 120 days prior to the date on which the applicant desires to have a Gulf aquaculture permit made effective and at least 30 days prior to the date on which the applicant desires to have an aquaculture dealer permit made effective. If the RA receives an incomplete application, the RA will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 60 days of the date of the RA's letter of notification or request an extension of time by contacting the NMFS Southeast Regional Office before the end of the 60 day timeframe, the application will be considered abandoned.

(7) *Display.* A Gulf aquaculture permit issued under this section must be prominently displayed and available for inspection at the aquaculture facility. The permit number should also be included on the buoys or other floating devices used to mark the restricted access zone of the operation as specified

in § 622.104(c). An aquaculture dealer permit issued under this section, or a copy thereof, must be prominently displayed and available on the dealer's premises. In addition, a copy of the dealer's permit, or the aquaculture facility's permit (if the fish have not yet been purchased by a dealer), must accompany each vehicle that is used to receive fish harvested from an aquaculture facility in the Gulf EEZ. A vehicle operator must present the permit or a copy for inspection upon the request of an authorized officer.

(8) *Sanctions and denials.* A Gulf aquaculture permit or aquaculture dealer permit issued pursuant to this section may be revoked, suspended, or modified, and such permit applications may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

(9) *Alteration.* A Gulf aquaculture permit or aquaculture dealer permit that is altered, erased, or mutilated is invalid.

(10) *Replacement.* A replacement Gulf aquaculture permit or aquaculture dealer permit may be issued. An application for a replacement permit is not considered a new application.

(11) *Change in application information.* An aquaculture facility owner or aquaculture dealer who has been issued a permit under this subpart must notify the RA within 30 days after any change in the applicable application information specified in paragraphs (a) or (b) of this section. If any change in the information is not reported within 30 days aquaculture operations may no longer be conducted under the permit.

§ 622.102 Recordkeeping and reporting.

(a) Participants in Gulf aquaculture activities addressed in this subpart must keep records and report as specified in this section. Unless otherwise specified, required reporting must be accomplished electronically via the Web site. See § 622.100(a)(3) regarding provisions for paper-based reporting in lieu of electronic reporting during catastrophic conditions as determined by the RA. Recordkeeping (*i.e.,* maintaining records versus submitting reports) may, to the extent feasible, be maintained electronically; however, paper-based recordkeeping also is acceptable.

(1) *Aquaculture facility owners or operators.* An aquaculture facility owner or operator must comply with the following requirements:

(i) *Reporting requirements*—(A) *Transport of fingerlings/juvenile fish to an aquaculture facility.* Report the time, date, species and number of cultured fingerlings or other juvenile animals that will be transported from a hatchery to an aquaculture facility at least 72 hours prior to transport. This information may be submitted electronically via the Web site or via phone. In addition, permittees are to maintain and make available to NMFS or an authorized officer upon request a written or electronic daily record of the number of cultured animals introduced into and the total pounds and average weight of fish removed from each approved aquaculture system, including mortalities, for the most recent 3 years.

(B) *Major escapement.* Report any major escapement or suspected major escapement within 24 hours of the event. Major escapement is defined as the escape, within a 24-hour period, of 10 percent of the fish from a single approved aquaculture system (*e.g.,* one cage or one net pen) or 5 percent or more of the fish from all approved aquaculture systems combined, or the escape, within any 30-day period, of 10 percent or more of the fish from all approved aquaculture systems combined. The report must include the items in paragraphs (a)(1)(i)(B)(*1*) through (*6*) of this section and may be submitted electronically via the Web site. If no major escapement occurs during a given year, an annual report must be submitted via the Web site on or before January 31 each year indicating no major escapement occurred.

(*1*) Gulf aquaculture permit number;

(*2*) Name and phone number of a contact person;

(*3*) Duration and specific location of escapement, including the number of cages or net pens involved;

(*4*) Cause(s) of escapement;

(*5*) Number, size, and percent of fish, by species, that escaped; and

(*6*) Actions being taken to address the escapement.

(C) *Pathogens.* Report, within 24 hours of diagnosis, all findings or suspected findings of any OIE-reportable pathogen episodes or pathogens that are identified as reportable pathogens in the NAAHP, as implemented by the USDA and U.S. Departments of Commerce and Interior, that are known to infect the cultured species. The report must include the items in paragraphs (a)(1)(i)(C)(*1*) through (*6*) of this section and may be submitted electronically via the Web site. If no finding or suspected finding of an OIE-reportable pathogen episode occurs during a given year, an annual report must be submitted via the Web site on or before January 31 each year indicating no finding or suspected finding of an OIE-reportable pathogen episode occurred. See § 622.108(a)(1) regarding actions NMFS may take to address a pathogen episode.

(*1*) OIE-reportable pathogen;

(*2*) Percent of cultured animals infected;

(*3*) Findings of the aquatic animal health expert;

(*4*) Plans for submission of specimens for confirmatory testing (as required by the USDA);

(*5*) Testing results (when available); and

(*6*) Actions being taken to address the reportable pathogen episode.

(D) *Harvest notification.* Report the time, date, and weight of fish to be harvested from an aquaculture facility at least 72 hours prior to harvest. This information may be submitted electronically via the Web site or via phone.

(E) *Landing information.* Report the intended time, date, and port of landing for any vessel landing fish harvested from an aquaculture facility at least 72 hours prior to landing. This information may be submitted electronically via the Web site or via phone. The person landing the cultured animals must validate the dealer transaction report required in paragraph (a)(2)(i) of this section by entering the unique PIN number of the Gulf aquaculture permit holder from whom the fish were received when the transaction report is submitted.

(F) *Change of hatchery.* Report any change in hatcheries used for obtaining fingerlings or other juvenile animals and provide updated names and addresses or specific locations (if no address is available) for the applicable hatcheries no later than 30 days after any such change occurs. This information may be submitted electronically via the Web site.

(G) *Entanglements or interactions with marine mammals, endangered species, or migratory birds.* Report any entanglement or interaction with marine mammals, endangered species, or migratory birds within 24 hours of the event. The report must include the items included in paragraphs (a)(1)(i)(G)(*1*) through (*5*) of this section and may be submitted electronically via the Web site. If no entanglement or interaction with marine mammals, endangered species, or migratory birds occurs during a given year, an annual report must be submitted via the Web site on or before January 31 each year indicating no entanglement or interaction occurred.

(*1*) Date, time, and location of entanglement or interaction.

(*2*) Species entangled or involved in interactions and number of individuals affected;

(*3*) Number of mortalities and acute injuries observed;

(*4*) Cause of entanglement or interaction; and

(*5*) Actions being taken to prevent future entanglements or interactions.

(H) *Feed invoices.* The permittee must keep the original purchase invoices for feed or copies of purchase invoices for feed, make them available to NMFS or an authorized officer upon request, and be maintained for a period of 3 years.

(I) Any other reporting requirements specified by the RA for evaluating and assessing the environmental impacts of an aquaculture operation.

(ii) *Other reporting requirements.* In addition to the reporting requirements in paragraph (a)(1)(i) of this section, an aquaculture facility owner or operator must comply with the following reporting requirements:

(A) Provide NMFS with current copies of all valid state and Federal permits (*e.g.,* ACOE Section 10 permit, EPA NPDES permit) required for conducting offshore aquaculture and report any changes applicable to those permits.

(B) Provide NMFS with current copies of all valid state and Federal aquaculture permits for each hatchery from which fingerlings or other juvenile animals are obtained and report any changes applicable to those permits within 30 days.

(iii) *Recordkeeping requirements.* An aquaculture facility owner or operator must comply with the following recordkeeping requirements:

(A) Maintain for the most recent 3 years and make available to NMFS or an authorized officer, upon request, monitoring reports related to aquaculture activities required by all other state and Federal permits (*e.g.,* EPA NPDES permit) required for conducting offshore aquaculture.

(B) Maintain records of all sales of fish for the most recent 3 years and make that information available to NMFS or an authorized officer upon request. Sale records must include the species and quantity of fish sold in pounds round weight; estimated average weight of fish sold to the nearest tenth of a pound by species; date sold; and the name of the entity to whom fish were sold.

(2) *Aquaculture dealer recordkeeping and reporting requirements.* A dealer who purchases fish from an aquaculture facility in the Gulf EEZ must:

(i) Complete a landing transaction report for each landing and sale of cultured animals via the Web site at the time of the transaction in accordance with reporting form and instructions provided on the Web site. This report includes date, time, and location of transaction; information necessary to identify the Gulf aquaculture permit holder, vessel, and dealer involved in the transaction; quantity, in pounds round weight, and estimated average weight of each species landed to the nearest tenth of a pound; and average price paid for cultured animals landed and sold by market category. A dealer must maintain such record for at least 3 years after the receipt date and must make such record available for inspection upon request to NMFS or an authorized officer.

(ii) After the dealer submits the report and the information has been verified, the Web site will send a transaction approval code to the dealer and the aquaculture permit holder.

(b) [Reserved]

§ 622.103 Aquaculture facilities.

(a) *Siting requirements and conditions.* (1) No aquaculture facility may be sited in the Gulf EEZ within a marine protected area, marine reserve, Habitat Area of Particular Concern, Special Management Zone, permitted artificial reef area specified in this part or a coral area as defined in § 622.2.

(2) No aquaculture facility may be sited within 1.6 nautical miles (3 km) of another aquaculture facility and all structures associated with the facility must remain within the sited boundaries.

(3) To allow fallowing and rotation of approved aquaculture systems within a site permitted by the ACOE and approved by NMFS, the permitted site for the aquaculture facility must be at least twice as large as the combined area of the aquaculture systems.

(4) The RA will evaluate siting criteria for proposed offshore aquaculture operations on a case-by-case basis. Criteria considered by the RA during case-by-case review include data, analyses, and results of the required baseline environmental survey as specified in § 622.101(a)(2)(v); depth of the site; the frequency of harmful algal blooms or hypoxia at the proposed site; marine mammal migratory pathways; the location of the site relative to commercial and recreational fishing grounds and important natural fishery habitats (*e.g.,* seagrasses). The RA may deny use of a proposed aquaculture site based on a determination by the RA that such a site poses significant risks to wild fish stocks, essential fish habitat, endangered or threatened species, marine mammals, will result in user conflicts with commercial or recreational fishermen or other marine resource users, will result in user conflicts with the OCS energy program, the depth of the site is not sufficient for the approved aquaculture system, substrate and currents at the site will inhibit the dispersal of wastes and effluents, the site is prone to low dissolved oxygen or harmful algal blooms, or other grounds inconsistent with FMP objectives or applicable Federal laws. The information used for siting a facility with regard to proximity to commercial and recreational fishing grounds includes electronic logbooks from the shrimp fishery, logbook reported fishing locations, siting information from previously proposed or permitted aquaculture facilities, and other data that would provide information regarding how the site would interact with other fisheries. The RA's determination will be based on consultations with appropriate NMFS and NOAA offices and programs, public comment, as well as siting and other information submitted by the permit applicant. If a proposed site is denied, the RA will deny the Gulf Aquaculture Permit and provide this determination as required by § 622.101(d)(2)(ii).

(b) [Reserved]

§ 622.104 Restricted access zones.

(a) *Establishment of restricted access zones.* NMFS will establish a restricted access zone for each aquaculture facility. The boundaries of the restricted access zone will correspond with the coordinates listed on the approved ACOE Section 10 permit associated with the aquaculture facility.

(b) *Prohibited activities within a restricted access zone.* No recreational fishing or commercial fishing, other than aquaculture, may occur in the restricted access zone. No fishing vessel may operate in or transit through the restricted access zone unless the vessel has on board a copy of the aquaculture facility's permit with an original signature, *i.e.,* not a copy of the signature, of the permittee.

(c) *Marking requirement.* The permittee must mark the restricted access zone with a floating device such as a buoy at each corner of the zone, as authorized by the USCG. Each floating device must clearly display the aquaculture facility's permit number and the words ''RESTRICTED ACCESS'' in block characters at least 6 inches (15.2 cm) in height and in a color that contrasts with the color of the floating device.

§ 622.105 Allowable aquaculture systems and species.

(a) *Allowable aquaculture systems.* The RA will evaluate each proposed aquaculture system on a case-by-case basis and approve or deny use of the proposed system for offshore marine aquaculture in the Gulf EEZ. Proposed aquaculture systems may consist of cages, net pens, enclosures or other structures and gear which are used to culture marine species. The RA will evaluate the structural integrity of a proposed aquaculture system based, in part, on the required documentation (*e.g.,* engineering analyses, computer and physical oceanographic model results) submitted by the applicant to assess the ability of the aquaculture system(s) (including moorings) to withstand physical stresses associated with major storm events, *e.g.* hurricanes, storm surge. The RA also will evaluate the proposed aquaculture system and its operations based on the potential to pose significant risks to essential fish habitat, endangered or threatened species, marine mammals, wild fish stocks, public health, or safety. The RA may deny use of a proposed aquaculture system or specify conditions for using an aquaculture system based on a determination of such significant risks. The RA's evaluation will be based on information provided by the applicant as well as consultations with appropriate NMFS and NOAA offices and programs. If the RA denies use of a proposed aquaculture system or specifies conditions for its use, the RA will deny the Gulf Aquaculture Permit and provide this determination as required by § 622.101(d)(2)(ii).

(b) *Allowable aquaculture species.* Only the following federally managed species that are native to the Gulf and are not genetically engineered or transgenic, may be cultured in an aquaculture facility in the Gulf EEZ:

(1) Species of coastal migratory pelagic fish, as defined in § 622.2.

(2) Species of Gulf reef fish, as listed in appendix A to this part.

(3) Red drum, *Sciaenops ocellatus.*

(4) Spiny lobster, *Panulirus argus.*

§ 622.106 Aquaculture operations.

(a) *Operational requirements and restrictions.* An owner or operator of an aquaculture facility for which a Gulf aquaculture permit has been issued must comply with the following operational requirements and restrictions.

(1) *Minimum start-up requirement.* At least 25 percent of aquaculture systems approved for use at a specific aquaculture facility at the time of permit issuance must be placed in the water at the permitted aquaculture site within 2 years of issuance of the Gulf aquaculture permit, and allowable species for aquaculture must be placed in the aquaculture system(s) within 3 years of issuance of the permit. Failure to comply with these requirements will be grounds for revocation of the permit. A permittee may request a 1-year extension to the above time schedules in the event of a catastrophe (*e.g.,* hurricane). Requests must be made in writing and submitted to the RA. The RA will approve or deny the request after determining if catastrophic conditions directly caused or significantly contributed to the permittee's failure to meet the required time schedules. The RA will provide the determination and the basis for it, in writing, to the permittee.

(2) *Marking requirement.* The permittee must maintain a minimum of one properly functioning electronic locating device (*e.g.,* GPS device, pinger with radio signal) on each approved aquaculture system placed in the water at the aquaculture facility.

(3) *Restriction on allowable hatcheries.* A permittee may only obtain juvenile animals for grow-out at an aquaculture facility from a hatchery located in the U.S.

(4) *Hatchery certifications.* (i) The permittee must obtain and submit to NMFS a signed certification from the owner(s) of the hatchery, from which fingerlings or other juvenile animals are obtained, indicating the broodstock have been individually marked or tagged (*e.g.,* via a Passive Integrated Transponder (PIT), coded wire, dart, or internal anchor tag) to allow for identification of those individuals used in spawning.

(ii) The permittee also must obtain and submit to NMFS signed certification from the owner(s) of the hatchery indicating that fin clips or other genetic materials were collected and submitted for each individual brood animal in accordance with procedures specified by NMFS.

(iii) The certifications required in paragraphs (a)(4)(i) and (ii) of this section must be provided to NMFS by the permittee each time broodstock are acquired by the hatchery or used for spawning.

(5) *Health certification.* Prior to stocking fish in an approved aquaculture system at an aquaculture facility in the Gulf EEZ, the permittee must provide NMFS a copy of a health certificate (suggested form is USDA/Animal and Plant Health Inspection Service (APHIS) VS 17–141, OMB 0579–0278) signed by an aquatic animal health expert, as defined in § 622.101(a)(2)(xv), certifying that the fish have been inspected and are visibly healthy and the source population is test negative for OIE pathogens specific to the cultured species and pathogens identified as reportable pathogens in the NAAHP as implemented by the USDA and U.S. Departments of Commerce and Interior.

(6) *Use of drugs and other chemicals or agents.* Use of drugs, pesticides, and biologics must comply with all applicable Food and Drug Administration (FDA), EPA, and USDA requirements (*e.g.,* Federal, Food, Drug and Cosmetic Act, 21 U.S.C. 301 *et seq.;* Clean Water Act, 40 CFR part 122; 9 CFR parts 101 through 124; 21 CFR parts 500 through 599; and 40 CFR parts 150 through 189).

(7) *Feed practices and monitoring.* The permittee must conduct feed monitoring and management practices in compliance with EPA regulations at 40 CFR 451.21, if applicable to the facility.

(8) *Monitoring and reporting compliance.* The permittee must monitor and report the environmental survey parameters at the aquaculture facility consistent with NMFS' guidelines that will be available on the Web site and from the RA upon request. The permittee also must comply with all applicable monitoring and reporting requirements specified in their valid ACOE Section 10 permit and valid EPA NPDES permit.

(9) *Inspection for protected species.* The permittee must regularly inspect approved aquaculture systems, including mooring and anchor lines, for entanglements or interactions with marine mammals, protected species, and migratory birds. The frequency of inspections will be specified by NMFS as a condition of the permit. If entanglements or interactions are observed, they must be reported as specified in § 622.102(a)(1)(i)(G).

(10) *Fishing gear stowage requirement.* Any vessel transporting cultured animals to or from an aquaculture facility must stow fishing gear as follows:

(i) A longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck. Hooks cannot be baited. All buoys must be disconnected from the gear; however, buoys may remain on deck.

(ii) A trawl net may remain on deck, but trawl doors must be disconnected from the trawl gear and must be secured.

(iii) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(iv) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (*i.e.,* hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(v) All other fishing gear must be stored below deck or in an area where it is not normally used or readily available for fishing.

(11) *Prohibition of possession of wild fish in restricted access zone.* Except for broodstock, authorized pursuant to paragraph (a)(16) of this section, possession of any wild fish at or within the boundaries of an aquaculture facility's restricted access zone is prohibited.

(12) *Prohibition of possession of wild fish aboard vessels, vehicles, or aircraft associated with aquaculture operations.* Possession and transport of any wild fish aboard an aquaculture operation's transport or service vessels, vehicles, or aircraft is prohibited while engaged in aquaculture related activities, except when harvesting broodstock as authorized by NMFS.

(13) *Maintaining fish intact prior to landing.* Cultured finfish must be maintained whole with heads and fins intact until landed on shore. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. Spiny lobster must be maintained whole with the tail intact until landed on shore.

(14) *Restriction on offloading.* For the purpose of this paragraph, offload means to remove cultured animals from a vessel following harvest from an offshore aquaculture facility. Cultured animals may only be offloaded between 6 a.m. and 6 p.m., local time.

(15) *Bill of lading requirement.* Any cultured animals harvested from an aquaculture facility and being transported must be accompanied by the applicable bill of lading through landing ashore and the first point of sale. The bill of lading must include species name, quantity in numbers or pounds by species, date and location of landing, Gulf aquaculture permit number of the aquaculture facility from which the fish were harvested, and name and address of purchaser.

(16) *Request to harvest broodstock.* (i) At least 30 days prior to each time a permittee or their designee intends to harvest broodstock from the Gulf, including from state waters, that would be used to produce juvenile fish for an aquaculture facility in the Gulf EEZ, the permittee must submit a request to the RA via the Web site using a Web-based form. The information submitted on the form must include the number, species, and size of fish to be harvested; methods, gear, and vessels (including USCG documentation or state registration number) to be used for capturing, holding, and transporting broodstock; date and specific location of intended harvest; and the location to which broodstock would be delivered.

(ii) Allowable methods or gear used for broodstock capture in the EEZ include those identified for each respective fishery in § 600.725, except red drum, which may be harvested only with handline or rod and reel.

(iii) The RA may deny or modify a request for broodstock harvest if allowable methods or gear are not proposed for use, the number of fish harvested for broodstock is more than necessary for purposes of spawning and rearing activities, or the harvest will be inconsistent with FMP objectives or other Federal laws. If a broodstock collection request is denied or modified, the RA will provide the determination and the basis for it, in writing to the permittee. If a broodstock collection request is approved, the permittee must submit a report to the RA including the number and species of broodstock harvested, their size (length and weight), and the geographic location where the broodstock were captured. The report must be submitted on a Web-based form available on the Web site no later than 15 days after the date of harvest.

(iv) Notwithstanding the requirements in § 622.106(a)(16), all proposed harvest of broodstock from state waters also must comply with all state laws applicable to the harvest of such species.

(17) *Authorized access to aquaculture facilities.* A permittee must provide NMFS employees and authorized officers access to an aquaculture facility to conduct inspections or sampling necessary to determine compliance with the applicable regulations relating to aquaculture in the Gulf EEZ. In conducting the inspections, NMFS may enter into cooperative agreements with States, may delegate the inspection authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party inspection results. The non-Federal Government third party may not be the same entity as the permittee.

(b) [Reserved]

§ 622.107 Limitation on aquaculture production.

No individual, corporation, or other entity will be authorized to produce more than 12.8 million lb (5.8 million kg), round weight, of cultured species annually from permitted aquaculture facilities in the Gulf EEZ. Production of juvenile fish by a hatchery in the Gulf EEZ will not be counted toward this limitation because those fish would be accounted for subsequently via reported harvest at the aquaculture facility where grow out occurs.

§ 622.108 Remedial actions.

(a) *Potential remedial actions by NMFS.* In addition to potential permit sanctions and denials in accordance with subpart D of 15 CFR part 904, NMFS may take the following actions, as warranted, to avoid or mitigate adverse impacts associated with aquaculture in the Gulf EEZ.

(1) *Actions to address pathogen episodes.* NMFS, in cooperation with USDA's APHIS, may order movement restrictions and/or the removal of all cultured animals from an approved aquaculture system upon confirmation by a USDA's APHIS reference laboratory that an OIE-reportable pathogen, or additional pathogens that are subsequently identified as reportable pathogens in the NAAHP exists and USDA's APHIS and NMFS determine the pathogen poses a significant threat to the health of wild or cultured aquatic organisms.

(2) *Actions to address genetic issues.* NMFS may sample cultured animals to determine genetic lineage and, upon a determination that genetically engineered or transgenic animals were used or possessed at an aquaculture facility, will order the removal of all cultured animals of the species for which such determination was made. In conducting the genetic testing to determine that all broodstock or progeny of such broodstock will be or were originally harvested from U.S. waters of the Gulf, will be or were from the same population or sub-population that occurs where the facility is located, and that juveniles stocked in offshore aquaculture systems are the progeny of wild broodstock, or other genetic testing necessary to carry out the requirements of the FMP, NMFS may enter into cooperative agreements with States, may delegate the testing authority to any State, or may contract with any non-Federal Government entities. As a condition of the permit, NMFS may also require the permittee to contract a non-Federal Government third party approved by the RA if the RA agrees to accept the third party testing results.

The non-Federal Government third party may not be the same entity as the permittee.

(b) [Reserved]

§ 622.109 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Regulating Offshore Marine Aquaculture in the Gulf of Mexico, the RA may establish or modify the items in paragraph (a) of this section for offshore marine aquaculture.

(a) For the entire aquaculture fishery: MSY, OY, permit application requirements, operational requirements and restrictions, including monitoring requirements, aquaculture system requirements, siting requirements for aquaculture facilities, and recordkeeping and reporting requirements.

(b) [Reserved]

[FR Doc. 2016–00147 Filed 1–11–16; 4:15 pm]

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FEDERAL REGISTER

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Part IV

Federal Communication Commission

47 CFR Parts 1, 2, 15, *et al.*
Use of Spectrum Bands Above 24 GHz for Mobile Radio Services; Proposed Rules

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 25, 30, and 101

[GN Docket No. 14–177, IB Docket Nos. 15–256 and 97–95, RM–11664, WT Docket No. 10–112; FCC 15–138]

Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this *document,* the Federal Communications Commission (Commission or FCC) have identified specific spectrum bands above 24 GHz that appear to be suitable for mobile service, and we seek comment on proposed service rules that would authorize mobile and other operations in those bands. This development of service rules for mobile use of the millimeter wave (mmW) bands occurs in the context of our efforts to develop a regulatory framework that will help facilitate so-called Fifth Generation (5G) mobile services.

DATES: Comments are due on or before January 26, 2016; reply comments are due on or before February 23, 2016. Written comments on the proposed information collection requirements, subject to the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13, should be submitted on or before March 14, 2016.

ADDRESSES: You may submit comments, identified by FCC 15–138, by any of the following methods:

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS) *http://fjallfoss.fcc.gov/ecfs2/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments and transmit one electronic copy of the filing to FCC 15–138. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number.
- Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form <your email address>''. A sample form and instructions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners.
- Envelopes must be disposed of *before* entering the building. The filing hours are 8:00 a.m. to 7 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 E. Hampton Dr., Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority must be addressed to 445 12th St. SW., Washington DC 20554.

In addition, document FCC 15–138 contains proposed information collection requirement subject to the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this document. PRA comments should be submitted to Cathy Williams via email at *PRA@fcc.gov* and/or *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: John Schauble of the Wireless Telecommunications Bureau, Broadband Division, at 202–418–0797 or *John.Schauble@fcc.gov,* Michael Ha of the Office of Engineering and Technology, Policy and Rules Division, at 202–418–2099 or *Michael.Ha@fcc.gov,* or Howard Griboff of the International Bureau, Policy Division, at 202–418–0657 or *Howard.Griboff@fcc.gov.* For information regarding the PRA information collection requirements contained in this PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918, or via email at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*), GN Docket No. 14–177, IB Docket Nos 15–256 and 97–95, RM–11664, WT Docket No. 10–112; FCC 15–138, adopted and released on October 22, 2015. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 200554. The complete text is available on the Commission's Web site at *http://wireless.fcc.gov,* or by using the search function on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or telephone the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 18–0432 (TTY). To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain;* (2) find the section of the Web page called ''Currently Under Review''; (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading; (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box; (5) click the ''Submit'' button to the right of the ''Select Agency'' box; and (6) when the list of FCC ICRs currently under review appears, look for the *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services* and then click on the ICR Reference Number.

Ex Parte Rules—Permit-But-Disclose

Pursuant to section 1.1200(a) of the Commission's rules, this *NPRM* shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff

during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), U.S.C. 603. The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. 104–121, Title II, 110 Stat. 857 (1996). The Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *NPRM.* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines specified in the NPRM for comments.

Report to Small Business Administration

The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA), 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**, 5 U.S.C. 603(a).

Paperwork Reduction Act

The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. Public and agency comments are due March 14, 2016. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506 (c)(4), the Commission seeks specific comment on how it may ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Use of Spectrum Bands Above 24 GHz for Mobile Radio Services.

Form No.: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; Not-for-profit Institutions; State, local or tribal governments.

Number of Respondents and Responses: 35 respondents and 130 responses.

Estimated Time Per Response: .5–10 hours.

Frequency of Response: On occasion reporting requirements; Record keeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection are contained in sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336, Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

Total Annual Burden: 5,015 hours.

Total Annual Costs: None.

Privacy Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Need for, and Objectives of, the NPRM: In the Use of Spectrum Bands Above 24 GHz for Mobile Radio Services NPRM, the Commission promotes a flexible regulatory environment for the next generation of wireless services. In this *NPRM,* the Commission identify specific spectrum bands above 24 GHz that appear to be suitable for mobile service, and we seek comment on proposed service rules that would authorize mobile and other operations in those bands. This development of service rules for mobile use of the millimeter wave (mmW) bands will help facilitate so-called Fifth Generation (5G) mobile services.

I. Introduction

1. Today we take further steps to promote a flexible regulatory environment for the next generation of wireless services. In this *NPRM,* we continue our examination of higher frequency bands for mobile and other uses. In that regard, we identify specific spectrum bands above 24 GHz that appear to be suitable for mobile service, and we seek comment on proposed service rules that would authorize mobile and other operations in those bands. This development of service rules for mobile use of the millimeter wave (mmW) bands occurs in the context of our efforts to develop a regulatory framework that will help facilitate so-called Fifth Generation (5G) mobile services. We note that we do not intend to define what qualifies as ''5G''. Standard bodies like 3GPP and the International Telecommunications Union (ITU) plan to develop the requirements by early 2017.

2. The framework we propose is built off of two decades of successful policies that stimulate and promote innovation and investment in wireless technologies and services. We propose rules that will enable flexibility in the uses and technologies that might be deployed in these bands in a way that also promotes coexistence between these different uses and technologies. We recognize that several of the bands we are examining are shared with satellite services, the Federal government, and fixed users. We believe it is possible to adopt a flexible and modern set of rules that can facilitate sharing among a wide variety of users and platforms. We propose to require flexible use commercial licensees to protect incumbent Federal operations consistent with Federal allocations in these bands, and expect that detailed sharing studies will be conducted as we consider development of the service rules for these bands to ensure that our proposed rules adequately protect Federal users.

3. In developing service rules for the mmW bands, we aim to facilitate access to spectrum, develop a flexible spectrum policy, and encourage wireless innovation. In order to ensure wide access to spectrum, we propose to use a variety of licensing mechanisms, including geographic area licenses, unlicensed operation under Part 15 of our rules, and authorizing indoor operating rights to property owners. In developing our technical rules, our goal is to develop flexible rules that will accommodate a wide variety of current and future technologies. Flexibility will

also encourage innovation in the development of advanced wireless services using the mmW bands.

II. Solicitation of Comments

4. In this Notice of Proposed Rulemaking, we seek comment on the following proposals:

- 28 GHz and 39 GHz bands: We propose to authorize mobile operations in the 27.5–28.35 GHz band (28 GHz band) and the 38.6–40 GHz band (39 GHz band) with county-sized geographic area licenses. These bands could be suitable for deployment of high-capacity, high-throughput small cells as part of mobile broadband deployments. At the same time, we propose rules that would provide licensees with the flexibility to conduct fixed and/or mobile operations.
- 64–71 GHz band: We propose to authorize operations in the 64–71 GHz band under Part 15 of our rules based on the rules we recently adopted for the adjacent 57–64 GHz band. This action will provide more spectrum for unlicensed uses such as Wi-Fi-like ''WiGig'' operations.
- 37 GHz band: In the 37–38.6 GHz band (37 GHz band), we propose a hybrid licensing scheme that would grant operating rights by rule to property owners, while establishing geographic area licenses based on counties for outdoor use. This licensing mechanism would facilitate the deployment of advanced enterprise and industrial applications not suited to unlicensed spectrum or public network services, while also providing additional spectrum for more traditional cellular deployments.
- Other Rules
- We propose to grant mobile operating rights to existing fixed Local Multipoint Distribution Service (LMDS) and 39 GHz band licensees, and seek comment on utilizing an overlay auction as an alternative.
- We propose to consider market-based rules that could facilitate greater satellite use of the 28 GHz, 37 GHz, and 39 GHz bands without unduly limiting terrestrial use of those bands.
- We seek comment on potential licensing approaches for the 28 GHz, 37 GHz, and 39 GHz bands. In particular, we seek comment on revising the performance requirements applicable to those bands.
- We seek comment on technical rules needed to facilitate licensed operation and mitigation methods to ensure protection of incumbent operations in the 28 GHz, 37 GHz, and 39 GHz bands.
- We propose to require mobile licensees to protect incumbent Federal operations, consistent with the Federal allocations in these bands. We seek detailed comment and analysis on ensuring compatibility between Federal uses and new mobile use of these bands, including comment on any rules that would be necessary to facilitate coexistence with Federal systems.
- We seek comment on how to ensure that effective security features are built into key design principles for communications devices and networks that will use these bands.

III. Background

A. The Millimeter-Wave Mobile Opportunity

5. Millimeter-wave frequencies have historically been considered unsuitable for mobile applications because of propagation losses at such high frequencies and the inability of mmW signals to propagate around obstacles. Short transmission paths and high propagation losses can facilitate spectrum re-use in microcellular deployments by limiting the amount of interference between adjacent cells. In addition, where longer paths are desired, the extremely short wavelengths of mmW signals make it feasible for very small antennas to concentrate signals into highly focused beams with enough gain to overcome propagation losses. The short wavelengths of mmW signals also make it possible to build multi-element, dynamic beam-forming antennas that will be small enough to fit into handsets.

6. While the discussion concerning a possible fifth generation of mobile wireless technology includes a wide variety of ideas and technological developments, the possible use of mmW bands for mobile use is a key concept within that discussion. Many commenters point to the increasing demand for data from consumers using an ever wider variety of devices. The mmW bands could be particularly useful in supporting very high capacity networks in areas that require such capacity. Several commenters also see the mmW bands being used for backhaul and machine-to-machine communication. Several commenters also highlighted that the low latency of 5G technology will enable various Internet of Things (IoT) applications including wearables, fitness and healthcare devices, autonomous driving cars, and home and office automation. In addition to the advanced antenna system, other enabling technologies for 5G include distributed network architecture, adaptive coding and modulation, multi-radio access technology, and advanced small cell technology.

B. Notice of Inquiry

7. In October 2014, acting on advice from the Commission's Technological Advisory Council, the Commission issued a Notice of Inquiry (NOI) seeking comment on the prospects for provision of mobile radio services in the frequency bands above 24 GHz. The Commission foresaw ''a potential coalescence of technologies that could lead to the emergence of a new and radically more capable generation of wireless mobile service that can capitalize on use of the millimeter wave region of the spectrum around the year 2020.'' The Commission also noted that significant momentum was starting to build among diverse countries and regions around the idea of a fifth generation of mobile and fixed services, that some envision as accommodating an eventual 1000-fold increase in traffic demand for mobile services; high-bandwidth content with speeds in excess of 10 gigabits per second (GB/s); end-to-end transmission delays (latency) of less than one-thousandth of a second, and, in the same networks, sporadic, low-data-rate transmissions among an ''Internet of things''—all of this to be accomplished with substantially improved spectral and energy efficiency. The Notice foresaw that achieving those objectives would likely require the development of new system architectures that, unlike current technologies, would necessarily include heterogeneous networks capable of delivering service through multiple, widely-spaced frequency bands and diverse types of radio access technologies, including macrocells, microcells, device-to-device communications, new component technologies, and unlicensed as well as licensed transceivers.

8. The Notice sought comment on the technologies underlying the development of mmW mobile services using bands above 24 GHz, the frequency bands that would be suitable for advanced mobile services, and the best ways to manage interference among operators and other licensees operating in the same or adjacent bands. Finally, the Commission sought comment on licensing and authorization schemes for mobile operations above 24 GHz. In its discussion of frequency bands above 24 GHz that would be most suitable for advanced mobile services, the Notice sought comment on the relative importance of access to large blocks of contiguous spectrum for successful implementation of advanced mobile technologies. After reviewing the salient

characteristics of several candidate bands, the Notice invited comment on the suitability of the three Local Multipoint Distribution Service (LMDS) bands between 27.5 and 31.3 GHz, the 38.6–40 GHz band, the 37–38.6 and 42–42.5 GHz bands, the 57–64 and 64–71 GHz band, the 71–76 GHz and 81–86 GHz bands, and the 24.25–24.45 GHz and 25.05–25.25 GHz bands for advanced mobile services. The Commission also invited comment on any other bands above 24 GHz that might be appropriate, including any bands above 95 GHz that could be suitable candidates for mobile services.

9. Regarding licensing mechanisms, the Commission noted that, except for the 24 GHz band, all of the candidate bands mentioned above have existing mobile allocations, and that the Commission has already established geographic service areas and conducted spectrum auctions for three of the bands—LMDS, 39 GHz, and 24 GHz. The NOI inquired whether the Commission should upgrade the existing fixed service licenses for those bands to include authorization to provide mobile service.

C. Recent Technological Developments

10. Since the release of the Commission's NOI in October 2014, there has been increased momentum behind the development of 5G technologies. Several manufacturers have showcased their prototype 5G equipment operating in centimeter and millimeter wave bands. In the United States, NYU Wireless Center has been leading the research in mmW technology, including the propagation measurements and models, radiation and biological health effects, mmW MAC layer design and other component technology development. In July 2015, the National Institute of Standards and Technology (NIST) initiated the 5G Millimeter Wave Channel Model Alliance with companies, academia, and government organizations to support the development of more accurate, consistent, and predictive channel models. Intel has introduced several laptop models with the 60GHz WiGig technology and continues to develop the mmW mobile broadband system in 28 GHz and 39 GHz bands. This is but some of the current and ongoing work on 5G technologies across the world.

D. World Radio Conference

11. The International Telecommunication Union's World Radiocommunication Conference (WRC) 2015 (WRC–15) is scheduled to take place from November 2–27, 2015 in Geneva, Switzerland. One of the tasks of that conference is to set the agenda for the next WRC, which is expected to take place in 2019 (WRC–19). At WRC–15, the United States will support the study of spectrum requirements and potential identification of harmonized spectrum for mobile broadband below 6 GHz and will encourage the adoption of a plan for identifying spectrum for mobile technologies in higher frequency bands. At WRC–15, the United States is supporting the Inter-American Telecommunications Commission (CITEL) proposal to consider spectrum requirements and identification of bands for the terrestrial component of International Mobile Telecommunications (IMT) to facilitate mobile broadband applications, with the aim of reaching decisions regarding possible spectrum for mobile use at WRC–19. The proposals resolve to conduct sharing and compatibility studies, including adjacent band studies as appropriate, within the frequency ranges: 10–10.45 GHz, 23.15–23.6 GHz, 24.25–27.5 GHz, 27.5–29.5 GHz, 31.8–33 GHz, 37–40.5 GHz, 45.5–47 GHz, 47.2–50.2 GHz, 50.4–52.6 GHz and 59.3–76 GHz.

12. We recognize that other countries have proposed or will propose the identification of other bands for consideration for mobile broadband. We are committed to working with both domestic and international partners in examining additional spectrum and on conducting the necessary technical sharing and compatibility studies. To the extent it becomes appropriate to consider additional bands for mmW mobile use in light of international developments, we will work with relevant stakeholders to examine the suitability of those bands for mobile and other uses.

IV. Discussion

A. Bands Above 24 GHz for Mobile Use

1. Criteria for Examining Bands for Mobile and Other Uses

13. Background. In the NOI, we specifically sought comment on the suitability of the following bands for mobile use: The Local Multipoint Distribution Service (LMDS) band (27.5–28.35 GHz, 29.1–29.25 GHz, and 31.0–31.3 GHz), the 39 GHz band, the 37 GHz band and 42–42.5 GHz, 57–64 GHz and 64–71 GHz bands, the 70/80 GHz bands (71–76 GHz and 81–86 GHz), and the 24 GHz bands (24.25–24.45 GHz and 25.05–25.25 GHz). We also invited comment on any other band that might be appropriate for mobile services, including bands above 95 GHz.

14. Commenters highlight several characteristics that they believe are important elements of defining a band as suitable for mobile use. Several commenters discuss the need for a substantial amount of contiguous bandwidth in order to enable 5G services.

Equipment manufacturers and others also highlight the benefits of having internationally harmonized spectrum.

15. In the NOI, we sought ''to advance our understanding of the means by which mobile services can avoid interfering with each other and with incumbent services and users that may share the same frequency bands as well as the impact on adjacent band radio services.'' Commenters agree that the Commission must consider existing incumbent uses in determining whether a particular band is a good candidate for mobile use.

16. There were four categories of incumbents (or organizations representing incumbent interests) that commented in this proceeding. Many incumbent geographic area licensees with fixed operating rights expressed support for authorizing mobile use in their bands, especially if the incumbent licensees were given the mobile operating rights. Satellite interests highlighted their interest in protecting current and future use of the Ka-Band and V-Band. Commenters that use the mmW bands for fixed uses ask the Commission to prioritize, or, at a minimum, allow for continued fixed use of these bands. Finally, the Committee on Radio Frequencies (CORF) asked the Commission to keep protection of adjacent-channel operations in mind when selecting mmW bands for mobile use.

17. *Discussion.* We believe there are four main criteria we should use in evaluating the suitability of mmW bands for mobile use in this NPRM. First, for purposes of this NPRM, we will focus on bands with at least 500 megahertz of contiguous spectrum. While commenters have offered a variety of minimum bandwidths that will be needed to accommodate mmW mobile use, virtually all commenters agree that it will be easier to accommodate mobile use in wider bands. Given the nascent state of mmW mobile technology, we believe our initial efforts should be focused on the band where the most spectrum is potentially available. Specifically, we will consider the 27.5–28.35 GHz band (28 GHz band), the 38.6–40 GHz band (39 GHz band), the 37–38.6 GHz band (37 GHz band), and the 64–71 GHz band. We note that we may consider additional bands in the future, and the fact that a particular band or bands are not considered in this NPRM does not foreclose future

Commission action on the band or bands.

18. Second, to the extent practical, we propose bands that are being considered internationally for mmW mobile service. While uniform international harmonization will not be possible because different countries have different spectrum frameworks and needs, substantial international harmonization would help promote development of mmW mobile service by reducing development and equipment costs and promoting a unified world market. For purposes of this NPRM, we will focus on those bands that have existing mobile allocations. We will also work with other countries through the International Telecommunications Union (ITU), in particular the World Radio Conference (WRC), and other processes to promote harmonized spectrum assignments for mmW mobile use.

19. Third, mobile use in mmW bands should be compatible with existing incumbent license assignments and uses. Current licensees that choose to continue their existing, authorized services should be able to do so. In applying that criterion, we do not mean to suggest that incumbents are entitled to maintain the status quo indefinitely. Specifically, many of the bands under discussion have shared allocations with satellite. As part of this NPRM, we will examine possible means of allowing enhanced satellite use of shared bands. We must also take into account the use of these bands for backhaul and other point-to-point purposes. These frequencies are well suited for backhaul and other fixed point-to-point uses because it is possible to have small, highly directional antennas in these bands which, together with the shorter propagation ranges, facilitate extensive reuse microwave frequencies in the same geographic area. The Commission has noted that ''[i]n certain rural and remote locations, microwave is the only practical high-capacity backhaul solution available.''

20. Finally, it is important to establish a flexible regulatory framework that accommodates as wide a variety of services as possible. We recognize that there is much that is unknown about all future uses of the mmW bands. Equipment manufacturers, including Ericsson, Alcatel-Lucent and Huawei all claim that substantial further research and development is required, and that the mmW bands may always present substantial challenges to the provision of mobile service. Thus, even among telecommunications equipment manufacturers, there is not an overwhelming consensus on the record that terrestrial mobile services will rapidly proliferate in the mmW bands in the near future. Similarly, particularly with respect to V-Band, satellite interests do not point to any firm commitments or plans to use that band.

21. We believe the appropriate response to the uncertainties is to establish a regulatory framework that maximizes flexibility and enables the widest possible variety of services, consistent with the state of technology and the characteristics of the mmW bands. A variety of commenters support expeditious issuance of an NPRM to help advance consideration of mobile technologies as part of the WRC process. We observe that certain satellite and terrestrial interests argue that we should not consider steps to facilitate the other type of service because it is speculative whether the other service will develop or premature to know how or when the other service will develop. We reject that approach. Waiting to develop a regulatory framework would have several disadvantages. First, given the rapid pace of technological development in these bands, waiting to develop service rules could result in delays in service if we are unable to finalize rules in a timely fashion. Such delays could affect the United States' leadership in mobile communications and hurt consumers. Second, establishing a regulatory framework now will provide equipment manufacturers and service providers with specific guidance as they design equipment and service offerings. In contrast, doing nothing will make it more difficult to plan for any type of service in the mmW bands. Third, creating a flexible regulatory framework would be consistent with the Commission's general policy of technological neutrality, which has wide support among commenters. Accordingly, we are attempting to develop rules that will accommodate the widest possible variety of services. In choosing bands for mmW mobile use, we will prioritize bands where it is possible to develop a flexible framework that accommodates the widest possible variety of services. The graphic below summarizes our consideration of various bands in this item:

2. Bands Proposed for Mobile Use

a. 27.5–28.35 GHz Band

22. *Background.* In 1997, the Commission developed a band plan making 1,300 megahertz of LMDS spectrum in each basic trading area (BTA) across the United States. Specifically, the Commission allocated two LMDS licenses per BTA—an ''A Block'' and a ''B Block'' in each. The A Block license is comprised of 1,150 megahertz of total bandwidth, and the B Block license is comprised of 150 megahertz of total bandwidth. The A Block consists of the sub bands 27.50–28.35 GHz (the A1 Band); 29.10–29.25 GHz (the A2 Band); and 31.075–31.225 GHz (the A3 Band). The B Block consists of the sub bands 31.00–31.075 (the B1 Band) and 31.225–31.30 GHz (the B2 Band). Of the 986 designated license areas (493 BTAs times two licenses per BTA), 416 areas have active licenses, which cover about 75 percent of the U.S. population.

23. LMDS occupies portions of two spectrum bands that the Commission has allocated on a co-primary basis for Fixed and Mobile services, as reflected in the U.S. Table of Frequency Allocations. While the Commission has not, to date, authorized any specific service (including LMDS) to provide mobile service in those bands, it previously expressed an expectation that it would expand the LMDS authorization for Fixed Service to include Mobile Service if proposed and supported by the resulting record. In the Second LMDS Report & Order, the Commission stated:

To ensure the flexibility in LMDS service offerings that commenters seek and we proposed, we will permit any fixed terrestrial uses that can be provided within the technical parameters for LMDS. We conclude that, for now, our significant allocation of spectrum under such a broad and flexible service definition should permit licensees to satisfy a broad array of their customers' communications needs, whether through one or multiple service offerings. Although LMDS is allocated as a fixed service, we know of no reason why we would not allow mobile operations if they are proposed and we obtain a record in support of such an allocation. We believe this would be consistent with our goal of providing LMDS licensees with maximum flexibility in designing their systems. We have authorized other wireless services to include mobile and fixed services, depending on whether developments in the service and related equipment demonstrate a need for changing the rules and a capability for mobile and fixed services to coexist in these bands.

24. There are no primary Federal allocations in the 28 GHz band. For the 28 GHz band, the U.S. Table of Frequency Allocations includes a co-primary Fixed Satellite Service (FSS) Earth-to-space allocation, but section 25.202 of the Commission's rules provides that FSS is secondary to LMDS

in that band. Twenty stations are licensed for Earth-to-space transmissions on a secondary basis in the 28 GHz band, and there are nineteen pending applications for operation in this band.

25. Ericsson, Motorola, Samsung, Straight Path, and XO support allowing mobile use in the LMDS bands. Most satellite interests, including Avanti, ESOA, the FSS Operators, Inmarsat, and O3b argue that mobile use of the 28 GHz band is incompatible with existing use of the Ka-Band by satellite systems. They argue that satellite operators need regulatory certainty that they will have spectrum available in order to make the large investments needed to construct and deploy satellites. SES, Intelsat, O3b, and Inmarsat argue that the operation of certain types of FSS earth stations, such as gateway earth stations, in the 28 GHz band (Earth-to-space) should have primary status. EchoStar, Hughes Network Systems and Alta Wireless also suggest that consideration be given to granting co-primary status to the operation of gateway earth stations in the 28 GHz band. Some parties argue that the 28 GHz band is not a good candidate for mobile use because the U.S. LMDS band plan does not align with international use of the band. Inmarsat states that it lacks sufficient information to determine whether contemplated mobile systems would be compatible with existing satellite use.

26. Not all satellite operators oppose consideration of the 28 GHz bands for mobile use. EchoStar supports giving existing LMDS licensees the flexibility to provide mobile services along with upgrading the status of gateway earth stations in the band to co-primary. ViaSat ''urges the Commission to refrain from defaulting to outdated paradigms for sharing between satellite and terrestrial systems'' and urges the Commission to expand the ability of satellite operators to make ''opportunistic'' use of bands such as the 28 GHz band.

27. *Discussion.* We propose to authorize mobile operation in the 28 GHz band. The research conducted by Samsung, NYU Wireless, and others demonstrates that mobile technologies can theoretically work in this band. Furthermore, the availability of 850 megahertz of contiguous spectrum makes this band particularly attractive for potential mobile use. Mobile use would be consistent with existing fixed uses in this band. Indeed, XO and Straight Path, which are LMDS licensees, support authorizing mobile use in this band.

28. We have carefully considered the opposition from certain satellite interests to allowing mobile use in this band, but tentatively conclude that those parties have not presented a valid basis for rejecting mobile use in this band. While those parties argue that they need regulatory certainty in order to invest in their systems, authorizing mobile use would not deprive FSS operators of any reasonable expectations they had of access to spectrum. Under our current rules, FSS use of this band is secondary to LMDS. Furthermore, this band has a co-primary mobile allocation throughout the world. The investments satellite operators have made in Ka-band operations were made with knowledge of their secondary status. The primary reason there has been little discussion of mobile use in this band is that there has not been any technology that would allow for mobile use of the millimeter wave bands such as this one. As that technology develops, it is unreasonable for us to preclude mobile use of this band solely because of pre-existing secondary use. Finally, we note that the satellite operators that oppose use of the 27.5–28.35 GHz band do not propose a comparable alternative band for mobile use.

29. We also reject the argument that the 28 GHz band should not be considered for mobile use because the U.S. band plan has not been replicated in other countries. While we recognize the benefits of international harmonization, we also understand that not every country will be able to designate exactly the same bands for similar uses because they will have a different needs and incumbent uses. We note that international equipment vendors such as Samsung, Huawei, and Alcatel-Lucent are looking at this frequency range for mobile use. Furthermore, the worldwide co-primary mobile allocation for this band is also an important factor that supports mobile use of this band.

30. Most importantly, we do not view mobile use of this band as necessarily being inconsistent with continued satellite use of the band. Our goal in this proceeding is to establish a flexible regulatory framework that accommodates as wide a variety of uses as possible. The Commission has recognized that satellite technology ''is particularly important for communication in remote areas that are unserved or underserved by terrestrial communication facilities'' and can provide vital connectivity for first responders in emergencies and natural disasters. Satellites are being used to provide communications services such as satellite television to homes and two-way voice and data networks (including broadband services). In light of these important services, we agree with ViaSat that it is time to reexamine ''outdated paradigms'' and closely examine potential opportunities for sharing. Satellite operators agree that they have been able to coordinate use with existing fixed LMDS licensees. While mobile use presents additional challenges in terms of coexistence, we offer proposals and ask questions about our ability to expand non-federal, secondary satellite use of this band by granting them, through a market-based mechanism, the right to greater flexibility in their use of the band. As discussed below, this proposed market-based mechanism would enable non-Federal satellite users to obtain the terrestrial licenses in the band, by either participating in a Commission auction or through the secondary market, in order to achieve co-primary status and thereby obtaining greater flexibility in their use of the band.

31. At a minimum, we anticipate that satellite operators will continue to be able to place gateway earth stations in the band. Under those circumstances, we believe the existence of FSS earth stations should not preclude our consideration of this band for mobile use.

b. 38.6–40 GHz Band

32. *Background.* The band is licensed by Economic Area (EAs). There are 176 EAs. There are fourteen paired blocks of 50 by 50 megahertz channels. The populations in areas covered by active licenses (both EA and Rectangular Service Area (RSA) licenses) vary by channel, but in aggregate they cover about 49 percent of the U.S. population. Out of 2,464 possible EA licenses (14 channel pairs for each of 176 EAs), 859 are currently licensed. Other licenses previously issued were voluntarily cancelled or terminated for failure to meet substantial service requirements. In addition, there are currently 229 active RSA licenses that predate the creation of the EA licenses and where the licensees self-defined their service area. Those RSA licensees retain the exclusive right to operate within their RSAs.

33. This band has a co-primary allocation for Fixed and Mobile services. The Commission provided licensees the flexibility to provide mobile services and stated the belief that ''the issue of technical compatibility of fixed and mobile operations within a service area is one that can and should be resolved by the licensee.'' The Commission declined to permit mobile operations, however, until it conducted a separate proceeding

to resolve inter-licensee and inter-service interference issues.

34. There are no Federal allocations in the 38.6–39.5 GHz band. There is an adjacent Federal allocation for FSS (space-to-Earth) and Mobile Satellite Service (MSS) (space-to-Earth) in the 39.5–40 GHz band. Federal government earth stations in the MSS in the 39.5–40 GHz band are prohibited from claiming protection from non-Federal stations in the fixed and mobile services in this band, but are not required to protect non-Federal fixed and mobile services in the band (*i.e.,* 5.43A of the ITU Radio regulations does not apply). This prohibition does not apply to Federal government earth stations in the FSS. When the 39 GHz Order was adopted, Federal government use of the band was limited to military systems in the 39.5–40 GHz band segment, but the Department of Defense stated that it had plans to implement satellite downlinks at 39.5–40 GHz in the future, and the National Aeronautics and Space Administration (NASA) identified 39.5–40 GHz as a possible space research band to accommodate future Earth-to-space wideband data requirements. The 39 GHz Report and Order expressed optimism that such plans would not affect the continued development of the 39 GHz band for non-government use, but the Commission said that it intended to address those interference issues in a future, separate proceeding that would focus on developing inter-licensee and inter-service standards and criteria. At present, the U.S. Table of Frequency Allocations provides that Federal satellite services in the 39.5–40 GHz band are limited to military systems.

35. Non-Federal government FSS (space-to-Earth) is co-primary throughout the entire 39 GHz band, but under a ''soft segmentation'' band plan adopted by the Commission in 2003, FSS is subject to lower power flux density limits in the 37.5–40 GHz band to accommodate high-density fixed terrestrial systems. Those power limits act to favor implementation of fixed systems over FSS systems. There are currently no non-Federal FSS authorizations or pending applications in this band.

36. Akbar Sayeed, FiberTower, Motorola Mobility, Nokia, NYU Wireless, Qualcomm, Samsung, Straight Path, and XO support allowing mobile use in the 39 GHz band. EchoStar, Inmarsat, SIA, and ViaSat argue that the Commission should take into account their interest in using both the 39 GHz band and the 37.5–38.6 GHz band for satellite broadband services as demand for those services increases. O3b asks the Commission to consider the open V-Band Third FNPRM in parallel with this proceeding. In contrast, Straight Path argues that the Commission should delete the FSS allocation from this band and terminate action on the V-Band Third FNPRM because it believes FSS use of the band would be inconsistent with terrestrial use. Straight Path also requested a freeze on V-Band satellite licensing pending resolution of this proceeding.

37. Bluwan S.A. believes that the 39 GHz band is best suited for non-mobile uses, such as backhaul or fixed wireless access. Vivint Wireless, a fixed wireless broadband provider that relies on the 39 GHz band for backhaul, argues that mobile operating rights should be secondary to existing fixed operations in order to protect existing fixed operations. It asks the Commission to avoid awarding mobile operating rights separately from the existing fixed rights.

38. *Discussion.* We propose to authorize mobile operation in the 39 GHz band. The availability of up to 1.4 gigahertz of spectrum could support ultra-high data rates. Equipment manufacturers and licensees agree that the band is suitable for mobile use, and no commenter identified any reason why this band would be technically unsuitable for mobile use. Furthermore, this band has a worldwide mobile allocation. We seek detailed comment and analysis on the compatibility of mobile use with current and future Federal operations, including any technical rules necessary to ensure coexistence between Federal and non-Federal operations in this band.

39. We believe mobile use would be consistent with existing fixed uses in this band. Indeed, Straight Path, FiberTower, and XO, which are 39 GHz licensees, support authorizing mobile use in this band. As we will discuss in further detail below, we propose to grant existing 39 GHz licensees mobile rights and to issue new licenses containing both fixed and mobile operating rights. We believe this action will alleviate Vivint Wireless' concerns about compatibility between fixed and mobile uses because a single licensee will be able to coordinate fixed and mobile operations while avoiding interference.

40. The concerns raised by certain satellite operators do not provide a valid basis for rejecting the possibility of mobile service in the 39 GHz band. Unlike in 28 GHz, there are no current commercial satellite operations in the 39 GHz band, but there are federal operations. Furthermore, while several commenters express interest in using V-band to provide satellite service, no commenter expresses any concrete intention to provide such service. Declining to consider mobile use in this band because of possible future satellite use would be inconsistent with our duty to make available ''[n]ationwide, and world-wide . . . radio communication service.'' Our intent is not to favor mobile service over fixed or satellite service. Instead, our goal is to develop a flexible regulatory framework that will accommodate the widest possible variety of compatible services and will allow the market to determine the best possible uses of the mmW bands.

41. We deny Straight Path's request that we consider deleting the satellite allocation in this band. We can readily envision that the mmW bands will be used for a variety of both satellite and terrestrial services. It appears that terrestrial mobile use of the mmW bands may initially be concentrated in large urban areas. Foreclosing use of the 39 GHz band for satellite could result in underutilization of the band.

42. We recognize that the 39.5–40 GHz portion of the band is allocated for Federal military satellite systems. Commenters that address this issue believe that mobile use would be compatible with those systems. We seek comment below on whether any limitations or special rules on mobile use would be necessary in order to protect Federal military FSS use of the 39.5–40 GHz band. We also seek comment on the technical characteristics for the mobile applications envisioned for the band in order to enable federal agencies to conduct the necessary compatibility analysis.

c. 37–38.6 GHz Band

43. *Background.* The Commission has not adopted terrestrial service rules for non-Federal operations in this band. In 2004, the Commission sought comment on establishing fixed and point-to-point multipoint service rules in the 37 GHz and 42 GHz bands, as well as allowing ''mobile use in the future, if and when the technology develops.'' There are co-primary allocations for terrestrial mobile service in these bands, but the Commission has not yet adopted service rules to authorize such services.

44. In 2004, the National Telecommunications and Information Administration (NTIA) sent a letter to the Commission identifying the following NASA receiving earth stations in the Space Research Service (SRS) in the 37–38 GHz band: Goldstone, California; Guam, Pacific Ocean; Merritt Island, Florida; Wallops Island, Virginia; and White Sands, New Mexico. NTIA has subsequently

identified the NASA receiving earth station at Blossom Point, Maryland. NTIA also identified Green Bank, Virginia; and Socorro, New Mexico National Science Foundation (NSF), which NSF cites as supporting their Very Long Baseline Interferometry (VLBI) earth station operations. NTIA noted the importance of the band 37–38 GHz to support U.S. goals to provide a permanent manned presence in earth orbit (on or near the moon) and to initiate manned exploration of the planet Mars, and to support VLBI by satellite. There is also a co-primary allocation for Federal space research, fixed, and mobile service operations in the 37–38.6 GHz band. NTIA identified 14 military sites in the 37–38.6 GHz band that required protection. In the 2004 letter NTIA recommended that coordination with the Federal operations be performed within the Interdepartment Radio Advisory Committee (IRAC) process. In 2006, NTIA sent a follow-up letter to the FCC reaffirming the need to protect NASA, NSF, and military operations from non-Federal terrestrial and FSS operations in the 37–38 GHz band. NTIA requested that the protection of Federal operations be accomplished by establishing a footnote to the U.S. table of Frequency Allocations specifying the Federal sites and the coordination areas. NTIA also recommended that because of the potential for interference from airborne systems, the aeronautical mobile service allocation should be deleted from the 37–38 GHz band. In the NOI, we terminated action on the 2004 proceeding and stated we would resume consideration of potential uses of the 37 GHz band in this proceeding.

45. In addition to Fixed and Mobile allocations, there is a co-primary non-Federal FSS (space-to-Earth) allocation. As described above, the soft segmentation plan adopted in the V-Band Second Report and Order favors terrestrial services in the 37 GHz band. Akbar Sayeed, Motorola Mobility, Nokia, Qualcomm, and Samsung support considering mobile use of this band. Straight Path believes that this band may be appropriate for examining novel sharing techniques.

46. As with the 39 GHz band, EchoStar, Inmarsat, SIA, and ViaSat oppose mobile use of this band, or ask the Commission to take into account their interest in using this band for satellite broadband services as demand for those services increases.

47. *Discussion.* We propose to develop service rules for mobile operation in the 37 GHz band. The band consists of 1.6 GHz of contiguous spectrum that could potentially support high data-rate transmissions. Furthermore, it is contiguous to the 39 GHz band, so there could be opportunities to aggregate up to 3 gigahertz of spectrum. The 37 GHz band also has a worldwide co-primary mobile allocation.

48. As with the 39 GHz band, we do not believe the concerns of the satellite operators should preclude consideration of mobile use of this band. There are no non-Federal incumbent satellite operations in this band and no concrete announced plans to use this band for satellite use. Our intent is to establish a flexible rules framework that enables as wide a range of services as possible. Our proposals and questions concerning facilitating satellite use—through a market-based mechanism—that is compatible with terrestrial use will include the 37 GHz band.

49. We recognize that this band is a shared Federal-non-Federal band. We will work together with NTIA to ensure that Federal operations are protected while maximizing the use of the 37 GHz band for commercial operations. In particular, we recognize that we will need to work with NTIA to develop appropriate protections for SRS facilities in the 37–38 GHz band. Another issue we will need to address is ensuring protection of Earth Exploration Satellite Service (EESS) passive observations below 37 GHz. We seek comment on these issues below.

d. 64–71 GHz Band

50. *Background.* There are no authorized non-Federal operations in this band. Unlicensed operations within the adjacent 57–64 GHz band are permitted under Part 15 of our rules. Non-Federal government operators of outdoor radio equipment in the 57–64 GHz band segment are not required to obtain individual licenses or seek coordination with the NTIA if they limit average EIRP to 82 dBm minus 2 dB for every dB that their antenna gain is less than 51 dBi. In 2013, the Commission allowed longer communication distances for outdoor point-to-point systems in the 57–64 GHz band by allowing higher powers, specified emission limits as an EIRP power level to provide uniformity and consistency in the rules, and eliminated the requirement for certain devices in the 57–64 GHz band to transmit identification information. Frequencies from 64–71 GHz are not among those listed in our rules as available for licenses issued in the terrestrial Fixed Service or for any satellite services except for Inter-Satellite service (ISS). Our rules list 65–71 GHz as available for ISS licenses, but there are no current ISS licenses.

51. The 64–71 GHz band has a co-primary mobile allocation. In the 64–66 GHz band, aeronautical mobile operation is prohibited. The 65–71 GHz band is authorized for ISS links. There are currently no active satellite licenses in that band. There are also a series of co-primary allocations for Federal and non-Federal Fixed, Radiolocation, Radionavigation-Satellite, EESS, and ISS operations throughout these bands. International and domestic rules also indicate that any use of the 66–71 GHz band by the land mobile service is subject to not causing interference to, and accepting interference from, the space radiocommunication services in this band.

52. Ericsson, IEEE 802, InterDigital, Qualcomm, SiBeam, and Wi-Fi Alliance support authorizing operations in the 64–71 GHz band under Part 15 of the Commission's rules. Samsung believes that this band could be used in connection with the adjacent 57–64 GHz band to increase flexibility for users, lower the potential for interference, and support higher data rates for a number of applications, including wireless backhaul. Samsung supports licensing the 64–71 GHz band and provides a recommended band plan. SiBeam believes authorizing use of the 64–71 GHz band could facilitate ''multigigabit, large scale, dynamically switches wireless network equivalent to current fiber metro networks.'' Interdigital believes there will be no interference to any future ISS licensees because the primary network architecture will be a low height above ground terrestrial network for both small cells and backhaul.

53. SIA noted the allocation for ISS links and ''urge the Commission to preserve flexibility for future satellite access.'' Nokia supports authorizing operations in the 64–71 GHz band on a licensed, geographic area basis because there are no current licensed operations in that band.

54. *Discussion.* We note Nokia's preference for geographic area licensing and Samsung's interest in licensing the 64–71 GHz band, but tentatively conclude that authorizing operation under Part 15 of the Commission's rules is the better approach in this band. As discussed elsewhere, we propose geographic area licensing in other bands. We believe that a balanced approach utilizing licensed, unlicensed, and hybrid mechanisms for authorizing service in the mmW bands will best accommodate a wide variety of services, providing multiple opportunities to put the spectrum to use, and encourage the

development of different technologies and business models in these bands. We agree with commenters that authorizing Part 15 operations in the 64–71 GHz band will allow this band to be used in conjunction with the existing 57–64 GHz band to double the spectrum available for the next generation of unlicensed wireless broadband technologies such as ultra-high-speed audiovisual content streaming and WiGig connectivity that will offer low latency and security-protected connectivity between devices. This will help meet the demand for access for unlicensed spectrum for lower-power end-user applications that continues to grow along with the demand for licensed radio spectrum for greater-distance, higher-power operations.

55. We believe authorizing Part 15 operation would be compatible with the allocation for ISS. Because of the high atmospheric absorption in this frequency range, it is highly unlikely that signals at the power levels contemplated would be able to reach satellites using ISS links. Are the technical considerations in the 57–64 GHz band fully applicable to deployment of unlicensed use in the 64–71 GHz band recognizing that unlicensed devices must protect allocated services including future systems? What additional technical and operational characteristics as well as interference mitigation techniques of the anticipated unlicensed use for this band need to be considered in assessing sharing with in-band and adjacent band incumbent services?

3. Other Bands

56. In this section, we discuss bands raised by commenters where we are not proposing service rules at this time. As noted below, with respect to certain of these bands, we seek comment on our analysis of these bands and ask interested parties to provide additional information concerning possible mobile uses of these bands. As we develop a further record in this proceeding, as technology develops, and as we develop a further record on compatibility issues with other allocated Federal and non-Federal services, we reserve the right to give further consideration to some of these bands. Given the early stage of the development of technologies for mobile mmW band, and the complex sharing issues raised in these bands, we believe the best approach is to initially focus our efforts on the strongest candidate bands, discussed above, which we believe are better positioned for more immediate use in the marketplace.

a. 24 GHz Bands (24.25–24.45 GHz and 25.05–25.25 GHz)

57. *Background.* There are two types of fixed licenses in this band. The 24 GHz Service has a total of 176 EA or EA-like service areas. In 2004, the Commission held Auction 56, in which it made 890 24 GHz licenses available. Only seven of the 890 licenses were sold. In addition, FiberTower and Puerto Rico Telephone Company hold a total of 49 pre-auction Digital Electronic Messaging Service licenses in this band.

58. The 25.05–25.25 GHz band segment has co-primary allocations for non-Federal government Fixed Service and FSS (Earth-to-space) services, and a footnote to the U.S. Table of Frequency Allocations provides that the use of the 25.05–25.25 GHz band by the FSS (Earth-to-space) is limited to feeder links for the Broadcast Satellite Service (BSS). Section 25.203(l) of the Commission's rules provides that applicants for feeder link earth station facilities operating in the 25.05–25.25 GHz band may be licensed only in EAs where no existing Fixed Service licensee has been authorized, and shall coordinate their operations with 24 GHz Fixed Service operations if the power flux density of their transmitted signal at the boundary of the Fixed Service license area is equal to or greater than −114 dBW/m2 in any 1 MHz. The 17/24 GHz Broadcasting-Satellite Service Report and Order determined that future Fixed Service systems locating near an authorized 17/24 GHz BSS feeder link earth station may not claim protection from interference from the feeder link earth station's transmissions, provided that those transmissions are compliant with the Commission's rules, and that future 24 GHz Fixed Service applicants would be required to take into account the transmissions from the previously authorized earth station when considering system designs, including their choices of locations for their license areas. There are three active licenses for feeder link earth stations in the 25.05–25.25 GHz band segment, all of them held by DIRECTV.

59. There is no mobile allocation in either of the 24 GHz band segments. In the 24 GHz Report & Order, the Commission found that it would be premature to allow mobile operations in the 24 GHz bands but reserved the discretion to revisit that issue if it is presented with technical information demonstrating that such operations would be technically feasible without generating interference to fixed operations and BSS feeder links in 24 GHz band segments.

60. FiberTower and Nokia support authorizing mobile use in the 24 GHz bands. Ericsson states that the 24 GHz bands may be suitable for backhaul use if sufficient spectrum can be aggregated. The FSS Operators ask for FSS access to 25.05–25.25 GHz.

61. *Discussion.* Commenters expressed a lower level of interest in the 24 GHz band than in other bands. We note that this band presents several challenges with respect to possible mobile use. Significantly, the amount of contiguous spectrum (two 200 megahertz blocks) available in these bands is less than many commenters currently recommend as the minimum amount of spectrum available for mobile use. This band also lacks an international mobile allocation; although we recognize that this could change in the future. We note that BSS feeder links in the upper part of the band are entitled to interference protection, and while not necessarily an insurmountable problem this would likely require complex analyses of the potential for aggregate interference from terrestrial wireless systems.

62. We do not wish, however, to preclude consideration of this band. We invite parties who are interested in mobile use of the 24 GHz band to comment on our analysis. Are there circumstances under which this band could be successfully used for the type of mobile systems, or other systems, contemplated for the mmW bands? Are there ways of allowing widespread deployments while protecting BSS feeder links? We ask commenters who support further consideration of this band to provide specific suggestions for addressing the issues we have identified above. Interested parties should also comment on the services that would likely be deployed in this band given the issues implicated and the possible viable business models. In those areas where there are incumbent fixed licenses, should we grant mobile rights to the incumbent fixed licensees? Would licensed or unlicensed rights be best for making this spectrum available and for facilitating coexistence? Are there rule changes that can be made to promote backhaul or other fixed uses?

b. 29.1–29.25 GHz and 31–31.3 GHz

63. *Background.* These bands are part of the LMDS. For the 29.1–29.25 GHz band segment, section 25.202 of the Commission's rules provides that 29.1–29.25 GHz is co-primary for MSS feeder links and LMDS, and section 101.1001 of the Commission's rules limits LMDS to hub-to-subscriber transmissions in this band segment. Section 25.257 of the Commission's rules allows as many as

ten MSS feeder link earth station complexes to be deployed in the 29.1–29.25 GHz band segment, but there are currently only five active licenses for feeder link and telemetry, tracking, and command earth stations in those frequencies. The 31–31.3 GHz band segment has co-primary allocations for terrestrial Fixed and Mobile services, with a secondary Federal and non-Federal allocation for space-to-Earth standard frequency and time signal operations.

64. Iridium, which operates feeder links in the 29.1–29.25 GHz band, notes that its feeder links are co-primary and asks the Commission to ''keep the Iridium system and the critical services it provides in mind even in the early stages of research into emerging terrestrial broadband technologies.'' While Straight Path generally favors making the LMDS band available for mobile use, it states that the presence of co-primary feeder links ''may make mobile wireless use of the band more complicated and require further analysis.'' NCTA identifies the 29.1–29.25 GHz band as a band that may be suitable for unlicensed use and argues that unlicensed operation could facilitate sharing with incumbent users.

65. We received little comment specifically directed to the 31–31.3 GHz band. Straight Path notes that Federal satellite uses in this band are secondary and do not require protection. CORF notes that the 31–31.3 GHz band is immediately adjacent to a passive EESS sensing band in which all transmissions are prohibited, and it urges that the Commission protect EESS through guard bands.

66. *Discussion.* We decline to propose authorizing mobile operation at this time, primarily because the bands offer considerably less than 500 megahertz of contiguous spectrum as commenters have suggested is necessary for mobile operations. Unlike in 27.5–28.35 GHz, the satellite facilities in 29.1–29.25 GHz have co-primary status. While it could be possible to develop a sharing regime between the feeder links and mobile operations, given the relatively small amount of spectrum at issue, we believe our efforts are better directed towards bands that offer more contiguous spectrum, such as 27.5–28.35 GHz. We also note that 31–31.3 GHz is shared between the A and B block licensees, so there may be instances where it may be difficult to aggregate even 300 megahertz of spectrum.

c. 31.8–33 GHz

67. *Background.* There are international allocations for Fixed and Radionavigation services throughout this entire band, although administrations should take practical measures to minimize potential interference between those services, taking into account the operational needs of airborne radar systems. The Radionavigation allocation is Federal throughout the entire band and non-Federal in the 32.3–33.4 GHz band. In the United States, ground-based radionavigation aids are not permitted except when they operate in cooperation with airborne or shipborne radionavigation devices. There is also a co-primary Space Research (deep space) (space-to-earth) allocation in the 31.8–32.3 GHz band, and an ISS allocation in the 32.3–33 GHz band. In addition, this band is adjacent to the 31.3–31.8 GHz bands, where no transmissions are authorized in order to protect radio astronomy observations.

68. Samsung supports adding this band to the Commission's consideration of mmW bands for mobile service in light of European and Asian regional support for consideration of this band. ESOA generally supports examination of bands above 31 GHz.

69. *Discussion.* This band presents particularly difficult challenges for mobile use. The need to protect the 31.3–31.8 GHz passive band, existing Federal systems, and deep-space research appears to severely limit the availability of useable spectrum in this band. Furthermore, there currently is no mobile allocation in this band, whereas there are existing mobile allocations for other bands under consideration.

70. In the interests of developing a complete record, we invite commenters who support further consideration of this band to comment on our analysis. In particular, we seek a detailed technical analysis of the out-of-band emission limits required to protect the 31.3–31.8 GHz band to help determine how much of this band could potentially be available for mobile use. We also seek comment on the compatibility of mobile use with the existing aeronautical and shipborne radar use of this band, future radionavigation and other federal services, as well as the deep space research in the 31.8–32.3 GHz band. Given the important incumbent uses of this band and the adjacent band, interested parties should comment on how sharing would work between mobile and existing incumbent uses.

d. 42–42.5 GHz

71. *Background.* There are currently no terrestrial service rules in place for this band. On May 9, 2012, FWCC filed a petition for rulemaking seeking the establishment of service rules for fixed point-to-point use of the 42–43.5 GHz band under Part 101 of the Commission's rules. There are Federal and non-Federal co-primary allocations for terrestrial mobile service in different segments of these bands, but the Commission has not yet adopted service rules to authorize such services. A footnote in the U.S. Table of Frequency Allocations urges all operations in the 42–42.5 GHz band to take all practicable steps to protect radio astronomy observations in the 42.5–43.5 GHz band from interference.

72. In addition to Fixed and Mobile allocations, there are Broadcasting and BSS allocations in this band. The Commission has proposed eliminating those BSS allocations and adding an FSS (space-to-Earth) allocation in order to protect adjacent channel radio astronomy in the 42.5–43.5 GHz band.

73. Motorola Mobility, Nokia, Qualcomm, and Samsung include this band in the list of bands that should be examined for possible mobile use. On the other hand, Ericsson describes this band as being of ''no current interest'' because it is only a single 500 megahertz block.

74. CORF describes the adjacent 42.5–43.5 GHz band as being one of the most important bands for radio astronomy because it is used to observe silicon monoxide, which yields important information on stellar temperatures, density, and wind velocities. Under our current rules, all practicable steps must be taken to protect the radio astronomy service from interference in the 42.5–43.5 GHz service. FWCC contends that the 42–43.5 GHz band is more suitable for fixed point-to-point service.

75. *Discussion.* While this band could possibly be used for mobile, it is not as desirable as the bands for which we are proposing service rules at this time. The band has 500 megahertz of contiguous spectrum, but the need to protect the adjacent radio astronomy band at 42.5–43.5 GHz may require limits on the use of the band. Interest in this band among commenters was somewhat lower than in bands where we are proposing rules authorizing mobile service. The band also is not part of the United States or CITEL proposals for bands to be considered for further study for mobile use. Finally, we note that there are competing proposals to make this band available for FSS or fixed use. While it may be possible to work through those issues, authorizing mobile service in this band would be more complicated than in bands such as 28 GHz and 39 GHz.

76. In light of the competing proposals for use of this band, we seek comment on the relative merits of using

this band for FSS, fixed, or mobile use, or the ability to share among these different uses. What sort of services would be offered using this band? We also ask commenters to analyze how the need to protect radio astronomy in the 42.5–43.5 GHz band affects the viability of this band for the services they support. We also seek comment on the extent to which different services could share in this band, and what sharing mechanisms, if any, would be appropriate.

e. 71–76 GHz and 81–86 GHz

77. *Background.* In 2003, the Commission established service rules to promote non-Federal fixed development and use of spectrum in the 71–76 GHz, 81 86 GHz, and 92–95 GHz bands. Based on its determination that systems in these bands can readily be engineered to produce highly directional, ''pencil-beam'' signals that can co-exist in the same vicinity without causing interference to one another, the Commission adopted a flexible and innovative regulatory framework for the bands. Specifically, the framework permits the issuance of an unlimited number of non-exclusive, nationwide licenses to non-Federal government entities for all of these bands. Under this licensing scheme, a license serves as a prerequisite for registering individual point-to-point links; licensees may operate a link only after the link is registered with a third-party database.

78. As of September 22, 2015, there were 408 active non-exclusive nationwide licenses covering the 70 GHz, 80 GHz, and 90 GHz bands. Based upon information available from the third-party database managers that are responsible for registering links in those bands, as of September 22, 2015 there were approximately 12,687 registered fixed links in the 71–76 GHz and 81–86 GHz bands.

79. Non-Federal operations may not cause harmful interference to, nor claim protection from, Federal Fixed-Satellite Service operations located at 28 military bases. In addition, in the 80 GHz band, licensees proposing to register links located near 18 radio astronomy observatories must coordinate their proposed links with those observatories. Third-party database managers are responsible for recording each proposed non-Federal link in the third-party database link system and coordinating with NTIA's automated ''green light/yellow light'' mechanism to determine the potential for harmful interference to Federal operations and radio observatories.

80. The 71–74 GHz band segment also has co-primary allocations for Federal and non-Federal Fixed, FSS, Mobile, and MSS (space-to-Earth) operations. The 74–76 GHz band segment has co-primary allocations for Federal and non-Federal government Fixed, FSS (space-to-Earth), Mobile, and SRS operations. In addition, there are non-Federal allocations in that band segment for Broadcasting and BSS operations. The 81–86 GHz band has co-primary allocations for Federal and non-Federal government Fixed, FSS (Earth-to-space), and Mobile, and within that band the 81–84 GHz band segment also has a Federal and non-Federal government allocation for MSS (Earth-to-space). The 76–77 GHz band is currently used for unlicensed vehicular radars under Part 15 of the rules. The Commission has proposed to authorize non-Federal radar applications in the 76–81 GHz band on a licensed basis under Part 95. This proposal would shift vehicular radars away from the existing Part 15 unlicensed model.

81. Akbar Sayeed and Nokia identify these bands as appropriate candidates for mobile use. Nokia believes these bands would be particularly appropriate because the wide amount of bandwidth available would support 10 Gbps peak rate with relatively simple equipment. Ericsson argues that these bands might support mobile service ''but would not be the industry's primary choice.'' IEEE802, NCTA, and Wi-Fi Alliance ask that a Part 15 authorizations be added to these bands. FWCC and McKay Brothers highlight the existing uses of these bands for fixed backhaul and specialized telecommunications services, and urge that these existing services be protected. FWCC, McKay Brothers, and SiBeam also note or propose changes to the existing fixed rules for 70 GHz and 80 GHz.

82. *Discussion.* The interest among commenters in using this band for mobile operations is rather limited. Furthermore, the coordination process between fixed and mobile operations would be considerably more complicated in these bands because there are multiple fixed licensees in a given area (as opposed to 28 GHz or 39 GHz, where there is one licensee in a given area and band). The need to protect Federal earth stations and radio astronomy locations would also require limits on mobile operations in these bands.

83. We do not offer a specific proposal at this time to amend our rules relating to the 70 GHz and 80 GHz bands. Based on the current record, it is not clear how mobile units would be controlled to avoid interference to fixed links. None of the proponents of unlicensed use in these bands has made a detailed showing that unlicensed devices would be compatible with the fixed equipment being deployed in these bands. Furthermore, we are proposing to make seven gigahertz of additional spectrum available for unlicensed use in the 64–71 GHz band. We seek comment, however, on whether the Commission should revisit its 2003 decision not to allow Part 15 operations in these bands, and if so, what specific bands we should consider for Part 15 operations (or for licensed use) and how such operations in those bands would be compatible with existing fixed operations, as well as Federal earth stations and radio astronomy operations. If we authorized sharing between fixed and mobile systems, what would the sharing mechanism look like and how should it be administered? What type of mechanisms would we need to establish to ensure there is no harmful interference?

84. With respect to the proposals to change the current Part 101 rules governing fixed operations in these bands, we believe these proposals are better addressed in our Wireless Backhaul proceeding, WT Docket No. 10–153. In that proceeding, we have under consideration a variety of proposed rule changes to our Part 101 Fixed Service rules. We note that FWCC originally filed its proposal for changes to the antenna standards in that proceeding.

f. Above 86 GHz

85. *Background.* IEEE802, Marcus Spectrum, NYU Wireless, Wi-Fi Alliance, and Wireless Innovation Forum expressed support for consideration of some combination of bands above 86 GHz for use. Marcus Spectrum pointed to a petition for rulemaking filed by Battelle Memorial Corporation seeking service rules for licensed use of the 102–109.5 GHz band. NYU Wireless described the frequencies above 100 GHz as a ''technical playground'' that could lead to new technical innovations. Marcus Spectrum urges that the presence of co-primary passive allocations should not preclude use of the frequencies above 95 GHz.

86. In the 92–95 GHz band, unlicensed operation is allowed only for devices that are capable of operating only indoors. In 2003, there was considerable interest in using the band more generally for unlicensed use, but the Commission declined to authorize outdoor or airborne use because of possible harmful interference to radio astronomy from unlicensed outdoor devices.

87. *Discussion.* We are encouraged by commenters' expressions of interest in

frequencies above 86 GHz. At the same time, as Marcus Spectrum points out, there are a wide variety of combinations of allocations in the frequencies above 86 GHz. We believe the most appropriate means of proceeding is to consider proposals for use of specific frequency bands. The specific proposal we have before us is Battelle's proposal to establish licensed service rules for the 102–109.5 GHz band. We will consider that proposal in the Wireless Backhaul proceeding, WT Docket No. 10–153. We invite other interested parties to submit other proposals, including proposals for authorizing use under our Part 15 rules. We also note that, unlike in 2003, there has been no advocacy for further unlicensed use in the 92–95 GHz band.

B. Rules for Licensed Operations in the 28 GHz, 39 GHz, and 37 GHz Bands—Creation of the Upper Microwave Flexible Use Service

88. In this section, we set forth our proposal for licensing rules for the 28 GHz, 39 GHz, and 37 GHz bands. These proposals are built off of the Commission's significant experience crafting licensing rules that promote the widespread deployment of spectrum. These proposals strike a balance between more traditional geographic-area licensing and innovative licensing schemes aimed at meeting needs of different users for different uses. In the 28 GHz and 39 GHz band, we propose a traditional geographic area licensing scheme that is flexible to provide access and protection for fixed, mobile, and FSS uses. In the 37 GHz band, we propose a licensing model that attempts to maximize the use of spectrum by creating rights for both local area networks and wide area networks. We seek comment on these proposed licensing mechanisms, and alternatives.

1. 28 GHz and 39 GHz Bands—Geographic Area Licensing

89. We propose to create a new service for the 28 GHz and 39 GHz bands—the Upper Microwave Flexible Use Service—and propose to establish rules to allow an Upper Microwave Flexible Use Service licensee to provide any form of fixed or mobile service (including aeronautical mobile, where consistent with the allocation). For current 28 GHz and 39 GHz licensees, we propose to grant new licenses that provide new flexible rights to operate in the licensed geographic area and include the same spectrum, with authorization for both fixed and mobile operations. For geographic license areas with no existing LMDS or 39 GHz licensees, we would assign these new Upper Microwave Flexible Use Service licenses via competitive bidding. Finally, as described in further detail below, we propose to allow FSS providers to acquire these licenses through auction or the secondary market, thereby allowing them to continue to operate or expand in these bands.

90. We believe there are several advantages to using a geographic area licensing approach in these bands. Issuing a single license including both fixed and mobile service rights would allow the licensee to coordinate fixed and mobile uses within its geographic area. Such an approach would be consistent with the Commission's prior decision to use geographic area licensing for fixed and point-to-multipoint service in these bands. In addition, geographic licensing is consistent with the Commission's licensing approach for flexible use bands, such as bands licensed under Part 27 of the Commission's rules. We also note that a wide variety of commenters supported geographic area licensing in these bands. We seek comment on this proposal.

91. We propose to permit existing LMDS and 39 GHz licensees to exercise the full extent of these rights—including mobile rights—for geographic areas and bands in which they currently hold licenses. There are several likely advantages to this proposal. First, this approach will minimize transaction costs and provide the fastest transition to expanded use of the band, which would be to the benefit of consumers. Second, traditional fixed operation in these bands consists of tightly focused beams between two points. Third, and related to the difficulty in distinguishing between fixed and mobile services in this band, the existence of separate licenses for fixed and mobile operation might create unusually large challenges related to interference.

92. Further, the Commission previously contemplated that LMDS and 39 GHz licensees would have the opportunity to engage in mobile operations if the associated technical issues could be resolved. Such a policy also would be consistent with the Commission's decision to grant existing MDS and ITFS licensees blanket authority to engage in mobile operations when the Commission instituted geographic area licensing for those services in the 2.5 GHz band. A variety of commenters support this approach. We accordingly seek comment on the proposal to award mobile operating rights to existing LMDS and 39 GHz licensees, and the costs and benefits of so doing.

93. We recognize, however, that alternative approaches exist to assign flexible use rights in geographic areas and bands with existing LMDS and 39 GHz licensees. In particular, we seek comment on the costs and benefits of establishing an overlay right that would allow new licensees flexibility in use, subject to noninterference with the incumbent licensees. While our principal proposal is to directly assign flexible use rights to existing licensees in lieu of establishing an overlay right, we acknowledge certain benefits to assigning such rights using competitive bidding and seek comment on whether to award overlay rights for these bands through auction. First, an auction would assign these rights to the user that values the set of rights most highly, whether it be an incumbent licensee or a new potential user. Second, the use of an auction, rather than a direct grant of additional rights to existing licensees, ensures that a portion of the value associated with these additional rights will accrue to the United States Treasury. Third, the Commission has relevant experience in the application of overlay rights in other bands.

94. We invite commenters to address these and related other issues that will help us identify the most efficient means for assigning these new, flexible use rights consistent with our obligations under Section 309(j) of the Communications Act, especially in geographic areas and in spectrum that currently has incumbent licensees. We ask commenters to provide data on the costs and benefits associated with each approach.

2. 37 GHz—Hybrid Authorizations

95. As we noted in the NOI, ''we aim to develop a framework that will accommodate as wide a variety of services and uses as possible.'' We also noted two primary models of wireless network deployments—service provider models, and decentralized Wi-Fi—like deployment deployed by end users. Our proposed licensing model for the 28 GHz and 39 GHz bands will ensure that extensive spectrum is available for service provider deployments of 5G small cells or other fixed or mobile technologies that service providers may deem appropriate. Similarly, our proposal for 64–71 GHz would extend the existing 57–64 MHz band, making 14 gigahertz of contiguous spectrum available for short-range unlicensed uses.

96. We propose to establish service rules for the 37 GHz band that would enable flexibility to facilitate a third type of network deployment: privately deployed networks that can provide 5G

communications for advanced enterprise and industrial applications not suited to unlicensed spectrum or public network services. These applications might require licensed spectrum rights tailored to physical facility boundaries. The inherent short-range characteristics of millimeter wave spectrum make it well-suited to serve this need, and might also facilitate natural coexistence between a private, local area network, and a more traditional commercial wide area network. Unlike in the 28 GHz and 39 GHz bands, there are no incumbent non-Federal terrestrial authorizations in the 37 GHz band. This lack of incumbents gives us additional flexibility in designing a licensing mechanism for this band. We therefore seek comment on a hybrid licensing scheme that would convey licensed ''local area'' operating rights to premises occupants by rule, and separately, geographic area licenses for wide area use. We also seek comment on variations on this proposal as discussed below. Because this mode of licensing would not exhaustively license all geography, we seek comment on ways to establish geographic area licenses for wide area use. We also seek comment on the proper regulatory relationship between the two categories of licenses.

97. We believe several facts support making 37 GHz band spectrum available for licensed local area networks. First, radio signals in this band propagate over short distances (due to atmospheric absorption) and signals are heavily attenuated by exterior walls and windows. With those characteristics, it could be possible to separate local-area deployments from each other and also from wide-area deployments by simply leveraging the physical properties of the spectrum. Second, as a practical matter, local-area millimeter wave deployments will require permission of the property owner for siting, installation, backhaul, etc. Or alternatively, a property owner will need the permission of the licensee to use the spectrum within their own property, and the licensee may not have an incentive to bargain with the property owner even if the property owner has a strong need for the spectrum. Therefore, it may be highly efficient to convey the initial spectrum assignment for these environments directly to the owner or user of the local area rather than a third-party entity.

98. We propose that local area operating rights in the 37 GHz band be awarded by rule, pursuant to Section 307(e) of the Communications Act. We seek comment on how to define ''local area'' for these purposes. If we limit operations to indoor only, what applications would be precluded by limiting devices to indoor use only? What consideration should be given to the tradeoffs between these factors? Should the rule convey rights to property owners? If so, should the rights apply equally to private and public property? Should we explicitly exclude outdoor ''public spaces'' (*e.g.,* streets, parks)? Should we allow those rights to be conveyed through standard instrumentalities of state law (*e.g.,* as part of a standard property lease) or should we establish special rules governing conveyance of these operating rights? Alternatively, should the usage rights automatically attach to the current lawful occupant of a property (*i.e.,* tenants)? Should the rights be conveyed only for indoor uses or should outdoor uses (*e.g.,* courtyards, campus environments) also be authorized? Should the rule relate to the deployment of network facilities (*e.g.,* a right to deploy base stations or access points in the local area) or more broadly to RF protections (*e.g.,* a right to quietude in the local area)? Should the local area operating rights only apply to facilities exceeding some minimum size? How do we ensure that equipment is used in a manner consistent with any restrictions we place on local area operations?

99. We further propose that wide area rights in the 37 GHz band be defined as area licenses assigned through auction. Holders of these licenses would be entitled to deploy service in any and all areas not awarded through the rule-based licensing approach described above. For example, if we were to determine that the local area rights attach to indoor deployment of the 37 GHz band, the wide area rights would authorize outdoor deployment. We presume that those licenses would otherwise be similar in character to traditional geographic licenses. We seek comment on this proposal. We seek comment below on the appropriate license area size.

100. We seek comment on the RF coexistence of local area and wide area deployments, and how the coexistence should affect the definition of and relationship between the two classes of rights. Specifically, we seek technical comment on the propagation of this spectrum through typical building materials, and to what extent modern building materials used in energy-efficient construction affect attenuation outside of the building. We seek comment on whether, to distinguish the rights between the use cases and facilitate coexistence through licensing rights, one of the two categories of licensees should have the right to assert claims of harmful interference against the other? Or should it be presumed that any licensee operating within the rules will be on equal footing with any other and every user would have a duty to coordinate with its neighbors? Could relatively lower authorized power limits for local area users minimize the interference risks to wide area users? Conversely, could ''self-help'' remedies (*e.g.,* RF shielding) protect local area users from higher power wide area network transmissions?

101. Alternative Proposal. As an alternative to the foregoing proposal, we could divide the 37 GHz Band into several blocks and assign some of these blocks by rule for local area uses (as described above). For example, the 1600 MHz bandwidth could be divided into three 533 megahertz or four 400 megahertz blocks. One or two of these blocks could be assigned by rule to local area uses and the others could be licensed on a geographical area basis and assigned through an auction process. A band-wide interoperability rule would ensure that equipment would be available for all users in the band. Dividing the band spectrally in this way may not be as efficient, from a local network standpoint, as dividing it geographically, as proposed above, because it may result in local area networks not being to access the full frequency range in the band. On the other hand, it may be easier to implement procedurally and would eliminate any concerns about co-channel interference between local area and wide area networks sharing the same frequencies. We seek comment on this alternative proposal.

102. A second alternative would be to use geographic area licensing of all rights, but use geographic areas small enough to accommodate local area users without extensive partitioning of large licenses. This alternative will be discussed in further detail in the License Area Size section, supra.

3. License Area Size for the 28 GHz, 39 GHz, and 37 GHz Bands

103. In the NOI, after noting that 28 GHz had already been licensed by BTA and 39 GHz had already been licensed by EA, we sought comment on ways in which geographic area licensing could be tailored to ensure greater utilization of spectrum for mobile services in the millimeter wave bands, including by selecting the optimal geographic area size. We also observed that, in determining the appropriate service area size, larger license sizes can make it difficult to generalize across different licenses in different areas, while smaller license sizes can raise the burden of

administering the licensing scheme, including verifying build out.

104. Many commenters addressed the issue of license area size. Six commenters supported license areas that are consistent with the current fixed terrestrial regime at 28 GHz and 39 GHz, including four incumbent fixed licensees. Several commenters pointed out that the characteristics of millimeter wave spectrum suggest that large service areas would not be advisable. Finally, two commenters stated that development of millimeter wave technology is too nascent to make informed determinations about license area, and one criticized large license area sizes as being inappropriate for millimeter wave technology.

105. *Discussion.* If we adopt a geographic area approach for licensing these bands as we proposed above, then we must determine the appropriate size(s) of service areas on which licenses should be based. We seek to adopt service areas for all bands that meets several statutory goals. These include facilitating access to spectrum by both small and large providers, providing for the efficient use of the spectrum, encouraging deployment of wireless broadband services to consumers, including those in rural areas and tribal lands, and promoting investment in and rapid deployment of new technologies and services consistent with our obligations under Section 309(j) of the Communications Act. In order to accomplish these goals, we must take into account the unique characteristics and circumstances in each specific band. We agree with CEA that the characteristics of millimeter wave spectrum must be taken into account in determining ''both the geographic scope of licenses and performance requirements,'' including the fact that licensees may not initially want or need to serve an entire BTA to meet its or its customers' needs.

106. We propose to use counties as the base geographic area unit for licenses in the 28 GHz, 39 GHz, and 37 GHz bands. Counties are significantly smaller than traditional license areas, such as BTAs and EAs, but are generally larger than the other non-traditional license area the Commission has elsewhere adopted, including census tracts. There are currently 3,143 counties, in comparison to 176 EAs, 493 BTAs, and more than 74,000 census tracts.

107. We believe there may be several advantages to county-based licenses. First, we believe county licenses best fit the localized types of services we expect to be offered in the mmW bands. Second, establishing smaller licenses could provide licensees with additional flexibility to target their deployments to those areas where they need the capacity. Third, smaller license areas reduce the potential for warehousing spectrum; again, licensees will be more likely to acquire and hold only the licenses they need to meet their customers' demand. Fourth, county based licenses could equally facilitate access by both small carriers and large carriers.

108. We believe that, in accomplishing our statutory objectives, it is advantageous that counties greatly vary in size, population, and demographics. We expect that there will be prospective providers who wish to serve areas in more than one county, as well as prospective providers with more limited business plans seeking to serve a single, small county or a partitioned county. And finally, as discussed below, we propose to allow FSS operators to acquire licenses in these bands, which will confer on the FSS operator the right to exclude other users. We believe counties are an appropriate size to allow FSS operators to seek the protection they might desire through the license without over or under excluding other uses or users.

109. We seek comment on alternative geographic area sizes that could be used as the basis for licensing spectrum in these bands. For 28 GHz and 39 GHz, should we maintain the existing larger license areas of BTAs or EAs, respectively? Would maintaining the existing license areas provide any advantages in facilitating deployment of those bands? We also seek comment on license areas historically used by the Commission such as PEAs, census blocks, or block groups. If we do not license local area rights in the 37 GHz band by rule, using a geographic area approach might allow for a greater mix of local area and wide area licensed uses in the same band. In that case, we may wish to adopt geographic license areas small enough to accommodate local area users without extensive partitioning of large licenses. For example, we could define license areas based on census blocks or block groups. This might allow for a greater mix of local area and wide area licensed uses in the same band compared to traditional license areas, which typically encompass an entire metropolitan region and its surrounding area. We also seek input from FSS operators on the appropriate license area size that would accommodate their participation in the market-based mechanism described below to accommodate potential further FSS use of these bands. Balancing the need for sufficient geographic separation and license areas that are not unnecessarily large, are counties an appropriate license size for potential FSS use, or would smaller or larger license areas be more appropriate? We ask commenters to discuss and quantify the economic, technical, and other public interest considerations of licensing these bands using the particular geographic area they advocate.

110. Treatment of Existing 28 GHz and 39 GHz Licenses. We recognize that there are existing LMDS and 39 GHz licenses that are licensed on a BTA or EA basis, respectively. In 1997, the Commission initially determined that the 39 GHz band would be licensed on a BTA basis. This decision was based on our expectation at the time that the Commission would execute licensing agreements similar to those it had in other services. By 1999, subsequent developments led the Commission to conclude that adopting BTAs for 39 GHz could unnecessarily delay the licensing process. Thus, on its own motion, the Commission reconsidered its license area determination and, based on the record in the proceeding, decided to license all channel blocks in the 39 GHz band using Economic Areas.

111. We propose to subdivide existing LMDS and 39 GHz licenses on a county basis, consistent with our proposal to offer licenses on a county basis for spectrum currently held in inventory. This ensures that both the existing and future licenses are uniform in their size and rights, and will facilitate a multiplicity of uses and users. In addition, because counties nest into both BTAs and EAs, incumbent licensees retain the exact same coverage, and increase their flexibility to tailor the license holdings to meet their business needs. Under our proposal, if a licensee holds a BTA or EA license consisting of eight counties, it would receive a separate license for each county in the BTA or EA, for a total of eight licenses. Existing licensees will otherwise keep the full package of license rights they currently hold (with the addition of new mobile rights). While we could keep the existing BTA or EA licenses as is, subdividing the licenses would create a uniform nationwide license structure. We seek comment on this proposal. We do not believe that subdividing the existing LMDS and 39 GHz licenses would constitute a modification of license within the meaning of Section 316 of the Communications Act because the change would not affect the substantive operating rights of the existing licensee. Moreover, to the extent the change modifies existing licenses, the Commission may effectuate

such a change on a licensee-wide basis pursuant its rulemaking authority, without triggering the procedural requirements of Section 316.

4. Band Plan for the 28 GHz, 27 GHz, and 39 GHz Bands

112. We seek comment on our proposed band plans for the 28 GHz, 37 GHz, and 39 GHz bands. For the 28 GHz band, we propose to use the existing band plans in place for LMDS. Specifically, the 27.5–28.35 GHz band is currently licensed as a single block (LMDS Channel A1). We believe that continuing to license this band as a single block would be in the public interest because it would provide a wide band (850 megahertz) of contiguous spectrum that could be used to provide high-speed service. Samsung supports this proposal. In contrast, Straight Path supports subdividing the band into a 500 megahertz block and a 350 megahertz block, although its proposal is dependent on the availability of the 29.1–29.25 GHz and 31–31.3 GHz bands. Should we consider subdividing this band into multiple channels, and if so, how? Proponents of subdividing the band should provide analyses showing that multiple operators could provide service in the band.

113. We also propose to continue using the existing 39 GHz band plan. The 39 GHz band is subdivided into 14 channel pairs. Each channel pair has 50 megahertz by 50 megahertz of spectrum (totaling 1.4 gigahertz). We recognize that Samsung and Straight Path recommend that the band be reconfigured for wider channels. On balance, we believe that keeping the existing band plan would promote expeditious deployment, consistent with our proposal to grant rights to current licensees, and provide a uniform nationwide band plan. We seek comment on this proposal, as well as proposals for larger channels. What is the cost of adopting a channel scheme that might vary between the current licenses and new initial licenses issued by competitive bidding (*i.e.,* if the current licenses continue to follow the current band plan, but the newly created licenses subject to auction have a different band plan)? We also seek comment on Straight Path's proposal to allow incumbent licensees to exchange licenses within a market so that incumbents can obtain contiguous spectrum.

114. We also seek comment on a band plan for the 37 GHz band. One possibility would be to subdivide the band into three equal blocks of approximately 533 megahertz each. Another possibility would be to have four blocks of 400 megahertz each. Those plans would potentially provide multiple channels, each capable of supporting high-rate communications. If we chose to have separate bands for local area uses and outdoor deployments, we could have separate band segments for each use. We seek comment on alternative band plans. Commenters should address how their preferred plans would support a wide variety of services while maximizing access to spectrum.

5. License Term

115. *Background.* License terms generally vary based upon the type of service authorized and the purpose for which a service was created. Under existing rules, fixed licensees in the 28 GHz and 39 GHz bands licensed under Part 101 will have a license term not to exceed 10 years. When the Commission adopted its Part 101 Report and Order, it determined that both private and common carrier licenses granted on or after August 1, 1996, would have a license term not to exceed ten years. Finally, terrestrial service rules currently do not exist for the 37 GHz band, so no license term has been specified for that band.

116. We did not seek comment specifically on the issue of license terms in the NOI. Only one commenter, Qualcomm, directly addressed this issue by stating that the FCC should adopt a 10-year license term in conjunction with reasonable performance requirements.

117. *Discussion.* We propose to establish a 10-year term for all licenses in the 28 GHz, 37 GHz, and 39 GHz bands. We believe this length of license term will help to maintain consistency within these bands. Many of the fixed licenses in these bands are already subject to 10-year license terms, including fixed licensees in the LMDS band and fixed licensees in the 39 GHz band that were licensed after August 1, 1996. As discussed above, we propose to grant mobile operating rights to existing LMDS and 39 GHz licensees. If we adopt that proposal, we believe the most seamless, consistent, and expedient path for license terms would be to also adopt 10-year terms for all licensees in these bands.

118. We seek comment on our proposal to adopt a 10-year license term, including any costs and benefits of the proposal. We also seek comment on whether licensees should receive a renewal expectancy for subsequent license terms if they continue to provide at least the level of service required at the end of their initial license terms through the end of any subsequent license terms. In addition, we invite commenters to submit alternate proposals for the appropriate license term, which should similarly include a discussion on the costs and benefits. For instance, we note that in the 3.5 GHz R&O the Commission adopted three year license terms on the theory that the band will be used in a flexible manner that supports myriad uses, providing spectrum to users where and when they need it. Would a five year term for these bands be appropriate under a similar rationale?

119. Under our 10-year license term proposal, if a license in these bands is partitioned or disaggregated (as discussed in further detail below), we propose that any partitionee or disaggregatee would be authorized to hold its license for the remainder of the partitioner's or disaggregator's original license term. This approach is similar to the partitioning provisions the Commission adopted for other services. We emphasize that nothing in our proposal is intended to enable a licensee, by partitioning or disaggregating the license, to confer greater rights than it was awarded under the terms of its license grant. Similarly, nothing in our proposal is intended to enable any partitionee or disaggregatee to obtain rights in excess of those previously possessed by the underlying licensee.

C. Facilitating Satellite Use of the 27.5–28.35 GHz and 37.5–40 GHz Bands

1. Background (Current Framework)

120. Nineteen years ago, in the 28 GHz First Report and Order, the Commission found that co-frequency sharing between LMDS and ubiquitously deployed satellite earth stations was not yet feasible, but said that it would consider revisiting that conclusion if future technology became available to facilitate that type of sharing. Among other band segments, the Commission designated 850 megahertz at 27.5–28.35 GHz for LMDS on a primary basis, and permitted geostationary Fixed-Satellite Service (GSO/FSS) or non-geostationary Fixed-Satellite Service (NGSO/FSS) systems to provide links in that band segment on a non-interference basis to LMDS systems, but only for the purpose of providing limited Earth-to-space gateway-type services. The Commission rejected a proposal to offer limited protection to FSS gateways operating in the 27.5–28.35 band segment, concluding that, if proponents of FSS systems were to implement gateways in that part of the LMDS band, these gateway links would operate on a non-

interference-non-protected basis with respect to LMDS operators.

121. With regard to the 37.5–40 GHz band, in 2003 the Commission preserved the co-primary status of FSS for space-to-Earth transmissions, but implemented a ''soft segmentation'' plan that favored terrestrial Fixed Service and terrestrial Mobile Service, which also have co-primary allocations in that band. The soft segmentation plan limited FSS to gateway-type earth station operations in the 37.5–40 GHz band, and it prohibited the ubiquitous deployment of satellite earth stations designed to serve individual consumers. The plan also established clear-sky power flux density (PFD) limits for satellite transmissions in the 37.5–40 GHz band that are 12 dB lower than the level allowed for satellite transmissions in the 40–42.5 GHz band. However, in the subsequent V-Band Third FNPRM in 2010, the Commission proposed to allow satellite operators to increase their PFDs during heavy rain storms to overcome signal attenuation under those conditions.

122. For the reasons discussed below, we believe that it is appropriate to review both sets of decisions in light of evolutions in technology, the introduction of mobile, and the possibility of leveraging market-based mechanisms to coordinate coexistence issues and future FSS expansion in these bands.

2. Ka-Band Gateway Earth Stations

a. Request for Upgraded Status in 28 GHz Band

123. EchoStar and the FSS Operators ask the Commission to upgrade gateway earth stations in the 28 GHz band from secondary status to co-primary status. They argue that the secondary status has hindered satellite investment and that satellite operators ''must have regulatory certainty about their continued access to this spectrum for existing, as well as new, gateway earth stations.'' They also argue that experience has shown that gateway earth stations have been able to successfully co-exist with fixed LMDS licensees. XO, which holds 91 LMDS licenses, argues that granting satellite operators' co-primary status in the 27.5–28.35 GHz band ''could encumber existing LMDS licensees' spectrum and potentially frustrate their efforts to build out fixed wireless and 5G systems.''

124. ViaSat recommends a different approach: That the Commission review past decisions that constrained opportunities for spectrum sharing and evaluate them in the light of contemporary technologies and techniques. ViaSat acknowledges that the industry committee that was formed in 1996 to develop negotiated proposed rules for the LMDS in the Ka-band identified a number of techniques that could enable sharing of widely deployed FSS transmitters and LMDS receivers, including cognitive radio technologies and mitigation techniques, such as FSS monitoring of LMDS transmissions before transmitting and requiring that a database of LMDS subscribers be maintained, but did not come to an agreement about those techniques, in part because of concerns about the commercial viability of those approaches in 1996. Regardless of whether those types of sharing techniques were mature when plans for the Ka-band and the V-band were adopted, says ViaSat, the fact remains that those techniques are readily available today, and in fact have been endorsed by the Commission in other proceedings as essential means of making more intensive use of spectrum.

125. *Discussion.* We believe there should be a mechanism under which satellite earth stations could acquire co-primary status where their owners believe that such a level of protection is necessary. Accordingly, we seek comment on establishing a market-based mechanism for allowing proposed gateway earth stations to acquire co-primary status by acquiring flexible use terrestrial licenses. Specifically, we propose that a Part 25 FSS earth station would have co-primary status if its licensee also holds the corresponding terrestrial license for the location of that earth station.

126. We believe it is not in the public interest to automatically grant co-primary status for FSS operations in the 27.5–28.35 GHz band at this time. The main disadvantage of designating FSS gateway earth stations as co-primary at this time is that it could be inconsistent with the development of terrestrial Mobile Service in the band. While there should be a mechanism for accommodating gateway earth stations in the 28 GHz band, that mechanism should also be consistent with terrestrial use of the band.

127. At the same time, we agree with EchoStar, the FSS Operators, and ViaSat that there should be additional mechanisms for accommodating gateway earth stations in the 28 GHz band. In particular, we agree with ViaSat that it might be feasible to allow satellite operators to make greater opportunistic use of the LMDS band for gateway earth stations. We note that FSS Operators, O3B, and ViaSat agree that they have been able to coexist with LMDS operations through planning and coordination. Recognizing the balance we are proposing to strike between incumbent operations and new flexibility in this band, we seek comment on the ability of mobile and FSS operations to coexist, and ways to facilitate coexistence that are mutually effective for both FSS and future mobile operators.

128. One way to protect gateways from being superseded by subsequent terrestrial deployments would be for FSS operators to obtain the terrestrial licensees, either by participating in Commission auctions or by purchasing them from existing Upper Microwave Flexible Use licensees. Since there are no proposed eligibility restrictions on Upper Microwave Flexible Use licenses that would specifically limit the ability of FSS providers to acquire these licenses, there is no legal impediment to FSS operators acquiring a terrestrial license. In this case, the license right that an FSS provider may benefit from and value the most is the right to exclude other users from the geographic area of the license. That right in effect allows them to achieve co-primary status and would provide the protection the FSS providers' seek.

129. Allowing non-Federal FSS operators to acquire flexible use licenses to obtain co-primary status would have several advantages. First, it would establish a market-based mechanism for determining the highest and best use of the spectrum in a given area. On the other hand, this mechanism need not unduly burden the development of terrestrial mobile or fixed service, especially where FSS operators opt only to obtain partitioned portions of licenses, because FSS operators will have little incentive to buy territorial rights any larger than they will need to ensure the continued operation of their gateways. Since these are transmitting earth stations, the area needs only be large enough to ensure that no constraints are imposed on terrestrial operations outside that area. Second, this approach would allow licensees to use the 28 GHz band to provide a wide variety of services to consumers and businesses. Third, both satellite and terrestrial operators would obtain additional flexibility to adjust their operations to meet consumer demand. That flexibility would help ensure that spectrum ends up in the hands of someone who is willing and able to use the spectrum to provide service.

130. By obtaining Upper Microwave Flexible Use licenses—or portions thereof—FSS operators would be able to prevent incursions by terrestrial operators that might otherwise require them to shut down their FSS gateways. We emphasize, however, that an Upper

Microwave Flexible Use license would not authorize operations of the FSS earth stations. The licensing of earth stations would continue to be governed by our Part 25 licensing rules. We further emphasize that, by auctioning Upper Microwave Flexible Use licenses or allowing the transfer of partitioned portions of those licenses to companies that operate FSS systems, we would not be auctioning orbital slots or the right to operate a satellite system. Any such authorization would require a separate license issued pursuant to Part 25 of the Commission's Rules. Accordingly, the fact that the Upper Microwave Flexible Use licenses would be subject to auction would not be contrary to Section 647 of the Open-market Reorganization for the Betterment of International Telecommunications Act.

131. In proposing the alternative discussed above, we do not intend to limit the ability of FSS operators to continue availing themselves of other, existing alternatives. We also emphasize that we would not require FSS operators to acquire an Upper Microwave Flexible Use authorization to operate in this band. In particular, FSS operators would continue to have the option of applying for earth station authorizations on a secondary basis under our existing rules. They would also remain free to negotiate private interference agreements with Upper Microwave Flexible Use licensees.

132. *Treatment of Existing 28 GHz FSS Earth Stations.* There are currently 21 FSS earth stations licensed in the 28 GHz band on a secondary basis, and 17 pending applications. About half of those earth stations (or proposed earth stations) are located within the service area of an active LMDS license authorized to operate in the 28 GHz band. The other half are located in areas where there is no active LMDS license in the 28 GHz band. We seek comment on the proposals described below for future treatment of those earth stations, as well as alternatives.

133. We propose that earth stations located within the service area of an active LMDS license maintain their secondary status. Those FSS operators constructed their facilities knowing that their operations would be on a secondary basis. LMDS licensees purchased their licenses at auction with the understanding that their fixed and point-to-multipoint operations would have priority over FSS operations. These LMDS licensees have also successfully demonstrated substantial service. Under those circumstances, we propose not to upgrade FSS operations at the expense of LMDS licensees. To the extent that FSS operators and LMDS licensees have private agreements concerning protection of their facilities, those agreements would continue in force and effect. We also note that depending on the terms of those agreements, the FSS operator may obtain protection which is based on the terms of the agreement and the primary nature of the LMDS license.

134. We have attempted to balance the introduction of mobile on a primary basis, with the investment and expectation of continued operation by FSS providers. Recognizing the services' status in the U.S. Table of Allocations, what is the extent to which mobile and FSS can coexist in a shared environment? Technically, to what extent do FSS providers anticipate that their operations may cause interference to mobile services? In the event that parties believe there are issues of coexistence that cannot be resolved through direct discussions between the mobile and FSS operations, are there regulatory approaches that could facilitate coexistence between the two services without having a negative impact on future mobile deployment?

135. With respect to FSS earth stations located outside the license area of an LMDS licensee, we believe it could be in the public interest to provide a mechanism for those earth stations to upgrade to co-primary status. In those areas, the most common reason for cancellation of the LMDS license was failure to demonstrate substantial service. Demand for fixed LMDS service in those areas was therefore apparently limited. To the extent an FSS earth station is operating and providing service, it could be appropriate to upgrade the earth station to co-primary status in those areas where the former LMDS licensee did not construct. Upgrading the status of those earth stations could give the FSS operator an incentive to make additional investment in those facilities because it would have certainty that the earth station would not have to shut down in order to protect primary users of the spectrum. In addition, there is no LMDS licensee who can claim prejudice from that action. As with the proposal in the previous paragraph, this proposal attempts to balance the introduction of mobile on a primary basis, with the investment and expectation of continued operation by FSS providers. We therefore seek comment on the same issues of interference and facilitating co-existence for this proposal as we did for that other proposal.

136. We seek comment on the following mechanism for upgrading existing FSS earth stations located outside the service area of an active LMDS license. Prior to holding an auction, the Commission would open a closed filing window for Upper Microwave Flexible Use licenses. The filing window would be restricted to FSS licensees with an earth station within the census tract (or other area we may adopt) of the proposed license. The FSS earth station licensee would have the opportunity to apply for a license including the license area where the earth station was located. Because the filing window would be restricted to the FSS operator, there would be no mutual exclusivity. Once the FSS operator was issued the Upper Microwave Flexible Use license, it would have co-primary status. Adopting this approach would give FSS operators certainty that they could obtain co-primary status covering a significant number of the existing sites. This mechanism would also integrate existing earth stations into the flexible, market-based framework we are adopting for the 28 GHz band. In the subsequent Upper Microwave Flexible Use license auction, initial licenses for any geographic area awarded pursuant to the closed filing window would not be offered.

137. In commenting on this mechanism, we ask parties to address the following issues. First, what criteria should we use for determining that an earth station is in operation and providing service? Second, what license area should we use for licenses offered to the FSS licensees in a potential closed filing window? Third, would it serve the public interest to set up a process to allow, through a market-based approach or otherwise, future earth stations in the same license area?

138. We also seek comment on alternative mechanisms of upgrading FSS earth stations that are not within the service area of an LMDS licensee to co-primary status. Commenters should keep in mind that there appear to be advantages to adopting a flexible licensing framework that results in FSS operators holding Upper Microwave Flexible Use licenses.

139. *Future 28 GHz Earth Stations.* We propose that future FSS operators can obtain Upper Microwave Flexible Use licenses at auction to eliminate potential interference concerns with terrestrial operations in their areas. We recognize that FSS operators may wish to apply for earth stations in the 28 GHz band during the period of time that precedes the auction for Upper Microwave Flexible Use licenses. Until we issue new rules, such licenses will continue to be issued on a secondary basis. If the earth station is within the service area of an existing LMDS licensee, the FSS operator may enter

into an agreement with the primary licensee or acquire the LMDS or Upper Microwave Flexible Use license in the secondary market in order to upgrade its status.

140. If the proposed earth station is sought before the auction for licenses outside the service area of an LMDS licensee, we must balance several competing interests. The FSS operator has an interest in obtaining protection for its earth station. On the other hand, depending on the location of the earth station, granting co-primary status could hinder future terrestrial deployment in the 28 GHz band.

141. We propose to use a waiver process to address this situation. Under our proposal, 28 GHz earth station applicants may seek a waiver of their secondary status and request co-primary status if they can demonstrate that their presence would be unlikely to have a negative impact on future terrestrial service. A primary factor we propose to consider in evaluating the waiver request would be the location of the proposed earth station. For instance, we would be more likely to favorably act on a request if an earth station applicant proposes to locate in a remote area where terrestrial service is unlikely to be deployed shortly after the auction. On the other hand, earth stations located in populated areas where there is likely to be demand for terrestrial service would bear a heavy burden of justifying a waiver. We could also consider steps the earth station applicant proposes to minimize its impact on terrestrial operations, such as natural or artificial shielding of the earth station site, or limiting its emissions towards low elevation angles. If the earth station applicant receives a waiver, and the earth station is operating and providing service at the time of the closed filing window, we propose that it would be eligible to apply for an Upper Microwave Flexible Use license during the closed filing window as discussed above.

142. We seek comment on using a waiver process to evaluate requests for co-primary status, as well as alternative ways of addressing this issue. Are there additional criteria we should consider in evaluating waiver requests? Are there other ways of evaluating such requests?

3. Repealing Restriction on FSS Fixed User Equipment in 28 GHz Band

143. As noted above, FSS use of the 28 GHz band is limited to gateway earth stations. While we anticipate that terrestrial service will remain primary in this band, we seek comment on whether it is possible to allow deployment of fixed FSS user equipment on a secondary basis, subject to the condition that the user equipment not cause interference to fixed or mobile operations. In that regard, we propose that Upper Microwave Flexible Use Service licensees be required to provide information on their fixed and mobile deployments in order to facilitate sharing. We also seek comment on several possible technical mechanisms by which sharing could be implemented.

144. While some commenters take the position that sharing between terrestrial and widespread satellite operations in the mmW bands will be difficult or impossible, the overwhelming majority of commenters who address the issue say that the propagation characteristics of mmW signals will make it much easier to manage spectrum sharing, compared with lower bands of spectrum where signals propagate around obstacles or beyond horizons.

145. In this section, we seek comment on several possible ideas for facilitating the deployment of FSS user equipment on a secondary basis. We seek comment on these ideas, as well as alternative ideas commenters wish to present. To the extent commenters believe a proposal will impose undue burdens, we encourage those commenters to describe the burden in detail and to provide detailed information on the costs involved. We also encourage commenters to discuss how these proposals would affect a variety of use cases for the mmW bands, including fixed, mobile, and satellite uses. We also seek comment on the extent to which private agreements between FSS operators and terrestrial licensees could facilitate sharing. Should we allow private agreements to supplement or replace any regulatory mechanisms we might establish to facilitate sharing? Could private agreements render rules unnecessary in this area? We seek comment on these issues.

a. Spectrum Access System

146. One possible sharing mechanism would be to develop a spectrum access system (SAS) similar to the system required for the 3.5 GHz band. In that band, the Commission established a roadmap for providing tiered access to shared spectrum on a user-priority basis, and made clear its intention to apply the same kinds of techniques to other bands.

147. ViaSat, T-Mobile, Wireless Innovation Forum and Google support the SAS concept in various scenarios. In particular, ViaSat says it is no longer necessary to impose limitations on satellite user terminals in light of the sharing technologies and techniques that have been proven to facilitate successful non-interfering operations in other bands.

148. Under the SAS option, we propose to require terrestrial licensees to provide satellite operators with essential information that the satellite operators will need in order to avoid causing interference to terrestrial operations. We propose to require licensees to provide a SAS provider with the geographic coordinates and other pertinent technical information for their links. We seek comment on what information, under this scenario, should be provided to the SAS operator. For stationary operations, we anticipate that the technical parameters that will be useful to FSS operators seeking to avoid causing interference will resemble, or perhaps be a subset of, the technical parameters that we require Fixed Service point-to-point license applicants to submit on Form 601, Exhibits D, H, and I, or their electronic equivalents. It is not yet possible to delineate a similarly specific set of parameters for mmW mobile base stations and user equipment because the design features of such equipment are still under development. Since Form 601 has been designed in part to accommodate applications for point-to-multipoint licenses, however, many of the parameters required by that form could also be pertinent to mmW mobile base stations, most of which will likely provide omnidirectional service over limited areas.

149. We recognize that, under most circumstances, the Commission's existing rules do not require the licensees of geographic service areas to file or otherwise publish the locations and technical characteristics of their individual transmitters and receivers. In this case, the benefits of enhanced sharing of the spectrum may outweigh any burden on the Upper Microwave Flexible Use Service licensee. We also note that existing licensees would obtain substantial benefits as a result of our proposed actions, including mobile operating rights. To avoid burdening terrestrial licensees prematurely or unnecessarily with this reporting requirement, we propose to defer implementing it until an FSS operator notifies the Upper Microwave Flexible Use Service licensee that it will soon begin deploying user equipment in the licensee's geographic service area or other area of operation. We also propose to require satellite operators to bear the cost of operating the SAS, for two reasons. First, the user equipment transmissions of satellite operators would be secondary to terrestrial operations in the 27.5–28.35 GHz band,

and it is their responsibility to avoid causing interference to primary users. Second, we assume that the SAS operators have the ability to pass along their costs of operation to their subscribers, with a reasonable profit margin, and that the SASs' internal costs will depend upon the complexity of coordination requested by the satellite operators. We seek comment on these proposals.

b. Beacon Signaling

150. Another option for facilitating FSS deployment of fixed user equipment on a secondary basis is to require Upper Microwave Flexible Use Service base stations to transmit beacon signals to assist satellite earth stations in determining the presence of nearby Upper Microwave Flexible Use Service links or base stations and the likely presence of user terminals communicating with those base stations. The beacon signals could either be separate signals or components of the forward-link signals that fixed links or base stations transmit to the user terminals with which they are communicating, similar to the pilot signals transmitted by CDMA and LTE base stations. Such beacon signals could be particularly helpful if they were modulated with messages containing some parameters describing the base stations' characteristics, *e.g.,* geographic location, coverage radius, height above average terrain, and antenna characteristics. Satellite earth stations would be required to monitor those beacon signals and have geolocation capability to determine keep-quiet areas, based on knowledge of their own signal characteristics and information about nearby Upper Microwave Flexible Use Service stations provided by their beacon signals.

151. We seek comment on the feasibility and desirability of this alternative approach. Would it be technically and economically feasible for 28 GHz Upper Microwave Flexible Use Service licensees to provide, and for FSS operators to use, the information provided by a beacon signal? Would this approach be more or less burdensome for Upper Microwave Flexible Use Service licensees than establishing an SAS? Is there a risk that transmitting a beacon signal could cause interference in its own right? Finally, how burdensome to require 28 GHz terrestrial licensees to provide technical information on their stations' characteristics concurrently via an SAS and by signal beacons, and would such requirements provide any added assurance that FSS stations would not interfere with terrestrial operations?

c. Limiting Satellite or Terrestrial Operations

152. Another possible means of facilitating sharing would be to modify existing limits on FSS transmissions toward the horizon below a specified elevation angle, but require Upper Microwave Flexible Use Service licensees to be capable of screening out incoming signals above the same elevation angle or another complementary angle. Last year, the Commission was able to facilitate spectrum sharing between satellite and Wi-Fi operations in the 5.15–5.25 GHz band by limiting the output power of Wi-Fi transmissions at elevations above 30 degrees, even though, in the same order, it authorized increased power for Wi-Fi transmitters at lower elevation angles and allowed them to be operated outdoors in a band where they had previously been restricted to indoor-only operation. In the 28 GHz band, the predominant source of interference would be Earth-to-space transmissions by FSS earth stations, but a similar kind of angular separation could potentially be applied by limiting the power of their transmissions below a specified angle. By one account, most industry evaluations of potential mmW mobile station deployments assume that such stations' antennas will be tilted downward by 6 to 15 degrees, a configuration that would presumably limit base stations' vulnerability to incoming interference. To what extent could angular separation protect the mobile user equipment that communicates with those base stations? To what extent could angular separation protect fixed backhaul, since point-to-point links may require a variety of elevation angles?

d. Active Signal Cancelling

153. Satellite operators already make use of signal cancelling technology to transmit and receive simultaneously on the same channels, and intensive research and development is underway to apply similar techniques to terrestrial communications. We seek comment on the possibility that active signal cancellation could be used to limit the extent of interference between satellite and terrestrial operations.

154. Is such a concept feasible and workable? Since FSS user equipment transmissions would be secondary in the band, would it be reasonable to require Upper Microwave Flexible Use Service licensees to generate countervailing suppression signals? How would those burdens compare to the other benefits they would be receiving if the Commission upgrades their licenses to allow mobile operations?

e. Movable FSS User Equipment

155. The initial phase of this docket will focus on opportunities for secondary use of FSS user equipment at fixed locations. We also note, however, that the Commission has previously adopted regulations authorizing the provision of FSS to moving platforms in other bands, with respect to vehicle-mounted earth stations (VMESs), earth stations on vessels (ESVs), and earth stations aboard aircraft (ESAAs). We do not presume that satellite operators will choose to deploy user equipment on moving platforms in the 28 GHz band, but we also believe that evolving technology and market conditions should be the gating mechanisms for any such initiatives, not regulatory proceedings. We propose to adapt our existing rules for FSS to moving platforms and apply them to the 28 GHz band. All of those rules require satellite user equipment to mute their signals instantaneously whenever they lose location awareness or signal lock with their serving satellites, in part to avoid causing interference to other satellites. Because those satellites are typically spaced at two degree intervals along the geostationary arc or, in the case of NGSO satellites, are moving rapidly overhead from one horizon to another, the rules for FSS on moving platforms require extreme precision and reliability. We expect to initiate further proceedings to address satellite operations on movable platforms, either in another phase of this proceeding or in a separate docket that addresses movable FSS satellite equipment in multiple bands. We invite comments to guide our deliberations in developing those provisions.

4. 37.5–40 GHz Band Sharing Issues

156. We seek comment on three issues relating to FSS use of the 37.5–40 GHz band. First, we seek comment on whether we should make any changes to our treatment of gateway earth station applications in this band. Second, we seek comment on whether it would be reasonable to eliminate the prohibition against ubiquitous deployment of space-to-Earth user equipment in that band. Third, we seek further comment on allowing satellite operators in this band to increase the intensity of their PFDs above existing limits during heavy rain storms, subject to the provisions discussed below.

157. Unlike in the 28 GHz band, FSS earth stations in the 37.5–40 GHz band are primary in the Table of Allocations. Under our rules, however, gateway earth

stations may only be deployed if the FSS licensee obtains a 39 GHz license in the area where the earth station will be located, or if it enters into an agreement with the corresponding 39 GHz licensee. We seek comment on whether we need to update this rule to reflect the Upper Microwave Flexible Use Service we are proposing today. Are there any other changes we should consider to this rule?

158. In the 28 GHz band, we are seeking comment on establishing a waiver process by which non-Federal FSS earth stations could acquire co-primary status in those areas where there is no LMDS licensee if they can demonstrate that they would not have a negative impact on future terrestrial service. We seek comment on establishing a similar waiver process for non-Federal FSS earth stations in the 37.5–40 GHz band. Does the fact that this band is space-to-Earth require any changes to the proposed waiver process?

159. With regard to reception of space-to-Earth signals by user equipment in this band, ViaSat argues that opportunistic access to this spectrum would be useful and appropriate for satellite operators, provided that they also have reliable access to a base of spectrum in other bands that are dedicated to satellite operations on a primary basis, where satellites will always be able to operate on an unimpeded basis. Do other parties see potential value in this possible opportunistic use? We seek comment on whether the concepts that we have discussed with respect to fixed satellite user equipment in the 28 GHz band could be applied to the 37.5–40 GHz band with respect to non-Federal FSS users.

160. As in the 27.5–28.35 GHz band, we seek comment on authorizing the provision of stationary non-Federal FSS user equipment in the 37.5–40 GHz band, as we propose to adopt service rules authorizing terrestrial mmW mobile operations in this band. While satellite user equipment will not be transmitting Earth-to-space signals in this band and, thus, will not cause interference to terrestrial operations, we believe providing their operators with information about terrestrial stations is required in order for those operators to adapt their user equipment deployment plans to take into consideration the presence of interference generated by terrestrial stations. We invite comments on our proposal and alternatives with respect to this band.

161. Finally, we invite comments on the terms and conditions under which satellite operators should be allowed to increase their PFDs in the 37.5–40 GHz band to overcome rain-fade conditions, as the Commission proposed earlier in the V-Band Third FNPRM. Specifically, we seek to refresh the record to reflect advances in signal processing and information processing systems that have occurred during the five years since the V-Band Third FNPRM was issued.

D. Federal Sharing Issues

162. Portions of the 39 GHz and 37 GHz bands are shared with the Federal government. In addition, there are passive Federal and non-Federal allocations below 37 GHz that need to be considered when developing service rules for the 37 GHz band. Through the inter-agency process, we will continue work with NTIA and the Federal agencies to update the information on current and future Federal use of the 37 GHz band, provide the appropriate technical parameters for envisioned fixed and mobile applications, assess sharing compatibility, and establish sharing arrangements to enable the development of service rules for innovative commercial wireless services. Below, we describe the relevant Federal allocations, provide the available information we have, and raise pertinent questions concerning sharing between Federal and non-Federal operations where appropriate.

163. In addition, we seek comment on whether the future mmW technologies might be able to support a platform that could enable expanded sharing, including two-way shared use between Federal and non-Federal users in these bands and sharing among different types of service platforms. For instance, could the future mmW technology be used to support convergence of historically different network topologies beyond just mobile, fixed, and satellite, to include air-to-ground or ground-to-air, high altitude uses, or others uses? Could the same benefits of mmW technology that help facilitate different users and use cases also support increased sharing between Federal and non-Federal uses in the non-Federal portions of these bands?

1. 39.5–40 GHz

164. There is a Federal allocation for FSS (space-to-Earth) and MSS (space-to-Earth) in the 39.5–40 GHz band. Federal government earth stations in the MSS in the 39.5–40 GHz band are prohibited from claiming protection from non-Federal stations in the Fixed and Mobile Services in this band, but are not required to protect non-federal Fixed and Mobile Services in the band (*i.e.,* 5.43A of the ITU Radio regulations does not apply). This prohibition does not apply to Federal government earth stations in the FSS. When the 39 GHz Report and Order was adopted, Federal government use of the band was limited to military systems in the 39.5–40 GHz band segment, but the Department of Defense stated that it had plans to implement satellite downlinks at 39.5–40 GHz in the future, and the National Aeronautics and Space Administration (NASA) identified 39.5–40 GHz as a possible space research band to accommodate future Earth-to-space wideband data requirements. The 39 GHz Report and Order expressed optimism that such plans would not affect the continued development of the 39 GHz band for non-Government use, but the Commission said that it intended to address those interference issues in a future, separate proceeding that would focus on developing inter-licensee and inter-service standards and criteria. At present, the U.S. Table of Frequency Allocations provides that Federal satellite services in the 39.5–40 GHz band are limited to military systems.

165. We seek comment on whether the existing allocation provisions are sufficient to ensure coexistence between Federal and non-Federal operations. We seek comment on appropriate protections for Federal operations in the 39.5–40 GHz band. What considerations should we keep in mind as we develop service rules for the 37.5–40 GHz band? What are the appropriate principles and mechanisms we should use to ensure protection of Federal operations and coexistence with commercial operations? Are any limitations or special rules on mobile use necessary in order to protect Federal military FSS use of the 39.5–40 GHz band? Are there any additional measures needed in terms of Out-of-Band (OOBE) limits that are needed to protect federal MSS and FSS downlink operations in the adjacent 40–40.5 GHz band?

2. 37–38.6 GHz

166. There is also an allocation for federal space research, fixed, and mobile service operations in the 37–38 GHz band. There are also federal fixed and mobile allocations in the 38–38.6 GHz band. In 2004, NTIA sent a letter to the Commission identifying the following NASA receiving earth stations in the SRS in the 37–38 GHz band: Goldstone, California; Guam, Pacific Ocean; Merritt Island, Florida; Wallops Island, Virginia; and White Sands, New Mexico. NTIA has subsequently identified the NASA receiving earth station at Blossom Point, Maryland. NTIA also identified Green Bank, Virginia; and Socorro, New Mexico NSF

sites to support their Very Long Baseline Interferometry (VLBI) earth station operations. NTIA noted the importance of the 37–38 GHz band to support U. S. goals to provide a permanent manned presence in Earth orbit (on or near the moon), to initiate manned exploration of the planet Mars, and to support VLBI by satellite.

167. In their 2004 letter, NTIA also identified 14 military sites in the 37–38.6 GHz band that required protection. NTIA recommended that coordination with the federal operations be performed within the IRAC process. In 2006, NTIA sent a follow-up letter to the FCC reaffirming the need to protect NASA, NSF, and military operations from non-federal terrestrial and FSS operations in the 37–38 GHz band. NTIA requested that the protection of federal operations be accomplished by establishing a footnote to the U.S. Table of Frequency allocations specifying the federal sites and the coordination areas. NTIA also recommended that because of the potential interference from airborne systems, the aeronautical Mobile Service allocation should be deleted from the band 37–38 GHz.

168. We seek comment on appropriate protections for Federal operations in the 37 GHz band. What considerations should we keep in mind as we develop service rules for the 37 GHz band? What are the appropriate principles and mechanisms we should use to ensure protection of Federal operations and coexistence with commercial operations?

3. Passive Services Below 37 GHz

169. There are Federal and non-Federal allocations for the EESS (passive) and SRS (passive) in the 36–37 GHz band. Those services shall not receive protection from fixed and mobile allocations operating in accordance with the U.S. Table of Allocations. The 36.43–36.5 GHz band is used for radio astronomy spectral line emissions, and as specified in footnote US342 all practicable steps must be taken to protect radio astronomy in that band from interference. There are several allocations around 40 GHz to the radio astronomy service for both continuum and spectral line observations, some through footnote protections. Some of these allocations are shared with different types of active services. Pertinent to the bands under consideration and bands near 40 GHz covered under US342, there are Very Large Array receivers in current operation that observe the cosmos over the nominal frequency ranges of 26.5–40 GHz (Ka-band), and 40–50 GHz (Q-band). VLBA receivers cover 21.7–24.1 GHz and 41.0–45.0 GHz. Similarly, the Green Bank Telescope has a sensitive receiver and specialized wideband (continuum as well as spectrometric) back-ends for observations over the 26–40 GHz range.

170. CORF reports that the 36–37 GHz band is used by a series of instruments that provide data on ocean winds, cloud liquid water, precipitation, terrestrial snow, sea ice cover, and sea surface temperature. Those instruments include the NASA Global Precipitation Measurement Mission's Microwave lmager, NASA Tropical Rainfall Measuring Mission's Microwave lmager, DoD Special Sensor Microwave/lmager and WindSat instruments, and the JAXA Global Change Observation Mission-Water 1's Advanced Microwave Scanning Radiometer 2. CORF explains that most of these instruments operate in a direct detection mode, which means that their ability to reject out-of-band emissions is limited. CORF states that these instruments are particularly susceptible to interference because they operate in lower orbits and have larger receiver antennas. CORF asks for unspecified guard bands to protect EESS operations.

171. Whenever possible, the radio astronomy community takes a number of measures to mitigate the impacts of interference, including locating radio observatories in remote areas and by using bands allocated or footnote-protected for radio astronomy services. Spectrum management and regulatory processes are, therefore, critical for interference-free radio astronomical operations. The provisions of US342 and ITU–R No. 5.149, for instance, have provided local protection for radio observatories. The FCC will continue to work closely with NTIA and NSF to help facilitate mobile applications in the mmW bands, while mitigating the impacts on existing radio astronomy facilities.

172. We seek comment whether any special protections are necessary or appropriate for passive services below 37 GHz. As noted, EESS and space research operations are not entitled to interference protection from duly authorized Fixed and Mobile Services. Nonetheless, we seek comment on whether there are steps we could take to protect those operations without unduly limiting fixed and mobile operations in the 37 GHz band.

E. Licensing, Operating, and Regulatory Issues

1. Creation of New Rule Service and Part

173. LMDS and the 39 GHz service are currently regulated under Part 101 of the Commission's rules, which governs fixed microwave services. In light of the additional flexibility we are providing to LMDS and 39 GHz licensees, including mobile operating rights, we propose to create a new radio service, the Upper Microwave Flexible Use Service, and regulate that new service under a new Part 30 of the Commission's rules. We also propose to include the contemplated new 37 GHz band as part of the Upper Microwave Flexible Use Service. We seek comment on these proposals.

174. We believe establishing a new rule part for these services would allow us to have one unified set of rules governing the various types of operations we contemplate licensees will offer. While there may be administrative advantages to keeping LMDS and the 39 GHz service in Part 101, we believe establishing a new rule part would provide more clarity and more accurately reflect the nature of these licenses. We ask commenters to offer their views.

2. Regulatory Status

175. *Background.* For LMDS, the Commission has previously determined that applicants could provide common-carrier service, non-common carrier service, or both, and also enabled licensees to later amend their applications or modify that status. Similarly, in the 39 GHz band, the Commission concluded that licensees should be permitted to serve as a common carrier or as a private licensee. It determined that, for those licensees who select common-carrier regulatory status, they would be able to provide private service, and those licensees who select private service provider regulatory status could share the use of their facilities on a non-profit basis or could offer service on a for-profit, private carrier basis, subject to section 101.135 of the Commission's rules. Under this approach, licensees would elect the status of the services they wish to offer and be governed by the rules applicable to their status.

176. The open and flexible approach the Commission took to regulatory status in Part 101 is also consistent with the Commission's approach to other wireless services, such as the Part 27 rules for terrestrial wireless service.

177. *Discussion.* We propose to maintain the open and flexible

regulatory framework for the Upper Microwave Flexible Use Service. Specifically, we propose to permit the full array of Fixed and Mobile Service offerings without undue regulatory restraint. In doing so, our goal is to maintain an open and flexible approach that will allow the business judgments of individual applicants and licensees in these bands to shape the nature of the services offered pursuant to their licenses.

178. We propose to permit applicants and licensees to request common carrier status, non-common carrier status, private internal communications status, or a combination of these options, for authorization in a single license (or to switch between them). Applicants in these bands therefore would be able to, but would not be required to, choose between providing common carrier and non-common carrier services. If an applicant requested both common carrier and non-common carrier status in the same application, it would result in the issuance of both authorizations in a single license. Alternatively, the applicant may wish to limit its operations to common carrier or non-common services, in which case it would apply only for authorization on a common carrier or a non-common carrier basis, and the license would be issued for the status specified. The licensee would be able to provide all Fixed and Mobile Services anywhere within its licensed area at any time (except for indoor operating rights in the 37 GHz service), consistent with the statutory and regulatory requirements that are imposed on its respective operations. We note that it would be the licensee's obligation to maintain the various operations in compliance with all those requirements.

179. We observe that an applicant is to rely on the realities of the services to be provided in electing the appropriate regulatory status. An election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise, the service is non-common carriage. Consistent with this approach, we propose to rely on the designation by an applicant of its status as a common carrier or non-common carrier, consistent with the Commission's decisions regarding the regulatory classification of mobile services, to enable us to fulfill our obligations to enforce the common carrier requirements contained in statutes and our regulations. We seek comment on this proposal.

3. Foreign Ownership Reporting

180. *Background.* Certain foreign ownership and citizenship requirements are imposed by paragraphs (a) and (b) of Section 310 of the Act, as modified by the 1996 Act. These provisions prohibit the issuance of licenses to certain applicants. For current LMDS, 37 GHz, and 39 GHz licensees, these statutory provisions are adopted in Part 101 of the Commission's rules at section 101.7 of the Commission's rules. Specifically, section 101.7(a) prohibits the granting of any license to be held by a foreign government or its representative. Section 101.7(b) prohibits the granting of any common carrier license to be held by individuals that fail any of the four citizenship requirements listed.

181. *Discussion.* We tentatively conclude that these Section 310 requirements would apply to any applicants in the Upper Microwave Flexible Use Service. An applicant requesting authorization only for broadcast, common carrier, aeronautical en-route, or aeronautical Fixed Services would be prohibited from holding a license if it met any of the criteria in paragraph (b). If the applicant requested authorization for services other than for broadcast, common carrier, aeronautical en route, or aeronautical Fixed Services, it could hold a license if it met the single alien ownership requirement in Section 310(a), regardless of whether it would otherwise be disqualified for a common carrier authorization. And if the applicant requested authorization for both non-common carrier and common carrier services, it would be disqualified from a license if it met any of the criteria in Section 310(b). Whether the applicant is seeking only common carrier authorization in a license or in combination with a non-common carrier authorization, the provisions of Section 310(b) would apply in either situation and would prevent any common carrier authorization from being issued to an ineligible applicant.

182. We propose that applicants for this band should not be subject to different obligations in reporting their foreign ownership based on the type of service authorization requested in the application. Consequently, we propose to require all applicants to provide the same foreign ownership information, which covers both paragraphs (a) and (b) of Section 310, regardless of which service they propose to provide in the band. We also note that, if any such licensee later desires to provide any services that are subject to the restrictions in Section 310(b), we would require the licensee to apply to the Commission for an amended license, and we would consider issues related to foreign ownership at that time.

183. Based on the foregoing interpretation of the requirements in Section 310, we propose to apply a new provision in Part 30 that mirrors current section 101.7 of our rules. This approach is also consistent with our treatment of flexible use services regulated under Part 27 of the Commission's rules. We believe that such a provision would properly implement the restrictions contained in Section 310(a) and (b). We request comment on this proposal, including any costs and benefits.

4. Eligibility

184. For the Upper Microwave Flexible Use Service, we propose to adopt an open eligibility standard and seek comment on this approach, including its costs and benefits. In particular, we seek comment on whether adopting an open eligibility standard for the licensing of these bands would encourage efforts to develop new technologies, products, and services, while helping to ensure efficient use of this spectrum. We note that an open eligibility approach would not affect citizenship, character, or other generally applicable qualifications that may apply under our rules.

5. Mobile Spectrum Holdings Policies

185. Spectrum is an essential input for the provision of mobile wireless services, and ensuring access to and the availability of sufficient spectrum is crucial to promoting the competition that drives innovation and investment. The Commission has held that the Communications Act requires a close examination of the impact of spectrum aggregation on competition, innovation, and the efficient use of spectrum to ensure that spectrum is allocated and assigned in a manner that serves the public interest, convenience and necessity, and avoids the excessive concentration of licenses. In May 2014, the Commission adopted the Mobile Spectrum Holdings R&O, which revised its mobile spectrum holding policies. The Commission determined, among other things, to replace its post-auction case-by-case analysis of the licensing of spectrum bands through competitive bidding with a determination of whether a band-specific mobile spectrum holding limit is necessary and, if so, to establish that limit ex ante. The Commission further determined to continue to use its initial spectrum screen and case-by-case review for proposed secondary market transactions.

186. We seek comment generally on how to address any mobile spectrum holdings issues involving the bands proposed for the new radio service in order to meet our statutory requirements and our goals for these bands. As discussed below, we are proposing to resolve all applications and license assignments in areas where there is currently no fixed licensee through competitive bidding. In considering whether to adopt a mobile spectrum holdings limit for the licensing of a particular band through competitive bidding, as well as what type of limit to apply, the Commission concluded in the Mobile Spectrum Holdings R&O that it will assess whether the acquisition at auction of licenses to use a significant portion of spectrum by one or more providers could potentially harm the public interest by reducing the likelihood that multiple service providers would have access to sufficient spectrum to compete robustly. The Commission indicated that this determination will be based on several factors, including total amount of spectrum to be assigned, characteristics of the spectrum to be assigned, timing of when the spectrum could be used, and the specific rights being granted to licensees of the spectrum. The Commission indicated that the determination also will be based on the extent to which competitors have opportunities to gain access to alternative bands that would serve the same purpose as the spectrum licenses at issue. We seek comment on whether to adopt a band-specific spectrum holding limit in the licensing of these spectrum bands through competitive bidding, either for individual bands or a combination of these bands, and ask commenters to consider the costs and benefits of any such limits.

187. In addition to considering whether to adopt a band-specific limit on the aggregation of these spectrum bands, we also will consider whether these bands are suitable and available for the provision of mobile telephony/broadband services in the same manner as other spectrum bands that currently are included in the Commission's spectrum screen as applied to secondary market transactions. Spectrum bands currently included in the spectrum screen are: 700 MHz; cellular; SMR; broadband PCS; H Block at 1915–1920 MHz and 1995–2000 MHz; Advanced Wireless Services (AWS) in the 1710–1755 and 2110–2155 MHz bands (AWS–1, on a market-by-market basis), the 1695–1710 MHz, 1755–1780 MHz, and 2155–2180 MHz bands (AWS–3, on a market-by-market basis), and the 2000–2020 MHz and 2180–2200 MHz spectrum bands (AWS–4); Wireless Communications Service (WCS); Broadband Radio Service (BRS, on a market-by-market basis), and Educational Broadband Service (EBS, on a market-by-market basis), as well as 600 MHz at the conclusion of the Incentive Auction). We seek comment on our proposed approach not to include these bands in the spectrum screen. Similar to the determination of whether to adopt a mobile spectrum holdings limit for the licensing of a particular band through competitive bidding, the determination of ''suitability'' and ''availability'' in the context of secondary market transactions review involves the evaluation of a number of factors related to the spectrum bands to be held by the acquiring entity. In that regard, we recognize that mmW bands could be particularly useful in supporting very high capacity networks in areas that require such capacity but are likely, given these bands' current technical characteristics, to be used to complement existing lower-band spectrum up through the BRS/EBS band that is currently considered suitable and available for the provision of mobile wireless services. We also recognize the nascent state of mmW technology, as well the early stage of the development of the accompanying standards. In light of these circumstances, it is not clear that, for purposes of including these bands in the spectrum screen applied to secondary market transactions, the bands we propose to license will be ''suitable'' and ''available'' spectrum for the provision of mobile telephony/broadband services in the near term. We therefore are disinclined to include these spectrum bands in the spectrum screen and seek comment on this proposed approach.

6. Performance Requirements

a. Introduction

188. The Commission establishes performance requirements to promote the productive use of spectrum, to encourage licensees to provide service to customers in a timely manner, and to promote the provision of innovative services in unserved areas, particularly rural ones. Our overriding purpose in establishing performance requirements is to provide ''a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public.''

189. In the case of Part 101 services, such as 24 GHz, LMDS, and 39 GHz, licensees are required to demonstrate that they are providing ''substantial service'' at the end of their first license period in order to obtain renewal. The Commission has generally defined substantial service as ''service which is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal.''

190. For Part 101 Fixed Services, including the LMDS and 39 GHz services, the Commission has generally specified safe harbors that will satisfy the substantial service requirement. It has also emphasized that safe harbors are merely one means of demonstrating substantial service, and that given an appropriate showing, a level of service that does not meet a safe harbor may still constitute substantial service. It has also determined that all substantial service showings that do not meet an established safe harbor would be evaluated on a case-by-case basis.

In connection with its Wireless Backhaul proceeding, the Commission rejected an argument from the National Spectrum Managers Association (NSMA) that the Commission should credit antecedent activities such as developing equipment, offering spectrum leases, and submitting proposals to potential customers towards a finding of substantial service.

191. In the NOI, we discussed performance requirements in the context of the four mechanisms for licensing vacant spectrum on which we sought comment: (1) Licensing exclusive rights to geographic areas, (2) nonexclusive licensing rules using automated frequency coordination, (3) an unlicensed regime under Part 15 of our rules, and (4) a hybrid, spectrum-sharing model. With respect to the first licensing mechanism, we noted that one potential concern with it is that ''portions of license areas outside of high-traffic areas could end up lying fallow.'' We proposed three different ways we might deal with that concern: (1) Relying on secondary market leasing, (2) establishing smaller licensing areas, and (3) adjusting performance requirements to ensure the spectrum is maximally utilized. We noted that there were several ways to pursue this last option, including more objective buildout requirements and an alternative remedy for failure to build out (*e.g.,* keep-what-you-use, which we noted could take several different forms).

192. Several commenters addressed the issue of applying performance requirements in licensing the millimeter wave bands. Qualcomm and Straight Path expressed support for imposing reasonable performance requirements. Other commenters suggested that adjusted performance requirements

were potential or promising solutions, but stopped short of endorsing them. Other commenters were more skeptical of performance requirements as a tool for ensuring spectrum utilization in these bands, arguing either that traditional performance requirements are: (1) Unnecessary if the Commission adopts proper secondary-market policies; or (2) insufficient to ensure spectrum utilization in an exclusive licensing regime based on geographic area. Finally, we note that some of the fixed incumbent licensees argued that buildout requirements for Mobile Services and Fixed Services should be separate so that a failure to meet the mobile requirement would not result in cancellation of the fixed license.

b. Geographic Performance Requirements at the County Level

193. As discussed elsewhere in this NPRM, for the 28 GHz, 39 GHz, and 37 GHz bands, we propose to license each band using county-based licenses. In the 28 GHz and 39 GHz bands, we also propose to assign exclusive rights to geographic areas to existing licensees. In order to make this approach work, we would subdivide existing 28 GHz and 39 GHz licenses on a county basis, where an LMDS or 39 GHz fixed incumbent licensee would give up its existing license and receive new license(s)—containing both fixed and mobile rights—for every county that lay within one of its existing license areas.

194. We propose to apply performance requirements for the Upper Microwave Flexible Use Service at the county level. By proposing to license service areas by county and to measure performance requirements on a county basis, we are providing licensees with flexibility to offer service in counties where the licensee determines it is technologically and economically feasible to do so. A licensee that decides to offer service in such a county would be able to meet the performance requirement and keep its license at the end of its first license term, without needing to provide service in any adjacent counties. Thus, if a licensee held licenses for nearby counties—either because it had obtained them at auction or because it was an existing fixed licensee whose service area had included other counties—and it determined it could not meet the performance requirement in those other counties, those licenses would terminate and go back to the Commission without jeopardizing the licenses in the county where the licensee had built out. Moreover, for licenses in counties where the performance requirement was not met, the Commission would be able to make those licenses available for use by others through re-auction, ensuring that other operators could use the spectrum in those areas.

195. We propose this approach in an effort to foster expeditious deployment by licensees in the 28 GHz, 39 GHz, and 37 GHz bands for the provision of wireless, terrestrial broadband service, and to enable others to have a chance to use the spectrum in areas where such deployment has failed to occur during that time. Because licensees could keep any counties in which they satisfy the performance requirement, and because we are proposing a relatively low population-based benchmark (in comparison to buildout benchmarks we have imposed recently), licensees in these bands would be more likely to build out to actually provide services in areas where it is feasible and less likely to build for the sake of keeping their licensees. At the same time, we believe this scheme still fulfills the basic function of performance requirements in ensuring that spectrum is utilized and spectrum gatekeeping and warehousing is avoided.

196. We observe that several commenters supported the adoption of reasonable performance requirements in these bands, though they did not propose or endorse any specific benchmarks. Other commenters, though they did not explicitly endorse performance requirements, suggested that adjusted performance requirements were options that should be considered. We encourage comment on whether our proposal strikes the appropriate balance between requirements that are too low as to not result in meaningful buildout and those that would be so high as to be unattainable. We also seek comment on whether other benchmarks represent more appropriate requirements. Commenters should discuss and quantify how any supported buildout requirements will affect investment and innovation, as well as discuss and quantify other costs and benefits associated with their proposals. We continue to believe that performance requirements play a critical role in ensuring that licensed spectrum does not lie fallow. At the same time, however, we recognize that the unique characteristics of frequencies above 24 GHz may require us to adopt a thoughtfully calibrated approach to performance requirements. We recognize that these unique characteristics are likely to cause prospective licensees in these bands to be interested in serving relatively small geographic areas (*e.g.,* urban areas), at least in the short-to-medium term. Accordingly, we are proposing a smaller coverage requirement than we have recently applied in other lower frequency bands. We seek comment on applying performance requirements at the county level. Is there another more appropriate geographic unit we should use for evaluating compliance with performance requirements?

c. Performance Metrics

197. Under the Communication's Act, we have an obligation to adopt rules that prevent the warehousing of spectrum, and we have an interest in doing so—it is our goal to create a regulatory scheme that promotes the rapid and widespread deployment of wireless broadband, to consumers' benefit. The Commission commonly measures performance on the basis of population covered by a licensee in a license area. This approach can be readily adopted to wide-area coverage based fixed systems (point-to-multipoint systems). For licensees providing fixed, point-to-point links, the Commission has generally evaluated buildout using a different metric—it compares the number of links in operation to the population of the license area. The Commission has also evaluated buildout, including in rural areas, by the percentage of land area served by a licensee.

198. We believe, given that technologies under development for these bands could be used for ''fixed'' or ''mobile'' uses, as described below, that it would be highly desirable to have a universal performance metric that could work across various types of services. Otherwise, we open the possibility of gaming the performance requirements, which would be counter to our statutory obligation and our policy prerogative. For example, if we adopted different buildout requirements for different services under the same license, a licensee might choose the lowest-common-denominator metric in order to provide a safe harbor for performance, even if this metric does not match the licensee's actual plans to build out a network. We believe, in general, it would be better to have a single metric covering different varieties of network deployment in these bands.

199. With this in mind, we seek comment on the appropriate type of metric to be used in evaluating buildout in the mmW bands. Is it feasible and appropriate to develop a unified metric combining fixed, mobile, and satellite service? If so, what is the best way to define that metric?

200. Of the three traditional performance metrics, it appears that population coverage is the one most

naturally suited to encompass both mobile and fixed network topologies. For each of these uses, it should be possible to develop a service contour and calculate its coverage in terms of the population within the coverage area. For a short-range mobile networks, we might expect this coverage area to be a ring concentrated around each base station. For longer-range fixed links, a narrow ''keyhole'' contour may be applicable. Regardless, both could be determined in terms of a common unit of measurement, *i.e.,* a measure of population that is served by the station. We seek comment on whether such a population-based approach would be appropriate for the Upper Microwave Flexible Use service. We also seek comment on the alternative of using an area-based metric.

201. If we use a population-based metric, we proposed to require that the applicant demonstrate that it is providing reliable signal coverage and that the applicant demonstrate that it is using the facilities to provide service, either to customers or for internal use. In terms of providing reliable signal coverage, we propose to measure coverage at the census block level, and that a census block will be considered ''covered'' if a reliable signal level is placed over the centroid of the census block. Under this methodology if a licensee provides coverage to a census block or multiple census blocks that have a total population equal to 40% of the population of the county the licensee would be deemed to meet the performance requirement and would retain the license for the entire county. We seek comment on this methodology or whether, alternatively, we should use some other methodology for determining coverage. In terms of defining service, we propose to require that a licensee demonstrate that all of the requisite infrastructure elements are in place and operational (including certified radio equipment, power, backhaul, etc.) and that the radio facilities are part of a network that provides ongoing service to unaffiliated paying subscribers or for bona fide private uses. We also seek comment on what engineering methodology would be appropriate to ensure consistent measurement of service area across different network topologies and technologies.

202. We also seek comment on alternative ways to measure population if we use a population-based metric. To the extent systems are used primarily at businesses, is there any way to reliably measure the daytime population within an area? If a system is used to serve an area with a heavy tourist or transient population, is it possible and appropriate to measure those types of populations?

203. Alternatively, is there some other method to normalize performance measurement so that it applies consistently to both fixed and mobile network deployments? For example, is it possible to assign some sort of population-based metric or area-based metric to a fixed-point-to-point link? What factors would be appropriate to consider in assigning a population or area to a fixed link (*e.g.,* population in or near the location of the link, interference contour around the link)? Are there other non-population based technical metrics that should be considered in measuring performance (*e.g.,* use of services associated with the link, capacity of the link)? Is there some metric other than population, land area, or number of links that we should consider?

204. We also seek comment on the possible alternative of having a separate performance requirement for fixed services. In LMDS, the Commission required licensees to provide substantial service. The Commission elaborated on what may constitute substantial service by offering some specific examples, which are sometimes referred to as safe harbors, to provide LMDS licensees with a degree of certainty as to how to comply with the substantial service requirement by the end of the initial license term. The Commission explained that an LMDS licensee that chooses to offer fixed, point-to-point services may fall within a safe harbor by constructing four permanent links per one million people in its licensed service area. We seek comment on the advantages and disadvantages of adopting a performance benchmark for fixed services based on the number of links compared to the population in a licensee's service area. We also seek comment on how we would reconcile performance requirements that vary depending on the type of service provided to ensure the spectrum is being put to use.

205. As noted above, we are seeking comment on means of facilitating sharing between terrestrial licensees in the 28 GHz, 37 GHz, and 39 GHz bands and FSS operators. We seek comment on whether it would be possible to incorporate satellite operations into a unified engineering metric. If we do not develop a unified metric, we propose that a FSS operator holding an Upper Microwave Flexible Use license used in association with an earth station be required to demonstrate that the earth station is in operation and providing service. We seek comment on what factors we should consider in determining whether the earth station is providing service. Should we use the same criteria we listed above?

d. Performance Milestones

206. The mmW bands have propagation characteristics that are well-suited for high bandwidth applications and intensive spectral reuse. However, because of the relatively small coverage area of a site operating on mmW spectrum, deploying a wide-area network may not be ideal, or it may not be necessary given the potential that these bands will provide primarily capacity, at least in cellular-type applications. In addition, given the nascent state of technology in these bands, we anticipate that it will take substantially longer to deploy these systems than in lower frequency bands. We also anticipate that initial deployments in these bands will take place in highly localized areas where there is demand for the speed and other characteristics these systems will provide.

207. Therefore, we propose that an Upper Microwave Flexible Use licensee providing mobile or point-to-multipoint service provide reliable signal coverage and offer service to at least 40 percent of the population in each of its county-based license areas at the end of the initial license term. We also propose to incorporate point-to-point operations into a population-based metric using the ''keyhole'' contour and include the population in that area within the keyhole contour in determining the population served by a station. We seek comment on this proposal. If, instead, we adopt the area-based metric described above, we would require an area coverage milestone that would be calibrated to be equivalent to 40 percent of the population. We seek comment on whether this calibration should represent the land area encompassing approximately 40 percent of population for the average U.S. county or whether it should be calibrated separately for each county in the United States. If we adopt separate benchmarks for fixed operations, we seek comment on what those benchmarks should be. We also seek comment on adopting a special rule that FSS licensees using Upper Microwave Flexible Use licenses in connection with FSS earth stations would be required to show that the associated earth station was in operation and providing service. We seek comment on these proposals, as well as alternatives.

e. Penalty

208. We propose that if a licensee fails to meet the buildout requirement in any county, its authorization for each county in which it fails to meet the requirement would terminate automatically without Commission action. This penalty is widely applied in many wireless services. We seek comment on this proposal. Are there any alternative penalties that may be appropriate?

f. Use-or-Share Obligation

209. One of the most important characteristics of bands above 24 GHz is that the propagation and atmospheric absorption characteristics result in shorter range communications. While those characteristics provide challenges, they also provide greater opportunity for frequency reuse without interference. Accordingly, we believe these bands are particularly good candidates for sharing. At the same time, a sharing mechanism can discourage warehousing and other improper behavior that result in spectrum not being used. We believe a ''use-or-share'' rule would provide another mechanism for ensuring that spectrum is put to productive use.

210. We propose that portions of a license area that remain unused after 5 years after the initial license is issued, or, for incumbent licensees, five years after the effective date of the new rules, be made available for shared use by other users. This shared use would be on a non-interfering basis to the licensees' use. We propose that after the first five years, the extent of unused spectrum could continue to change. In other words, a licensee would be free to expand its operations (with the requirement that other users retract service from the expanded area) or a licensee could reduce its operations (making more portions of the license area available for shared access). We seek comment on this proposal, including the costs and benefits.

211. We also seek comment on establishing a specific framework for sharing. How should we define ''unused spectrum'' for these purposes (or conversely, how would we define ''use'' for these purposes)? We have previously proposed that licensees be required to make available information on their proposed facilities. Would that information be sufficient to provide information on what constituted ''unused spectrum?'' What would be the best way to define and determine what areas were unused? Should we adopt technical criteria for determining when spectrum is used? If so, what are the appropriate criteria? Should shared use be authorized on a licensed basis or under Part 15 of the Commission's rules? What mechanism should be used to maintain sharing boundaries and prevent harmful interference? Would an SAS be the best means of administering a sharing mechanism, or should the Commission adopt some other coordination mechanism? We seek comment on these and all other issues associated with establishing a sharing framework.

g. Service After the Initial License Term

212. We seek comment on what requirements we should apply in the Upper Microwave Flexible Use Service after a licensee makes a performance showing after its initial license term. We intend to create a mechanism to require that this spectrum is continually used, including ensuring that licensees that have met their performance requirements continue to provide service and expand their networks. As technology develops for these bands, should we require licensees to make more stringent construction showings after the initial license term? If so, what should those additional requirements be, and when should they apply? If a licensee substantially reduces service after making its initial buildout showing, should it be subject to penalties over and above the obligation to share spectrum? Are there other requirements we should impose in order to ensure that spectrum continues to be put in use? For instance, should we require a performance showing, even using the exact same metric, at some regular interval after the initial performance deadline?

h. Treatment of Incumbent Licenses

213. We recognize that current LMDS and 39 GHz licensees may be planning to meet current requirements concerning substantial service and renewal expectancy. In order to provide a smooth transition, we propose to apply the existing performance requirement to incumbent LMDS and 39 GHz licensees at the end of their current license terms, so long as the license term expires prior to March 1, 2021. We recognize that current licensees will have a difficult choice—to try to acquire new equipment and deploy right at the potential launch of mobile mmW services (expected around 2020), or provide innovative fixed services. We seek comment on this proposal. Alternatively, we seek comment on allowing current licensee to meet their performance requirements under the current rules at some earlier date, for example 2018.

i. Alternatives to Construction-Based Performance Requirements

214. We acknowledge that some commenters question whether traditional performance requirements are necessary or appropriate in these bands, based on observations about market incentives to use spectrum and the unique characteristics of millimeter frequencies. We believe, for the reasons described above, that performance requirements are an important tool to ensure that spectrum is utilized. However, we also recognize that traditional performance requirements in these bands would create certain challenges. These challenges include taking into account the unique difficulties for licensees that try to deploy networks using these bands, as well as the difficulties the Commission would have in enforcing performance requirements in 3,143 counties nationwide. Therefore, we also seek comment on alternative approaches we might take to ensuring deployment and spectrum utilization, as well as the costs and benefits of adopting any of those approaches.

215. First, we seek comment on whether the consecutive license concept discussed below would provide strong incentives to productive use that might obviate the need for construction-based performance milestones. Under that proposal, prospective millimeter wave licensees could bid for a license in a given county in a single, one-time auction, and the winning bidder in that auction would be required to pay the auction price, adjusted for inflation, before the start of each five-year license term; once the winning bidding made this payment before a five-year license term, a new license would be issued to the licensee for that five-year term. Such an approach would be one way to incentivize construction of network facilities and spectrum use, given that a licensee would be unlikely to pay the auction price in successive license terms unless it could come up with a viable long-term plan for using the spectrum. That approach could also make traditional performance requirements unnecessary because a licensee would be unlikely to make future payments for spectrum it does not intend to use. We seek comment on these approaches, and other alternative approaches we might take, as well as the costs and benefits of adopting any of these approaches.

216. Second, we also seek comment on separating interference and exclusion rights using an ''option'' concept to accomplish the goals of performance requirements. In the 3.5 GHz

proceeding, we recently sought comment on a proposal to define ''use'' of priority access licenses in such a way as to separate the right to operate without interference from the right to exclude other users. Under that proposal, the priority access licensee would have the right, but not the obligation, to exclude other users by making an additional ''option'' payment. If this concept has merit, how should the idea be adapted to comport with the other proposals contained in this proceeding?

217. We also seek comment on any other alternatives to construction-based performance requirements that may be appropriate in the context of the other rules we propose herein.

j. Performance Requirements and Part 25 Operations

218. As noted above, we are seeking comment on means of facilitating sharing between terrestrial licensees in the 28 GHz, 37 GHz, and 39 GHz bands and FSS operators. We seek comment on whether it would be appropriate to make any adjustments to our performance requirements to facilitate such sharing. As noted above, we seek comment on what FSS licensees using Upper Microwave Flexible Use licenses in connection with FSS earth stations would be required to show to demonstrate that the associated earth station was in operation and providing service. We seek comment on these issues, as well as other issues relating to the intersection between performance requirements and sharing with satellite operators.

7. Permanent Discontinuance of Operations

219. For Upper Microwave Flexible Use Service licensees, for providers that identify their regulatory status as common carrier or non-common carrier, we propose to define ''permanently discontinued'' as a period of 180 consecutive days during which the licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to, the provider in the service area of its license (or smaller service area in the case of a partitioned license). Under section 1.955(a)(3) of the Commission's rules, an authorization will automatically terminate, without specific Commission action, if service is ''permanently discontinued.'' The permanent discontinuance rule is intended to provide operational flexibility while ensuring that spectrum does not lie idle for extended periods.

219. We propose a different approach, however, for licensees that use their licenses for private, internal communications, because such licensees generally do not provide service to unaffiliated subscribers. For such private, internal communications, we propose to define ''permanent discontinuance'' as a period of 180 consecutive days during which the licensee does not operate. Licensees would not be subject to this requirement until 1 year after their initial license period ends, so they will have adequate time to construct their network. Allowing such licensees one year before they are subject to permanent discontinuance is also consistent with the current Part 101 permanent discontinuance rules.

220. In addition, consistent with section 1.955(a)(3) of the Commission's rules, we propose that, if a 28 GHz, 37 GHz, or 39 GHz licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 and requesting license cancellation. An authorization will automatically terminate without specific Commission action if service is permanently discontinued even if a licensee fails to file the required form. We seek comment on these proposals, including the associated costs and benefits.

221. The approach to permanent discontinuance described above is consistent with the definition that the Commission has adopted for other spectrum bands that are licensed for mobile use, including the H Block, AWS–3, and AWS–4 bands. We note that the discontinuance periods in the Part 101 rules are different, but we tentatively conclude that those requirements are more applicable to site-licensed microwave licenses. We seek comment on our proposal.

8. Secondary Markets

a. Partitioning and Disaggregation

222. *Background.* The Commission's Part 101 rules generally allow for geographic partitioning and spectrum disaggregation in the LMDS and 39 GHz service. Geographic partitioning refers to the assignment of geographic portions of a license to another licensee along geopolitical or other boundaries. Spectrum disaggregation refers to the assignment of discrete amounts of spectrum under the license to another entity. Disaggregation allows for multiple transmitters in the same geographic area operated by different companies on adjacent frequencies in the same band.

223. In 1997, the Commission determined that all LMDS licensees would generally be permitted to disaggregate and partition their licensees. The Commission later adopted specific procedural, administrative, and operational rules to govern the disaggregation and partitioning of LMDS licenses. Similarly, in the same year, the Commission concluded that partitioning and disaggregation would be permitted in the 39 GHz band; and it adopted rules to govern partitioning and disaggregation in that band as well.

224. We did not address the issue of secondary market transactions, including partitioning and disaggregation, in the NOI. Nonetheless, several commenters addressed this area, and those that did were universally supportive of allowing secondary market transactions in general and of allowing partitioning and disaggregation in particular.

225. *Discussion.* We propose to continue permitting partitioning and disaggregation by 28 GHz and 39 GHz licensees and to allow 37 GHz licensees to partition or disaggregate their licenses. As the Commission noted when first establishing partitioning and disaggregation rules, allowing such flexibility could facilitate the efficient use of spectrum by enabling licensees to make offerings directly responsive to market demands for particular types of services, increasing competition by allowing new entrants to enter markets, and expediting provision of services that might not otherwise be provided in the near term. This policy would leave the decision of determining the correct size of licenses to the licensees and the marketplace, which is consistent with the flexible approach to licensing these bands that we have proposed in this NPRM.

226. To ensure that the public interest would be served if partitioning or disaggregation is allowed, we propose requiring each licensee in these bands that is a party to a partitioning, disaggregation, or combination of both, to independently meet the applicable performance and renewal requirements. We believe this approach would facilitate efficient spectrum use, while enabling service providers to configure geographic area licenses and spectrum blocks to meet their operational needs. We seek comment on these proposals. Commenters should discuss and quantify the costs and benefits of these proposals with respect to competition, innovation, and investment.

227. We also seek comment on whether the Commission should adopt additional or different mechanisms to encourage partitioning and/or disaggregation of 28 GHz, 37 GHz, and

39 GHz spectrum, and the extent to which such policies ultimately may promote more service. Commenters should discuss and quantify the costs and benefits of promoting more service using mechanisms to encourage partitioning and disaggregation of spectrum in these bands, including the effects of any proposals.

b. Spectrum Leasing

228. *Background.* In 2003, in order to promote more efficient use of terrestrial wireless spectrum through secondary market transactions and in order to eliminate regulatory uncertainty, the Commission adopted the Secondary Markets First Report and Order, which contained a comprehensive set of policies and rules to govern spectrum leasing arrangements between terrestrial licensees and spectrum lessees. These policies and rules enabled terrestrially based Wireless Radio Service licensees holding ''exclusive use'' spectrum rights to lease some or all of the spectrum usage rights associated with their licenses to third party spectrum lessees. Those third party lessees were then are permitted to provide wireless services consistent with the underlying license authorization.

229. In the 2003 Secondary Markets First Report and Order, the Commission excluded a number of wireless radio services from the rules and policies, including Part 101 services. In 2004, however, the Commission extended the 2003 spectrum leasing policies to a number of additional wireless services, including Part 101 services. At that time, the Commission also built upon the 2003 spectrum leasing framework by establishing immediate approval procedures for certain categories of terrestrial spectrum leasing arrangements.

230. As mentioned, we did not address secondary market transactions at all in the NOI. Regardless, in addition to voicing support for allowing secondary market transactions, several commenters also specifically supported allowing spectrum leasing arrangements.

231. *Discussion.* We propose that the spectrum leasing policies and rules established in those proceedings be applied to the new Part 30 radio service governing Upper Microwave Flexible Use Services, including all 28 GHz, 39 GHz, and 37 GHz terrestrial licensees. We propose to apply these rules and policies in the same manner that those policies apply to Part 101 services. Our secondary markets policies are designed to promote more efficient, innovative, and dynamic use of the spectrum, expand the scope of available wireless services and devices, enhance economic opportunities for accessing spectrum, and promote competition among providers. Likewise, allowing spectrum leasing in these bands will serve these same purposes. We also observe that ''[f]or a particular spectrum band, spectrum leasing policies generally follow the same approach as the partitioning and disaggregation policies for the band.'' Thus, our proposal to permit spectrum leasing in the 28 GHz, 39 GHz, and 37 GHz services is consistent with our determination above to permit partitioning and disaggregation in these spectrum bands.

232. We seek comment on this proposal. Commenters should discuss the effects on competition, innovation and investment, and on extending our secondary spectrum leasing policies and rules to these bands.

9. Other Operating Requirements

233. Regardless of which radio service or rule part the licenses in the these bands are issued pursuant to, licensees may be required to comply with rules contained in other parts of the Commission's rules depending on the particular services they provide. For example:

- Applicants and licensees will be subject to the application filing procedures for the Universal Licensing System, set forth in Part 1 of our rules.
- To the extent a licensee provides a Commercial Mobile Radio Service (CMRS), such service would be subject to the provisions of Part 20 of the Commission's rules, along with the provisions in the rule part under which the license was issued. Part 20 applies to all CMRS providers, even though the stations may be licensed under other parts of our rules.
- The application of general provisions of Parts 22, 24, 27, or 101 would include rules related to equal employment opportunity, 911 service, etc.

234. We seek comment generally on any provisions in existing, service-specific rules that may require specific recognition or adjustment to comport with the supervening application of another rule part, as well as any provisions that may be necessary in this other rule part to fully describe the scope of covered services and technologies. We seek comment on applying these rules to the spectrum that is the subject of this NPRM, and specifically on any rules that would be affected by our proposal to apply elements of the framework of these parts, whether separately or in conjunction with other requirements.

235. We propose, therefore, to also require Upper Microwave Flexible Use Service licensees to comply with certain other rule parts that pertain generally to wireless communications services. This approach will maintain general consistency among various wireless communications services. Further, we seek comment on whether we need to add any rules in order to ensure that we cover licensees in these bands under the necessary Commission rules. Finally, we seek comment on any rules that would be affected by the proposal to apply elements of the framework of these rule parts, whether separately or in conjunction with other requirements.

10. Competitive Bidding Procedures

236. As discussed above, we propose to re-designate the existing LMDS and 39 GHz licenses as a new radio service combining mobile and fixed rights, in which case the existing fixed licensees would be assigned new licenses. We note that, of the 986 designated LMDS license areas, 416 have active licenses at this time, and of the 2,464 designated 39 GHz license areas, 859 have active licenses at this time. Further, because we have never licensed 37 GHz for fixed or mobile use, there are currently no active terrestrial licenses in that spectrum.

237. We have a statutory obligation to use competitive bidding to resolve mutually exclusive applications for licenses. Section 309(j) of the Communications Act requires that the Commission assign initial licenses through the use of competitive bidding when mutually exclusive applications for such licenses are accepted for filing, except in the case of certain specific statutory exemptions. This statutory mandate applies to the mmW bands. Consistent with the Commission's policy that competitive bidding places licenses in the hands of those that value the spectrum most highly, we believe that it would be in the public interest to adopt a licensing scheme for the Upper Microwave Flexible Use Service which allows the filing of mutually exclusive applications that, if accepted, would be resolved through competitive bidding.

238. Under the proposed licensing scheme, we propose to resolve all applications and license assignments in areas where there is currently no active licensee through competitive bidding, consistent with our statutory mandate under Section 309(j). We seek comment on this proposal. Additionally, we seek comment on a number of proposals relating to competitive bidding procedures discussed below, including the costs and benefits of those proposals.

a. Application of Part 1 Competitive Bidding Rules

239. We propose that the Commission would conduct any auction for licenses of spectrum in the Upper Microwave Flexible Use Service in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules, and generally consistent with the competitive bidding procedures that have been employed in previous auctions. In July 2015, the Competitive Bidding Update Report & Order amended the Commission's Part 1 competitive bidding rules by, among other things, updating the standardized schedule of small business size standards, instituting a rural service provider bidding credit, and adopting a process by which we may establish a reasonable monetary limit or cap on the total amount of bidding credits that an eligible small business or rural service provider may be awarded in any particular auction. Specifically, we propose to employ the Part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any further modifications that the Commission may adopt for its Part 1 general competitive bidding rules in the future. We seek comment on whether any of our Part 1 rules would be inappropriate or should be modified for an auction of licenses in these frequency bands.

b. Small Business Provisions for Geographic Area Licenses

240. *Background.* In authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' In addition, Section 309(j)(3)(B) of the Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall seek to promote a number of objectives, including ''economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' One of the principal means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses.

241. In the Competitive Bidding Second Memorandum Opinion and Order, the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. As noted above, we recently updated our standardized schedule of small business size standards and associated bidding credits. Under the new standardized schedule, businesses with average annual gross revenues for the preceding three years not exceeding $4 million would be eligible for a 35 percent bidding credit, businesses with average annual gross revenues for the preceding three years not exceeding $20 million would be eligible for a 25 percent bidding credit, and businesses with average annual gross revenues for the preceding three years not exceeding $55 million would be eligible for a 15 percent bidding credit.

242. *Discussion.* We propose to use for the 28 GHz, 37 GHz, and 39 GHz bands the standardized schedule of small business size standards we adopted in the Competitive Bidding Update Report & Order. We also propose to provide qualifying ''small businesses'' with a bidding credit of 15 percent and qualifying ''very small businesses'' with a bidding credit of 25 percent in future auctions of licenses in these services. We have used these bidding credits in a range of other services and in instances where ''[w]e do not know the precise type of service that new licensees may attempt to provide in this band.'' In the absence of any information in the record at this point about the capital requirements to allow us to tentatively conclude otherwise, we propose to use the two small business definitions with higher gross revenues thresholds. Thus, we propose to define a small business as an entity with average gross revenues for the preceding three years not exceeding $55 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding $20 million. Consistent with the decision in the Competitive Bidding Update Report & Order, we also seek comment on whether the unique characteristics of these frequencies and our proposed licensing model suggest that we should adopt different small business size standards and associated bidding credits than we have in the past. We seek comment on these issues, including the costs and benefits associated with different approaches we might take.

243. Commenters should focus on the appropriate definitions of small businesses and very small businesses as they may relate to the size of the geographic area to be served and the spectrum allocated to each license. Further, commenters should discuss and quantify any costs or benefits associated with these standards and associated bidding credits as they relate to the proposed geographic areas. In discussing these issues, commenters are requested to address and quantify the expected capital requirements for services in these bands and other characteristics of the service. Commenters are also invited to use comparisons with other frequency bands for which the Commission has already established service rules as a basis for their comments and any quantification of costs and benefits regarding the appropriate small business size standards.

244. In establishing the criteria for small business bidding credits, we acknowledge the difficulty in accurately predicting the technology and market conditions that will exist at the time these frequencies are licensed. Thus, our forecasts of types of services that will be offered over these bands may require adjustment depending upon ongoing technological developments and changes in market conditions.

c. Rural Service Provider Provisions for Geographic Area Licenses

245. *Background.* In the Competitive Bidding Update Report & Order, the Commission adopted a 15 percent bidding credit for eligible rural service providers. The new rural service bidding credit allows an eligible rural service provider that provides commercial communications services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers and serves primarily rural areas a 15 percent bidding credit. An applicant is permitted to claim a rural service provider bidding credit or a small business bidding credit, but not both. The rural service provider bidding credit is designed to better enable rural service providers to compete for spectrum licenses, thereby speeding the availability of wireless voice and broadband services in rural areas, in furtherance of statutory objectives.

246. *Discussion.* We seek comment on whether it is appropriate to apply the rural service provider bidding credit to auction of the 28 GHz, 37 GHz, and 39 GHz. While the rural service provider bidding credit is new, we have used

other types of bidding credits in the past to facilitate competition for spectrum at auction. Given the nature of the services being contemplated for the mmW bands, is use of the rural service provider bidding credit appropriate? Commenters are requested to address and quantify the expected capital requirements for service in rural areas and other characteristics of the service when provided in rural areas.

247. We note that under our Part 1 rules, a winning bidder for a market will be eligible to receive a bidding credit for serving a qualifying Tribal land within that market, provided that it complies with the applicable competitive bidding rules.

d. Bidding Process Options

248. We seek comment on whether we should revise any of our bidding process and payment rules to take into consideration the administrative difficulties for the Commission in enforcing construction requirements in the 3,143 counties nationwide. One alternative means of encouraging deployment of network facilities and spectrum utilization (in place of traditional construction requirements), as discussed above, would be to allow potential licensees to bid, in a single auction, on licenses that have consecutive terms of license rights in a given geographic area. Under this concept, at an auction the licensee would be bidding for the right to obtain the license not only for the first license term, but at each consecutive license term, for a fixed price (which could be adjusted for inflation in successive license terms). We note that, if we were to adopt such a proposal, we would likely adopt a shorter license term than ten years, such as five years because a shorter license term would enable us to ensure that the licensee evaluates its need for the spectrum on a regular basis. For example, prospective millimeter wave licensees could bid for a license in a given county in a single, one-time auction, and the winning bidder in that auction would be required to pay the auction price, adjusted for inflation, before the start of each five-year license term; once the winning bidding made this payment before a five-year license term, a new license would be issued to the licensee for that five-year term. Additionally, licensees could be permitted to trade future license rights via secondary market transactions.

249. This concept could be one way to incentivize deployment for a diverse range of uses in the public interest and discourage spectrum warehousing, without imposing traditional performance requirements. We do not believe the consecutive payments would not be installment payments because the license for a term would not issue until after each payment—which had been determined in the auction—had been made for that term. Thus, the license would terminate automatically if the payment was not made. We seek comment on this concept, including its costs and benefits. In the alternative, we seek comment on whether we should accomplish the same goal by levying license fees in consecutive intervals in lieu of performance requirements, which may not be well suited for the types of deployments contemplated in this band.

250. We seek comment, with respect to this proposal, on whether we should revise any of our payment rules to take into consideration the potential for applicants to become winning bidders for licenses that do not become effective until five years or more after the auction has closed. For instance, under this proposal, should we revise our upfront payment requirement to better safeguard the Commission against defaults by a winning bidder on consecutive license terms? Should we require a winning bidder for consecutive license terms to make a larger down payment to better safeguard the Commission from defaults in subsequent terms? Currently, unless otherwise noted by public notice, the Commission's rules require that within 10 business days after being notified that it is a high bidder on a particular license the winning bidder must submit its down payment necessary to bring its total deposits up to twenty (20) percent of its winning bid(s) or it will be deemed to have defaulted. Should we increase the down payment percentage here to be forty percent of the winning bid(s)? Similarly, unless otherwise specified by public notice, auction winners are required to pay the balance of their winning bids in a lump sum within ten business days following the release of a public notice establishing the payment deadline. Here, we could collect the down payment required for each Upper Microwave Flexible Use Service license at the close of the auction, including consecutive term licenses, but final payment(s) would not be due until we are ready to grant the particular Upper Microwave Flexible Use Service license at the beginning of the subsequent license term. Will retaining down payments on deposit for consecutive Upper Microwave Flexible Use Service license terms, particularly if the down payment obligation for such a license is increased, help the Commission safeguard against the potential of default in subsequent years?

251. We also seek comment on whether we should revise our default rule to ensure that if a winning bidder wins a Upper Microwave Flexible Use Service license in a licensing area for consecutive terms and defaults on a payment obligation for a license in that area, it loses the right it acquired at the auction to be granted a Upper Microwave Flexible Use Service license in that area for any consecutive term? What incentives would be created by such a default provision, and would those incentives help to ensure that the spectrum was used productively? If we hold an auction that offers Upper Microwave Flexible Use Service licenses for consecutive terms, should we also change the default rule by holding a winning bidder for such licenses who defaults on its winning bids responsible for a larger default payment?

252. Would such a default rule adequately safeguard the Commission should a winning bidder file bankruptcy between the close of an auction and the date of a future payment obligation? Commenters should address in particular the application of the Bankruptcy Code's requirement that an agency ''may not deny, revoke, suspend, or refuse to renew a license . . . or other similar grant to,'' or ''discriminate with respect to such a grant against,'' a debtor or a bankrupt ''solely because'' it ''has not paid a debt that is dischargeable'' in bankruptcy.

11. Examining Security To Maximize Effectiveness

253. We seek comment on the best methods to ensure maximum effectiveness of the use of the mmW bands, cognizant of potential security vulnerabilities in light of the technology and systems that are anticipated to comprise new networks. There are high expectations that these networks will provide capabilities for a tremendous variety of new devices and applications, including traditional cellular services, M2M and Internet of Things (IoT) applications, and mission critical and public safety services, among many others. However, one of the key challenges facing the developers of new services is to support numerous distinctly different possible uses in a secure manner. The security aspect of services using the mmW bands is important to examine at this time for several reasons including: (1) Services using these bands can be used to facilitate very dense deployments of wireless communication links to connect a multitude of wireless devices, many of which might not be secured or sufficiently secured, (2) the core

network may be based on software-centric, highly programmable core network architectures that continue to face serious security questions that remain unanswered; (3) the ongoing transformation of advanced mobile communication devices into far more powerful devices of connectivity, thereby making them more alluring to hackers and more menacing not only to the devices' owners but also to the global Internet. The implications of these issues require us to better understand the security of future mmW band networks in order to promote public safety through communications networks.

254. Generally, we seek comment on how to ensure that effective security features are built into key design principles for all mmW band communications devices and networks. The common network security triad of confidentiality, integrity, and availability (CIA triad) provides a convenient frame of reference for the Commission to gain insight into the security events targeting communications providers and the network infrastructure in general in order to guide our approach to the security of communications critical infrastructure. With security built into the design of mmW band devices and systems, the opportunity will exist for the creation of a new generation of networks and services that meet these three critical components of a secure system. To that end, our questions below are organized around these three critical security components.

255. Confidentiality refers to the protection of data from unauthorized access and disclosure, both while at rest and in transit. What existing or planned methods of authentication in mobile or fixed networks provide sufficient confidentiality under the conditions planned for mmW band networks? Are there any specific uses or characteristics of the spectrum discussed in this proceeding, alone or in conjunction with other bands, that would make it difficult to ensure the confidentiality of users, either in terms of the content or the circumstances (time, place, and manner) of their use? What implications do the proposed uses of these bands have for authentication of users? What, if any, action should the Commission take to ensure that an appropriate level of confidentiality is provided to the content of users communications (*e.g.,* voice, video and data) and to the data generated as part of the communication (usage history, etc.)?

256. Integrity refers to the protection against the unauthorized modification or destruction of information. Does the shorter range of communications in these bands and concomitant expected reliance on more access points increase, or decrease the ease of interception and potential compromise of integrity of the communication? What security or architectural methods might mitigate such issues, and are they under consideration by the appropriate standards bodies? What actions could the Commission take to assist industry in developing minimum security standards in order to ensure the integrity of devices that connect to or through other devices using these bands or any other network connection?

257. Availability refers to the accessibility and usability of a network upon demand. What conditions should be considered in order to ensure the availability and security of networks utilizing the mmW bands? To what extent will planned capabilities be robust and secure enough to support communication all the time?

258. We seek comment on the extent to which existing and previous wireless protocols do not inherently derive useful security services from the underlying transport layer and how such vulnerabilities could be prevented from propagation into mmW band networks. For example, would spectrum used in these bands to supply common carrier services have similar security requirements to similar services using lower bands, and if not, how do security requirements differ? Would security requirements vary based on the use of the service (*i.e.,* voice or data), and if so, how? We seek comment on whether the protocols established for these bands might include elements specifically designed to provide security value for higher layers of the OSI Model. The OSI Model is a theoretical model of networks that organizes the network functions into various layers (physical, datalink, network, transport, session, presentation, and application layers) and specifies the communications interfaces between these layers and between network endpoints utilizing an OSI Model-based protocol suite. The International Standards Organization (ISO) developed this model of how networks should behave and how they are put together. The ISO OSI Model is used throughout the network, Internet and telecommunications industries today to describe various networking issues, and can be useful in explaining how various technologies interact, where they reside, what functions they perform, and how each protocol communicates with other protocols. Would some of these attributes be more meaningful for enterprise use, or for personal use?

F. Technical Rules

1. Introduction

259. Our goal in establishing technical rules is to develop a flexible set of rules that will authorize as wide a variety of services as possible and avoid mandating specific technologies or deployment models. We recognize that the technology is still in early stages of development, and intend to create a set of technical rules that encourage, rather than inhibit that development. We also recognize that we may need to be nimble and flexible as the technology develops, and update our rules as appropriate.

260. A common theme among the comments and replies that we received in response to the NOI was that the Commission should consider a ''light'' regulatory approach in the development of technical rules so that new wireless technologies might flourish. In commenting on our proposed technical rules, we encourage commenters to keep that principle in mind. If commenters believe our proposed rules are inconsistent with the goal of technical flexibility, we ask them to explain their belief and suggest alternatives.

2. Flexible Duplexing Rules

261. Many commenters responding to the NOI emphasize that mmW technology is in an early stage of development and request that the Commission consider a flexible regulatory regime in order to provide maximum flexibility. We agree with commenters that there is no need to mandate a duplexing option at this stage of mmW technology research and development. In addition, we would prefer to avoid adopting any rules that would preclude the development of new forms of duplexing that further technological advances might introduce. For those reasons, we propose to adopt flexible use in 27.5–28.35 GHz band, 37–38.6 GHz band, and 38.6–40 GHz band by allowing TDD and FDD deployment subject to other relevant technical rules to manage the interference.

262. In the 39 GHz band, we previously proposed above to continue using the existing 39 GHz channel plan. The 39 GHz band is subdivided into 14 channel pairs. Each channel pair has 50 megahertz by 50 megahertz of spectrum and is licensed on an Economic Area geographical service area basis. The existing band plan was created to support traditional fixed point- to-point and point-to-multi-point wireless services. Our current rules do not prescribe or preclude either FDD or TDD based wireless operations, however,

paired 50 MHz channels in the band plan naturally imply FDD operations. Most commenters agree that the technologies proposed for mobile mmW, at a minimum, will need at least 100 MHz of contiguous spectrum. Some commenters even suggested the need for up to 2GHz of contiguous bandwidth. We seek comment on the impact of the current channel plan, which may favor FDD operations, on the ability to deploy future mmW wireless networks that might deploy either FDD or TDD based technologies. Should we consider alternate band plans in order to accommodate TDD operations, and if so, how should we modify our proposals to accommodate such band plans?

3. Transmission Power Limits and Antenna Height

a. Base Stations

263. Currently, the Part 101 rules allow a maximum EIRP of +55dBW (or +85dBm) for the 28 GHz band and the 39 GHz band order to provide flexible fixed services for various applications. Existing service providers in the 28 and 39 GHz bands generally use those bands for establishing fixed point-to-point or point-to-multipoint high capacity communication links. A fixed transmitter typically includes a high-gain antenna mounted at a high tower elevation in order to provide a line-of-sight path to the receiving antenna. The range of these communication links often extends to several miles when the maximum allowed transmission power is used. We propose that we maintain the existing EIRP limit of +55dBW (or +85dBm) solely for fixed point-to-point or point-to-multipoint systems. This limit would allow continued operation of current or future fixed point-to-point or point-to-multipoint systems that are operating consistent with the current Part 101 rules, and we are not aware of any problems with the existing limit for fixed operations.

264. In response to the Notice of Inquiry, most commenters envision mmW band Mobile Services as supplementing existing 3G/4G services by overlaying their comparatively large cells with deployment of small cell-like equipment, with service radii of a few hundred meters. Commenters suggest a maximum transmission power limit of 58–65 dBm EIRP for base stations. Intel states that ''58 dBm (631 watts) EIRP for base station transmitters . . . could achieve the performance and range for the applications targeted for these bands.'' Samsung states that, in its field trials, ''Based on a 58 dBm EIRP limit, satisfactory communications links were attained even in non-line-of-sight scenarios more than 200 meters away.'' Straight Path states that ''the FCC [should] adopt an EIRP limit of 65 dBm (3160 watts) for base stations operating in the 39 GHz and LMDS bands. This is consistent with the maximum power limit for other spectrum in which mobile services operate—*e.g.,* the Cellular, Broadband PCS, WCS, AWS, and 700 MHz bands.'' Furthermore, most commenters are proposing to build systems with emission bandwidth greater than 100 megahertz. Samsung and Motorola suggest 100 megahertz of channel bandwidth, while Nokia and NYU propose a minimum bandwidth of 300 megahertz and 500 megahertz. TIA and Huawei state that 1–2 gigahertz of spectrum may be aggregated to provide gigabit throughput.

265. Based on the proposed deployment and service scenarios of mmW mobile broadband service, we conclude that the transmission power limits of Mobile Services in PCS and AWS bands are more applicable than the Part 101 FS rules as potential models for the mmW mobile broadband service. Therefore, we propose to adopt 1640 watts (or 62dBm) EIRP as the maximum transmission power limit for base stations operating in the 28, 39, and 37 GHz bands.

266. In a number of recent proceedings, the Commission has applied the power spectral density concept when adopting transmission power limits. For example, base stations operating in the PCS, AWS–1, AWS–3, AWS–4 and 700 MHz bands are allowed to operate at maximum power when transmitting with an emission bandwidth of 1 megahertz or less and may scale the transmission power linearly per 1 megahertz with an emission bandwidth greater than 1 megahertz. For base stations operating in the 28, 39, and 37 GHz bands, we propose to adopt 100 megahertz as the scaling factor such that the base station transmission power is limit to 1640 watts EIRP, when transmitting with less than 100 megahertz of emission bandwidth and 1640 watts EIRP per 100 megahertz when transmitting with more than 100 megahertz of emission bandwidth. This proposed rule would allow additional transmission power for systems employing more than 100 megahertz emission bandwidth, and it would support the maximum transmission power limits suggested by commenters. We also propose to adopt the practice of doubling transmission power limits in rural counties where the population density is 100 or fewer persons per square mile, based on the most recently available population statistics from the Bureau of the Census. We seek comment on these proposed transmission power limit rules.

267. Some commenters suggest that in-band backhaul might be feasible in the mmW bands by dedicating certain portion of array antennas of 5G system for backhaul use or allocating certain portion of timeslots of TDD 5G system for backhaul use. Recently, the Commission modified 60GHz rules to allow a peak EIRP limit of 85 dBm with very high gain antennas to support outdoor point-to-point backhaul service. We seek comment on whether a higher transmission power limit should be considered for the in-band application where the same equipment is used to for mobile service and backhaul service.

268. Our PCS and AWS rules require reduction of the transmission power limit when the antenna height is more than 305 meters (or 1000 feet). The purpose of those rules is to mitigate the risk of harmful interference from high-elevation transmitters to neighboring services in adjacent markets. We seek comment on whether a similar antenna height limit should be applied to the base stations operating in the proposed bands. Should we allow increased antenna heights in rural areas? We request that commenters provide technical analyses to justify their proposals.

b. Mobile Stations

269. Commenters propose a wide range of mobile station transmission power limits in response to the NOI. Nokia states that ''at this time we are assuming approximately +30dBm EIRP for mobile units which can serve as an initial guidance to the Commission.'' Intel states that 34dBm, including 9dBi of array gain with 8 elements, for mobile devices could achieve the performance and range for the applications targeted for these bands. Straight Path recommends that ''for mobile station, the FCC should adopt a 30dBm maximum output power and 43 dBm maximum peak EIRP. Samsung recommends 85dBm for 5G mobile stations operating in the 28 GHz band, which is the current transmission limit for base stations operating in the LMDS band.

270. We are tentatively inclined to accept Straight Path's recommendation that, for mobile transmitters in the 28, 39, and 37 GHz bands, we should adopt the same maximum peak EIRP limit of 43 dBm (20 watts) that is already allowed in the 57–64 GHz band under the current Part 15 rules. As discussed in further detail below, all radiofrequency devices are subject to the radiofrequency radiation exposure specifications in sections 1.1307(b),

2.1091 and 2.1093 of the Commission's rules. When the 57–64 GHz rules were adopted in 1995, most of the products envisioned for that band were not handheld devices, and the higher transmission power was granted to support future technologies that were expected at that time. In practice, most of the part 15 devices presently reaching consumers for operation in 57–64 GHz band are generally expected to be used at least 20 centimeters away from the user's body and are therefore subject to the requirements in section 2.1091 of the rules. Handheld and other portable user equipment operating in close proximity to users will likely have to operate at lower power in order to comply with the limits specified in section 2.1093 for devices which are likely to be used within 20 centimeters of the user's body under. A device operating at a lower power level to satisfy exposure limits will likely comply with the proposed maximum peak EIRP limit. Thus, we propose that the same maximum peak EIRP limits would apply in any case so long as the exposure limits are met, and a reduction or separate categorization of maximum peak EIRP for different types of devices depending on normal use is unnecessary and redundant with the requirements in sections 2.1091 and 2.1093 of the Commission's rules. We maintain that the requirements applicable to equipment operating in the 28, 39, and 37 GHz bands to demonstrate compliance with the Commission's exposure limits will depend on the normally maintained separation distance from a user's body. The combined effect of those rules and a maximum peak EIRP limit of 43 dBm would be to ensure compliance with the exposure limits while allowing industry flexibility to develop higher-powered transmitters for situations where an appropriate separation distance is maintained. We seek comment on this tentative conclusion and invite alternative proposals.

4. Emission Limits

271. *Background.* Rule 101.111(a)(2)(iv) establishes an emission limit for fixed stations operating in the 28 GHz band expressed as A=11 + .4*(P–50) + 10log10B, where A is attenuation below the mean output power of the transmitter, B is the authorized bandwidth in megahertz (40 megahertz for the LMDS band), and P is the percentage by which the transmitter bandwidth is removed from the carrier frequency. This emission limit is defined in conducted fashion. For fixed stations operating in the 39 GHz band, there are several rule sections that apply to emission limitations according to the type of digital modulation techniques deployed. These rules are created to support various fixed microwave technologies with conventional antenna systems, and the emission limits are defined as conducted.

272. For most mobile systems, the Commission has generally required licensees to attenuate their unwanted emission power below the transmission power (P) by a factor of at least 43 + 10log10(P), or -13 dBm for any emissions on frequencies outside the licensee's authorized spectrum. These requirements take effect at the edges of the assigned frequencies (*e.g.,* channel, block or band), and may be used as a basis for developing further requirements that relate to transmitter performance by industry standard organizations. This limit is applied equally both to base stations and to mobile stations, and compliance with this limit in existing systems, where access to the RF port of the antennas is conveniently available, is based on conducted measurement of transmission power at the output of the individual RF port. In the NOI, the Commission sought comment on whether a limit of 43 + 10log10(P) might be appropriate for mobile broadband systems in the proposed mmW bands.

273. In response to the NOI, some commenters express reservations about specifying an out-of-band emissions (OOBE) limit at this early stage of technology development. Several commenters agree that an OOBE limit of 43 + 10Log10 (P) for base stations would be appropriate.

274. *Measurement Challenges.* Some commenters indicate that conducted measurement of OOBE can be challenging. We acknowledge the measurement challenges identified by commenters and discussed in the Equipment Authorization section, and in response we propose to define emission limits in radiated fashion. Commenters suggest that the 5G base stations in mmW bands are expected to employ more than 100 radiating elements to effectively create multiple beams to serve multiple simultaneous users in a given cell. 5G mobile stations in mmW bands are also expected to have tens of radiating elements with multiple power amplifiers. With lack of RF ports, the emission measurement needs to be made in radiated fashion, and the antenna gain must be characterized and subtracted from the radiated measurement if the emission limit is to be defined in conducted fashion. Most mobile services in licensed bands define the emission limit in conducted fashion, where the measurement for determining compliance is done directly at the antenna port. Measuring the emission on a radiated fashion requires that the measurement be made at some point away from the antenna, where the measurement is made on the signal created by the radiated elements and transmitted over the air. We tentatively conclude that defining the emission limit in radiated fashion is more practical than alternative methods and seek comment on this proposal.

275. Accordingly, we seek further comment on radiated emission limits for 5G transmitters in mmW bands. We define out-of-band emission and spurious emission as characterizing the overall emission performance of a transmitter and the measurement procedures for spurious emissions at antennal terminals and field strength of spurious radiation are described in the Commission's rules. For bands higher than 1 GHz, for example PCS and AWS–1, compliance with the emission rule is based on a resolution bandwidth of 1 megahertz or greater, except within the first 1 megahertz. In the first 1 megahertz band immediately outside and adjacent to the channel block, a resolution bandwidth of at least 1 percent of the emission bandwidth of the fundamental emission of the transmitter may be employed, provided that the measured power is integrated over the full required measurement bandwidth.

276. Some commenters suggest that an emission attenuation of 43+10 logP per MHz (or -13dBm/MHz) in radiated fashion is still achievable at certain frequency offsets from the edge of the transmission signal, while others indicate that the conducted emission limit of 43+10logP is achievable but do not specify the resolution bandwidth or the measurement offset. Intel states that a ''step-like mask cannot meet requirements for 100/200 MHz channels; [m]ask must be gradual up to offset of 50 MHz.''. Straight Path states, ''The spurious emission limit (emission limit for P > 250) . . . will mostly be governed by the ''43 + 10 Log10 (the mean output power in watts) decibels'' limit, which is equivalent to -13 dBm/MHz with typical configurations of 5G systems.'' We seek comment on whether a radiated emission limit of 43+10log(P) can be supported by 5G transmitters operating in the 27.5–28.35 GHz, 37–38.6 GHz, and 38.6–40 GHz bands, and if so, what resolution bandwidth and frequency offset should be considered to define out-of-band emissions and spurious emissions. We request that commenters provide technical showings on how the proposed radiated emission

limits can mitigate the risk of harmful interference to operations by adjacent users. While our proposed rules contain an emission attenuation of 43+10logP per MHz with the measurement techniques of PCS and AWS bands, we recognize, however, that we need additional information before we can reach any conclusions on the appropriate emission limit.

277. *Protection of Passive Bands.* As discussed in the ''Passive Services Below 37 GHz'' section above, the 36.43–36.5 GHz band is used for radio astronomy spectral line emissions and all practical steps must be taken to protect radio astronomy in that band from interference. In the same section, we note that the EESS and space research operations are not entitled to interference protection from duly authorized fixed and mobile services in the 36–37 GHz band. Nonetheless, we seek comment on steps we could take to protect those operations without unduly limiting fixed and mobile operations in the 37 GHz band.

278. As commenters propose emission limits for mobile stations and base stations operating in 37–40 GHz band, we ask commenters to provide interference analysis into passive service receivers operating in 36–37 GHz band, including the assumptions on the distance separation, propagation model, system loading, aggregate number of transmitters, antenna characteristics, and others as appropriate.

5. Interference Protection and Coordination

a. Coordination and Field Strength Limits at Market Borders

279. *Background.* The Commission's rules for mobile services typically define field strength limits at the market boundaries in order to prevent interference between licensees in adjacent markets. For example, Part 27 for AWS specify that the predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed 47 dBμV/m unless the adjacent affected service area licensee(s) agree(s) to a different field strength. Our current rules contain coordination distances for both the 28 GHz and 39 GHz bands under which a fixed terrestrial licensee, within a certain prescribed distance of a mutual GSA border, is required to coordinate with the potentially affected fixed licensee of an adjacent GSA. Straight Path recommends ''a PFD limit of −86 dBm/m2/MHz or, equivalently, an electric field strength limit of 30 dBuV/m/MHz as the co-channel interference limit at the economic area boundary for 39 GHz mobile services.'' Qualcomm believes that it may be premature given the state of technology to establish field strength or power flux density limits at geographic service area borders at this time. Nokia believes that mmW mobile operations will involve advanced networks that will be capable of managing and avoiding interference not only among themselves but also with other licensees and technologies. Their belief in this proposition is coupled with the concept that the advanced narrow beams formed in highly attenuating frequencies will, in and of themselves, provide sufficient interference protection to protect adjacent licensees and differing wireless technologies operating in the spectrum.

280. *Discussion.* We seek comment on the appropriate interference protection criteria. Specifically, is the existing field strength limit of 47 dBuV/m specified in Part 27 appropriate for mmW mobile and fixed services? Is Straight Path's proposed PFD limit of −86 dBm/m2/MHz, which incorporates a spectral density more appropriate? Are there alternative more appropriate interference protection limits than these mentioned? Or, are coordination distances, such as those currently specified for the fixed services more appropriate? Additionally we seek comment on alternative, interference limits at the geographical service area border that would protect future mmW operations from unwanted interference. Any such proposed alternative limits should be described in detail and supported by engineering analysis. Commenters who believe that field strength limits at the license boundaries are not necessary should provide specific technical details and analysis substantiating their position that such protections will not be necessary in the future. Additionally we also seek comments as to the applicability of any such interference limit to current or potential future fixed point-to-point terrestrial facilities. Are the Part 27 interference protection technical limits, or alternatively those proposed by Straight Path at the geographic service area border adequate protection criteria for current and potential future fixed point-to-point terrestrial deployments? Are there other proposed interference protection limits that would be more appropriate for protecting fixed services?

281. A worst-case scenario to consider would be a fixed point-to-point terrestrial bi-directional link in one GSA near its border, oriented directly toward an urban area in an adjacent GSA that also lies near the border. Would the Part 27 and Straight Path limits for which we seek comment have more of a limiting effect on fixed point-to-point transmitter deployments than existing rules? Considering the reception antenna in the same scenario, would the Part 27 and Straight Path interference protection limits at the GSA border adequately protect a point-to-point fixed link close to the GSA border that uses narrow-beam, high-gain antennas? Would the protection afforded by the proposed limit be less effective in the protection of fixed point-to-point receivers oriented toward adjacent GSAs near their borders? Considering this worst-case scenario, should the existing rules based on specified distances from adjacent borders be retained, along with the existing coordination requirements? Is there another more appropriate rule that could be applied specifically to current and potential future deployments of fixed point-to-point facilities? Is there a threshold protection level that could be established that benefits the fixed point-to-point facilities as well as future mmW mobile facilities?

282. In a similar fashion, we have considered proposed concepts involving applications where mmW mobile base stations would deploy backhaul and fronthaul ''in-band'' solutions. These mmW conceptual backhaul/fronthaul uses further support our inquiry as related to the questions posed above because they appear to align closely with the operation of fixed point-to-point facilities. If it is determined that the current rules for fixed point-to-point facilities should be retained, should they be applied to mmW base station backhaul technologies? If so, should we consider retaining the existing distance and coordination requirements with respect to cases where an mmW base station would require ''in-band'' wireless backhaul? Should these distance requirements be modified and/or made uniform and applied consistently across all the bands? In the converse would the Part 27 and Straight Path interference protection limits allow for these distance requirements that trigger required coordination to become irrelevant in the transition to new rules for these bands?

b. Canadian and Mexican Borders

283. Sections 101.147(r)(13), 101.509(d), and 27.57 of our rules provide that fixed and mobile operations are subject to international agreements with Mexico and Canada. We propose to apply the same limitation to the newly established rule parts for the mmW bands. Until such time as any adjusted agreements between the United

States, Mexico, and/or Canada can be agreed to, mmW mobile operations must not cause harmful interference across any of our international borders, consistent with the terms of the agreements currently in force. Currently there are existing Arrangements for the 27.5—28.35 GHz LMDS band and 38.6C–40.0 GHz band between the United States and Canada. We note that further modification of the proposed rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands. We seek comment on this issue, including the costs and benefits of alternatives.

6. 37 GHz Technical Rules

284. We seek comment on any changes to our technical rules that may be required if we adopt our proposal to authorize local area operations in the 37 GHz band by rule while issuing geographic area licenses for outdoor use. Are there circumstances under which local area deployments could cause interference to outdoor systems, notwithstanding the heavy signal attenuation in this band? In order to avoid interference, should we propose lower authorized power for local area deployments? What special technical rules, if any, would be needed for indoor systems to promote indoor/outdoor coexistence? For example, do we need to establish a requirement that local area users and geographic area licensees coordinate their proposed operations? If a coordination mechanism is necessary, how should we design that mechanism? If we decide that geographic area licensees should have priority over local area operations, how should we define the responsibilities of the local area licensee to avoid interference? If, on the other hand, we decide that local are operations have priority, are there any special technical rules that would be needed for outdoor operations in this environment? We seek comment on these and other issues relating to the technical rules for our proposed hybrid licensing approach in 37 GHz.

7. Interoperability

285. The Commission historically has sought to promote the development of interoperable equipment, allowing smaller providers to benefit from the scale generated by equipment capable of operating across an entire band or adjacent bands. Beginning with the licensing of cellular spectrum, the Commission maintained that consumer equipment should be capable of operating over the entire range of cellular spectrum as a means to ''insure full coverage in all markets and compatibility on a nationwide basis.'' Since that time, the Commission has addressed the issue of interoperability in several bands, including in the Lower 700 MHz band (where it implemented an industry solution to LTE interoperability), the AWS–3 band (where it mandated interoperability for some operators), and the H Block band (where it stressed the importance of interoperability). We continue believe that interoperability delivers important benefits to consumers.

286. We propose to require that mobile equipment operating within each mmW band be interoperable using all air interfaces that the equipment utilizes on the frequencies. Interoperability helps ensure a robust market for equipment, and helps ensure that such equipment is available equally to all licensees. We note that interoperability could be a particularly important issue in the 37 GHz band if we license local area operations and outdoor operations separately. If we take that approach, we believe it would be necessary to ensure interoperability in order to ensure that equipment is available for both types of deployments. We seek comment on this proposal. Are there unique issues implicated in creating interoperable equipment at the frequencies and bandwidths proposed herein? We also seek comment on Straight Path's contention that it should be possible to achieve interoperability between different technologies, *e.g.,* switching between LTE and Wi-Fi.

8. Limits on Terrestrial Emissions

287. We seek comment on whether we should adopt emission limits above a certain elevation angle to terrestrial facilities in order to prevent interference between terrestrial facilities and satellites.

288. In the 28 GHz band, there appear to be three situations where terrestrial operators might generate transmissions toward reception antennas on satellites. The first case would involve transmissions from mmW base stations, but comments and research indicate that the most common scenario for such stations would likely include a downward beam-tilt from an antenna situated on a street lamp pole or on a building at a similar height. The second case would involve transmissions from mobile user equipment toward their serving base stations. Those transmissions could be directed upward, but we recognize that any interference to satellites from such user equipment, if it were to occur, would only result from the aggregate power from a very large number of mmW user devices transmitting simultaneously toward the satellite receiver. Noting that comments suggest that mmW user devices are likely to use steerable beamforming antenna arrays the likelihood that a large number of user devices would be pointed at a satellite (while oriented to communicate with a base station) is unlikely. Therefore, such interference appears to be unlikely, but we request any technical analyses that might indicate otherwise, together with any technical limitations that might be required to prevent such interference.

289. Perhaps the most likely increased source of interference to satellites (particularly NGSO satellites) would be the large number of backhaul links that will likely be necessary to connect the many small-cell base stations that will be required to support mobile service in the 28 GHz band. Some commenters envision that future mmW mobile base stations could require a substantial amount of in-band backhaul in order to move traffic from street-level base stations in urban canyons to aggregate backhaul points at higher elevations, using the same 28 GHz spectrum that will be used for mobile access. XO a large holder of LMDS licenses in the 28 GHz band, has stated that it currently has approximately 750 point-to-point-to-point facilities, mainly in urban environments, in most cases serving as an alternative to fiber to connect buildings to telecommunications backbone facilities. It seems reasonable to assume that in the interim and near future, until such time as mmW mobile technologies develop to the point of being commercially viable for deployment, more such facilities proposing technical parameters consistent with the current Part 101 Rules will continue to be built. Taking all three of the above sources of potential interference into account, are the existing and proposed power and emission limits for terrestrial operations in the 28 GHz band sufficient to prevent interference into satellite receivers? We request comments and technical information that would assist us in determining whether it would be necessary or beneficial to limit skyward emissions from terrestrial mmW facilities in the 28 GHz band, and, if so, at what thresholds.

9. Technical Rules for Part 15 Operation Within the 64–71 GHz Band

290. We propose to allow unlicensed operations in the 64 71 GHz frequency band pursuant to the same technical rules as in the 57 64 GHz frequency band under section 15.255 of our rules, with slight modifications. We believe that making available a 14-gigahertz

segment of contiguous spectrum in these frequencies will encourage the development of very high-speed wireless links with higher connectivity, bandwidth and throughput between small cell sites to support spectral efficiency in existing communications systems as well as in future 5G systems, consistent with the Commission's objectives to bring broadband access to every American and to provide additional competition in the broadband market.

291. Part 15 of the Commission's regulations permits the operation of radio frequency (RF) devices without an individual license from the Commission or the need for frequency coordination. The technical standards contained in Part 15 are designed to ensure that there is a low probability that such devices will cause harmful interference to other users of the radio spectrum. Unlicensed operations within the 57–64 GHz band are currently permitted under section 15.255 of our rules. Any type of unlicensed operation within the 57–64 GHz band is permitted under these rules, with the exception of operation on board aircrafts or satellites, and in mobile field disturbance sensor applications.

292. As indicated above, in the Spectrum Frontiers NOI, the Commission sought comment on the potential for the provision of mobile radio services in bands above 24 GHz, and in particular, on the advisability of amending its rules to allow unlicensed Part 15 operations in the 64 71 GHz band segment. Commenters unanimously support this action and recommend that the Commission proceed with extending the band to cover 57 to 71 GHz under the same Part 15 provisions that allow operation in the currently authorized 57–64 GHz band.

293. Suitability of the Existing Rules in section 15.255 to the 64 71 GHz Band. We are proposing to extend the technical requirements in section 15.255 to encompass the 57 71 GHz band. As we discuss in detail below, we believe that the existing technical rules in the 57 64 GHz band can successfully apply to the proposed 64 71 GHz adjacent band, with certain minor adjustments. In addition, we seek comment on certain aspects of the rules to further the growth and development of these devices without increasing the potential for harmful interference to authorized users in these bands. We examine the pertinent rules in section 15.255 below.

294. Operation On Board Aircraft. Section 15.255(a)(1) prohibits operation of equipment used on aircraft in the 57 64 GHz band. This requirement was adopted in 1995 pursuant to the request of the CORF to protect radio astronomy operations. We now observe that new tri-band chipsets compliant with IEEE Standard 802.11ad and intended for use in future WiGig products may operate in the 2.4 GHz, 5 GHz and 60 GHz bands. These components can be embedded into laptops or other mobile electronic devices used by travelers on airplanes. The present prohibition in our rules would require mobile devices to affirmatively disable Wi-Fi operation at 60 GHz (but not in the 2.4 GHz or 5 GHz frequency ranges) while operating on board a plane, possibly creating difficulty in enforcing compliance.

295. Radio astronomy has no allocations in this 57–64 GHz range; two major radio telescopes (in Green Bank, WV and on Kitt Peak, AZ) operate on an unprotected basis at these frequencies in the continental United States. There are telescopes in Chile, Japan and Europe that regularly operate at these frequencies, and US astronomers are scientific partners with researchers in those facilities. The issue for US radio astronomy about devices operating over the full range of the 57–64 GHz band is whether strong harmonics or out-of-band emission could interfere with observations of the cosmos in the Q-band (40–50 GHz) or W-band (80–96 GHz at all the VLBA sites). While radio signals around 60 GHz attenuate rapidly with distance, attenuation effects due to oxygen become much less pronounced in the 64–71 GHz band and higher, so interference effects propagate over much longer distances. Furthermore, strong harmonic emissions could seriously interfere with radio astronomy observations of the Carbon Monoxide (CO) spectral emission in passive-only bands (protected by ITU–R 5.340 and US246) including 109.5–111.8 GHz, 114.25–116 GHz, 164–167 GHz, 182–185 GHz, and 226–231.5 GHz. Harmonics could also interfere with radio astronomy operations at the 111.8–114.25 GHz, 217–226 GHz, and 241–248 GHz bands.

296. We observe an ongoing industry effort to work with the NTIA and other federal agencies to study compatibility of operation of these new chipsets and their operation on board in flight aircraft. As such, we believe that the prohibition on operation on board aircraft may be revisited at the present time. We therefore seek comment on this issue. We request technical studies and interference analyses demonstrating whether transmissions in the 57–71 GHz band should be permitted on aircraft. Such operations may include applications in the 57 71 GHz band that support enhancement of in-flight communications service offerings by airlines to meet the increasing consumer demand for broadband connectivity on aircraft. Is it possible to limit unlicensed device operation on aircraft to a narrower portion of the 57–64 GHz band to minimize impact to the radio astronomy observations? If so, should we consider such a limitation?

297. *Fixed Field Disturbance Sensor Operation.* Section 15.255(a)(2) prohibits operation of field disturbance sensors in the 57 64 GHz band; however it makes an exception for sensors in certain fixed industrial applications (speed control, fluid level, and motion detection functions, etc.) These devices are required to operate at a power level 30 dB lower than communications devices in the 57 64 GHz band, in order to avoid causing harmful interference to co channel communications devices. Since the rules require these fixed field disturbance sensors to operate at a much lower power than communications equipment in the band, and they have not been the subject of any case of harmful interference over the years, we believe that such devices should be able to co-exist with communications equipment in the proposed 64 71 GHz band without additional harmful interference potential. We seek comment on whether to extend the requirements for these fixed field disturbance sensors in Section 15.255 into the proposed 64 71 GHz band.

298. *Emission Limits.* Except for fixed field disturbance sensors discussed above, section 15.255(b) limits the average power of any emission in this band to 40 dBm EIRP and the peak power to 43 dBm EIRP for transmitters located either indoors or outdoors. In 2013, the Commission modified these rules to provide transmitters located outdoors with very high gain antennas (*i.e.,* higher than 30 dBi) an average EIRP emission limit of 82 dBm and a peak EIRP limit of 85 dBm, in each case minus 2 dB for every dB that the antenna gain is below 51 dBi. At that time, the Commission observed that two primary types of equipment serving different markets have emerged to share the 57 64 GHz band: (1) In building wireless personal area networking (WPAN) devices designed to share uncompressed high definition (HD) data signals between consumer entertainment devices, such as high definition televisions (HDTV), cameras, and laptop computers, usually within the same room; and (2) outdoor short range point to point systems intended to extend the reach of fiber optic networks by providing service to adjacent structures, provide broadband backhaul links between cellular networks base

stations, or interconnect buildings in campus environments.

299. At the request of the 60 GHz industry stakeholders that offer this second type of application, the Commission adopted higher emission levels to provide longer range coverage for outdoor point to point links with very high gain antennas resulting in very narrow beamwidths, while maintaining the existing lower emission levels for any application indoors or outdoors.

300. We believe that future 5G technologies, similar to existing 4G or LTE technologies, would take advantage of mobile data off-loading to unlicensed operations at Wi-Fi hotspots, either indoors or outdoors, as well as leveraging short backhaul links between pico cells. Therefore, we believe the existing two types of emission limits that we propose to apply to the 64 71 GHz band will continue to benefit both the low power networking communication links, including mobile use for data and voice communications, and the high-power high antenna gain fixed point to point backhaul links. We further note that although oxygen attenuation is most severe in the 57 64 GHz band which is approximately centered at 60 GHz, its effect becomes much less pronounced in the adjacent 64 71 GHz band. Thus, equipment operating in the proposed 64 71 GHz band at the same emission levels would effectively be able to provide longer range and higher data throughput, as these levels are not as attenuated by the oxygen phenomenon. We seek comment on these tentative conclusions.

301. *Spurious Emissions.* Section 15.255(c) restricts spurious emissions to a power density limit of 90 pW/cm2 at a distance of 3 meters for frequencies between 40 and 200 GHz, and to the general limit for intentional radiators in section 15.209 for frequencies below 40 GHz. We propose to apply the same spurious emissions limits to transmitters operating in the proposed 64 71 GHz band. We seek comment on this proposal.

302. *Publicly Accessible Coordination Channel.* Section 15.255(d) sets aside a publicly-accessible coordination channel in the 57.00 57.05 GHz band, in which only spurious emissions and emissions related to coordination techniques regarding interference management between diverse, non-interoperable, transmitters are permitted. The rules further stipulate that the development of standards for this channel shall be performed pursuant to experimental authorizations issued under Part 5 of the Commission's rules. This requirement was adopted in 1998 and modified in 2000 at the request of industry. However, since 1998, there has been no report submitted to the FCC related to any specific experimental research with respect to this band. We also observe that with recent technological advances and industry standardization, co-existence between 60 GHz devices is better resolved by voluntary standards than by a coordination channel requirement in the rules. Because specifications on coordination techniques could reside in industry standards, we question the need to maintain a requirement that adds costs to equipment design and installation. Removing this requirement would also provide an extra 50 MHz of spectrum for data transmission. We propose to remove this requirement from the rules and seek comment on this proposal, including its costs and benefits.

303. *Conducted Transmitter Output Power.* Section 15.255(e) limits the peak transmitter conducted output power of 57–64 GHz unlicensed devices to 500 mW (*i.e.,* 27 dBm) for transmitters with an emission bandwidth of at least 100 MHz, and is reduced for systems that employ narrower bandwidths. We propose to apply this conducted transmitter output power requirement to transmitters operating in the proposed 64 71 GHz band. We seek comment on this proposal.

304. *Frequency Stability.* Section 15.255(f) requires that fundamental emissions be contained within the 57–64 GHz frequency band during all conditions of operation; and that equipment be able to operate over the temperature range −20 to +50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage. In adopting this requirement, the Commission noted that ''. . . [m]illimeter wave devices generally are more susceptible to changes in operating frequency due to fluctuations in temperature or voltage than are transmitters operating at lower frequencies.'' We propose to apply the same requirements to transmitters operating in the proposed 64 71 GHz band. We seek comment on this proposal.

305. Co-*location of separately authorized transmitters.* Section 15.255(h) allows group installation of transmitters that have been tested separately for compliance with the rules and received separate equipment authorizations, as long as no transmitter in the group is equipped with external phase-locking inputs that permit beam-forming arrays to be realized. This requirement seeks to prevent the possibility of producing a high-power coherent beam from discrete transmitters that have not been tested for compliance together, which could lead to non-compliance with the emission limits. This requirement does not preclude the use of advanced antenna technologies with beam forming arrays in any transmitter, as long as its emissions in any array configuration comply with the limits on emissions and on RF exposure in the rules. We propose to apply the same requirement to equipment operating in the proposed 64 71 GHz band. We seek comment on this proposal.

10. Sharing Analysis and Modeling

306. The Commission recognizes that having widely accepted propagation models for millimeter wave bands is one of the key steps towards 5G technology development and interservice sharing in mmW bands. While the propagation models of low frequency bands are well understood and practiced, mainly due to their long history, the wireless industry and academia are currently engaged in development of propagation models for millimeter wave bands. The Satellite Industry Association (SIA) and EchoStar have filed comments raising their own questions on what types of propagation models might be used for sharing analysis between satellite and terrestrial systems. NYU also filed comments emphasizing the importance of propagation modeling for mmW band technology development.

307. We seek comment on the various sharing analysis framework among fixed, mobile and satellite systems, as well as between active and passive services in the millimeter bands. Specifically, we request technical information on transmitter and receiver characteristics including peak and average transmit power and antenna performance, operational assumptions including antenna orientation and practical use case of transmitters and receivers, and appropriate propagation models for each sharing analysis that would assist in evaluating interference potential including aggregate effects as applicable.

11. Equipment Authorization

308. There are some unique technical challenges specific to demonstrating compliance for the purpose of equipment authorization of millimeter-wave devices that may need to be addressed through guidance by the FCC Laboratory or future Commission proceedings. For example, as discussed above, it is expected that the millimeter-wave devices being contemplated are expected to be designed with an array of multiple antennas employing

dynamic beamforming and no output port for which to measure the conducted power of the transmitter, which may make challenging the verification of transmitter power, equivalent isotropic radiated power (EIRP), and antenna gain. Additionally, devices authorized for operation above 6 GHz have so far been intended for normal use at least 20 centimeters from the body of the user, introducing new challenges for measurement of RF exposure for such devices at close distances. Throughout the next two sections, we seek comment on how we should address these technical challenges in future guidance to demonstrate compliance with the Commission's rules pertaining to equipment authorization. Specifically, we request information on relevant research as we address two topics: (1) Measurement techniques to verify that devices meet limits on peak EIRP and out-of-band emissions (OOBE), and (2) demonstration of compliance with respect to the Commission's rules on RF exposure.

a. Measurement Techniques

309. *EIRP Measurement.* Above we proposed a maximum device EIRP, without a limitation on device conducted power or antenna gain. Present FCC Laboratory guidance addresses to a certain extent some of the technical procedures that could inform compliance demonstration with the proposed rules under consideration for millimeter-wave devices herein. However, direct measurement of the fundamental EIRP of millimeter-wave devices including those that use dynamic beamforming antenna arrays across channel bandwidths of 100 MHz (or more) at millimeter-wave frequencies are more challenging than the present guidance for a number of reasons. For instance, when performing radiated emission measurements there may be significant losses depending on the test measurement setup, and attempts to recoup some of the added losses could introduce additional complexity, perhaps by requiring that measurements be performed in the radiating near-field of the device under testing. This presents practical problems of measurement repeatability and consistency. Additionally, the equivalent antenna gain of the device under testing depends on the frequencies being measured and in the case of beamforming arrangements, the direction of the beam being formed, which is especially true across wide channels such as those being contemplated for millimeter-wave devices. We seek information on fundamental aspects of measurements of radiated emissions at these frequencies. What are the ways to demonstrate compliance with procedures which are practical, repeatable and do not have large margins of errors. We further seek comment on whether and how present procedures can be adapted or modified to appropriately to address these specific technical challenges presented by millimeter-wave devices.

310. *Out-of-Band and Spurious Emissions Measurement.* Conventionally, out-of-band and spurious emissions are verified by direct measurement of conducted power at an output port, which avoids the additional losses and uncertainties associated with field measurements. However, millimeter-wave devices being contemplated are likely not to have an output port, primarily due to the manner in which the antennas in the array will be fed. At the present time the FCC Laboratory guidance does offer a procedure to measure the out-of-band and spurious emissions from devices with multiple antennas. The measurement challenges introduced in the previous paragraph regarding significant losses that could be introduced depending on the test measurement setup are accentuated in the case of out-of-band and spurious measurements due to the low levels relative to the fundamental emissions. We seek comment on what other measurement procedures may be used and whether we would need to provide any additional guidance to determine compliance with the out-of-band and spurious emission limits for millimeter-wave devices considering the technical challenges. Additionally, out-of-band emissions limits are presently measured using a 100 kHz bandwidth at operating frequencies below 1 GHz, and are measured using a 1 MHz bandwidth at operating frequencies above 1 GHz. We seek comment on whether we should further consider widening the measurement bandwidth, say to 10 MHz above 10 GHz, and what might be the practical implications in doing so. For example, a wider measurement bandwidth would include more thermal noise, which could make measurement more difficult because of the increased noise to a point higher than the emissions limits. We seek comment on this proposal. Finally, spurious emissions for devices operating above 10 GHz are required by the Commission's rules to be measured up to the fifth harmonic of the highest fundamental frequency, below a certain cutoff frequency. We seek comment on whether these cutoff frequencies should be modified.

b. RF Exposure Compliance

311. Radiofrequency (RF) devices must comply with the Commission's RF exposure limits. The Commission has an open proceeding in which it is examining its RF exposure rules and policies, which could potentially influence how such devices are authorized in the future. We propose to similarly require compliance with the radiofrequency radiation exposure specifications in sections 1.1307(b), 2.1091 and 2.1093 of the rules to equipment operating in the Upper Microwave Flexible Use Service. We seek comment on this proposal; however, any issues raised involving the present exposure limits themselves as they exist today will be dealt with in the context of that separate proceeding.

312. Presently, the Commission's rules include two types of guidelines limiting exposure to RF energy: (1) Specific absorption rate (SAR), and (2) maximum permissible exposure (MPE). There is no SAR limit for operations above 6 GHz, rather the MPE limit on total power flux density must be used to determine compliance at frequencies from 6 through 100 GHz. Compliance with these rules for devices is demonstrated through the equipment authorization process, and will be subject to subsequent specific guidance on RF exposure compliance procedures. Nevertheless, determining compliance with the RF exposure limit for portable devices (intended for use within 20 centimeters of the body of a user) operating above 6 GHz does present some unique technical challenges not addressed in our guidance documents and warrant some additional discussion. Recognizing the specific guidance on evaluation to be issued by the FCC Laboratory which will address how to demonstrate compliance with our exposure limits, and given the additional considerations in the Commission's pending proceeding on RF exposure rules and policies, we seek comment on how to address these technical challenges.

313. Conventionally, consumer portable devices operating at frequencies below 6 GHz intended to be held against the head during normal use are tested for SAR with the device placed directly against a head-shaped tissue-equivalent phantom defined by SAR measurement standards, called the specific anthropomorphic mannequin (SAM). SAR is evaluated under specific exposure conditions within tissue-equivalent media. However, the more tractable MPE measurements are

performed in free-space without a SAM present. MPE evaluations in free-space do not account for the specific exposure conditions in the body tissues; however, the MPE limits without spatial averaging have a built-in conservativeness that assumes whole-body exposure and ensures compliance with SAR limits below 6 GHz. We acknowledged in our proposals in the RF Further Notice that the five centimeter minimum distance for measurement and calculation of MPE in free-space specified in our rules appears to be inappropriate at frequencies above 6 GHz, especially in the context of portable devices that may normally be operated closer than five centimeters from the head or body. However, we also acknowledged in those proposals in the Commission's *RF Further Notice* that there could be some minimum distance at which device coupling with measurement probes could reduce measurement accuracy, even with today's advanced and more compact measurement equipment. However, with computational techniques there may be no practical limitation on minimum distance. We seek comment on what major factors, considering both measurement and computational techniques, we should take into account when developing guidance to evaluate consumer portable devices operating at frequencies above 6 GHz intended to be held against the head or close to the body during normal use. We encourage comments addressing whether the technical challenges described above regarding probe-device coupling in the near-field are surmountable when measuring MPE, and whether suitable techniques can be established to validate the computational model used in simulations of near-field power density.

314. As noted above, consistent with other existing advanced wireless service rules, we are proposing a 20 watts (43 dBm) peak EIRP for mobile devices. However, the major distinctions between millimeter-wave devices being contemplated and existing wireless devices are the default use of an array of multiple antennas with no output port at which to measure the conducted power of the transmitter. Also mentioned in our proposals in the *RF Further Notice* was the rationale for a maximum averaging area of one square centimeter for MPE above 6 GHz to be consistent with one gram averaging of SAR. We note that the antenna array dimensions being contemplated can be significantly larger than a single square centimeter, and every antenna in an array is being fed equal power, effectively spreading the power across the entire aperture of the device's antenna array. In this regard, peak EIRP in the far-field is conceptually considered to be inversely related to the maximum power flux density of the antenna array in the near-field, and ultimately the maximum conducted power that could be used by the device while still complying with the Commission's RF exposure limits might not be related to peak EIRP, however we seek comment on this concept. Recognizing also that portable devices are likely to operate at conducted power levels much lower than the proposed maximum peak EIRP, due to antenna array gain and to effectively manage device power consumption among other reasons, we also seek comment on whether to maintain our continued approach to allow portable devices to be authorized up to the maximum EIRP permitted by the rules, as long as our RF exposure limits are met, and if not, what other alternative approaches we should consider. Related to equipment authorization procedures, we specifically seek comment on whether an averaging area of one square centimeter would appropriately reflect the intent of the rationale behind our present exposure limits in the interim, until the Commission considers the issues brought forth in its RF Inquiry. Moreover, similar to the rationale that permits consideration of lateral separation between antennas measured for peak SAR in the context of reducing test requirements for some types of equipment operating at frequencies below 6 GHz, and given the anticipated dimensions of antenna arrays for these devices, we seek comment on whether any one square centimeter averaging area across the dimensions of the array can be assessed independently while still adhering to the intent of these guidelines.

V. Ordering Clause

A. Need for, and Objectives of, the Proposed Rules

315. In this Notice of Proposed Rulemaking, we propose to authorize mobile operations in the 27.5–28.35 GHz band (28 GHz band), the 38.6–40 GHz band (39 GHz band), and the 37–38.6 GHz band (37 GHz band). These bands are known collectively as the mmW bands.

316. Until recently, the mmW bands were generally considered unsuitable for mobile applications because of propagation losses at such high frequencies and the inability of mmW signals to propagate around obstacles. As increasing congestion has begun to fill the lower bands and carriers have resorted to smaller and smaller microcells in order to re-use the available spectrum, however, industry is taking another look at the mmW bands and beginning to realize that at least some of its presumed disadvantages can be turned to advantage. First and foremost, the perceived unsuitability of mmW frequencies for mobile and other applications have not been considered as potential spectrum for wide-bandwidth, broadband operations whenever technology becomes available to exploit those under-used resources. As discussed further below, short transmission paths and high propagation losses can facilitate spectrum re-use in microcellular deployments by limiting the amount of interference between adjacent cells. Where longer paths are desired, however, the extremely short wavelengths of mmW signals make it feasible for very small antennas to concentrate signals into highly focused beams with enough gain to overcome propagation losses. Also, the short wavelengths of mmW signals also make it possible to build multi-element, dynamic beam-forming antennas that will be small enough to fit into handsets—a feat that might never be possible at the lower, longer-wavelength frequencies below 6 GHz where cell phones operate today.

317. In the 28 GHz, 39 GHz, and 37 GHz bands, we propose to create a new radio service in a new rule part that would authorize fixed and mobile services. The additional spectrum for mobile use will help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service. It could also make possible new types of services for consumers and businesses.

318. For the 28 GHz and 39 GHz bands, we propose to assign licenses by competitive bidding using counties as the area for geographic area licensing. We also propose to transition existing licensees in these bands to county-based licenses. For the 37 GHz, we propose a hybrid licensing scheme in which rights to local area operations tailored to physical facility boundaries would be assigned by rule and rights to outdoor operations would be assigned by geographic area licensing using counties as the geographic unit. This hybrid mechanism could facilitate the development of advanced enterprise and industrial applications not suited to unlicensed spectrum or public network services.

319. These service rules would make available additional spectrum for

flexible use. In proposing service rules for the band, which include technical rules to protect against harmful interference, licensing rules to establish geographic license areas and spectrum block sizes, and performance requirements to promote robust buildout, we advance toward enabling rapid and efficient deployment. We do so by proposing flexible service, technical, assignment, and licensing rules for this spectrum, except where special provisions are necessary to facilitate shared use with other co-primary users.

320. At the same time, because the 28 GHz, 39 GHz, and 37 GHz bands are shared with satellite services, we also seek comment on ways to facilitate satellite uses that are consistent with fixed and mobile use of the bands. Specifically, we propose a mechanism under which 28 GHz gateway earth stations could obtain co-primary status if their presence would not impede terrestrial development. We also ask if there are circumstances under which satellite user equipment could be authorized in these bands on a secondary basis.

321. We also propose to authorize unlicensed operation pursuant to Part 15 of our rules in the 64–71 GHz band. The proposed technical rules would be based on our existing rules for the 57–64 GHz band.

322. Overall, these proposals are designed to provide for flexible use of this spectrum by allowing licensees to choose their type of service offerings, to encourage innovation and investment in mobile broadband use in this spectrum, and to provide a stable regulatory environment in which fixed, mobile, and satellite deployment would be able to develop through the application of flexible rules. The market-oriented licensing framework for these bands would ensure that this spectrum is efficiently utilized and will foster the development of new and innovative technologies and services, as well as encourage the growth and development of a wide variety of services, ultimately leading to greater benefits to consumers.

B. Legal Basis

323. The proposed action is authorized pursuant to Sections 1, 2, 3, 4, 5, 7, 10, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, and 336 of the Communications Act of 1934, 47 U.S.C. 151, 152, 153, 154, 155, 157, 160, 201, 225, 227, 301, 302, 302a, 303, 304, 307, 309, 310, 316, 319, 332, 336 and section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

324. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

325. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards. First, nationwide, there are a total of approximately 28.2 million businesses, 99.7 percent of which are small, according to the SBA. In addition, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2011 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88, 506 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

326. *Wireless Telecommunications Carriers (except satellite).* The appropriate size standard under SBA rules is for the category Wireless Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2011, show that there were 10,145 firms in this category that operated for the entire year. Of this total, 10,117 had employment of 999 or fewer, and 28 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

327. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), the 39 GHz Service (39GHz), the 24 GHz Service, and the Millimeter Wave Service where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 61,970 common carrier fixed licensees, 62,909 private and public safety operational-fixed licensees, 20,349 broadcast auxiliary radio licensees, 412 LMDS licenses, 35 DEMS licenses, 870 39GHz licenses, 5 24GHz licenses, and 408 Millimeter Wave licenses in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, the Commission will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons is considered small. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2011, show that there were 10,145 firms in this category that operated for the entire year. Of this total, 10,117 had employment of 999 or fewer, and 28 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action. The Commission notes that the number of firms does not necessarily track the number of licensees. The Commission estimates that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

328. *Satellite Telecommunications and All Other Telecommunications.* Two economic census categories address the satellite industry. The first category has a small business size standard of $32.5 million or less in average annual receipts, under SBA rules. The second also has a size standard of $32.5 million or less in annual receipts.

329. The category of Satellite Telecommunications ''comprises establishments primarily engaged in

providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Census Bureau data for 2011 show that 659 Satellite Telecommunications firms operated for that entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

330. The second category, *i.e.* ''All Other Telecommunications'' comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2012 show that there were a total of 2,981 firms that operated for the entire year. Of this total, 2,347 firms had annual receipts of under $25 million and 12 firms had annual receipts of $25 million to $49,999,999. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

331. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The proposed rules relating to Part 15 operation pertain to manufacturers of unlicensed communications devices. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

332. The projected reporting, recordkeeping, and other compliance requirements proposed in the *Notice of Proposed Rulemaking* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the proposed rules will unduly burden small entities, as discussed below. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to wireless spectrum.

333. Any applicants for Upper Microwave Flexible Use Service licenses will be required to file license applications using the Commission's automated Universal Licensing System (ULS). ULS is an online electronic filing system that also serves as a powerful information tool, one that enables potential licensees to research applications, licenses, and antenna structures. It also keeps the public informed with weekly public notices, FCC rulemakings, processing utilities, and a telecommunications glossary. Upper Microwave Flexible Use Service applicants that must submit long-form license applications must do so through ULS using Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms.

334. Applicants in the Upper Microwave Flexible Use Service will be required to meet buildout requirements at the end of their initial license terms. In doing do, they will be required to provide information to the Commission on the facilities they have constructed, the nature of the service they are providing, and the extent to which they are providing coverage in their license area.

335. We also propose to require Upper Microwave Flexible Use Service licensees to provide information on their proposed operations in order to facilitate sharing with other authorized services. We seek comment on the scope of the information to be provided and the manner in which it should be provided.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

336. The proposal in the *NPRM* to license the 28 GHz, 39 GHz bands using county-sized licenses. We also propose to assign outdoor rights in the 37 GHz band using county size licenses. These license areas are small enough to provide spectrum access opportunities for smaller carriers. County license areas also nest within and may be aggregated up to larger license areas. Therefore, the benefits and burdens resulting from assigning spectrum in county license areas are equivalent for small and large businesses. Depending on the licensing mechanism we adopt, licensees may adjust their geographic coverage through auction or, as we discuss in section IV.E.8 of the NPRM, through secondary markets. This proposal should enable providers, or any entities, whether large or small, providing service in the mmW bands to more easily adjust their spectrum to build their networks pursuant to individual business plans. As a result, we believe the ability of licensees to adjust spectrum holdings will provide an economic benefit by making it easier for small entities to acquire spectrum or access spectrum.

337. The proposals to facilitate satellite service in the 28 GHz, 39 GHz, and 37 GHz would facilitate service by all Fixed Satellite Service entities, including small entities.

338. The *NPRM* proposal in section IV.E.10 pertaining to how the mmW band licenses will be assigned includes proposals to assist small entities in competitive bidding. We propose that the Commission would conduct any auction for licenses for spectrum in the mmW bands in conformity with the general competitive bidding rules set forth in Part 1, Subpart Q, of the Commission's rules, and substantially consistent with the competitive bidding procedures that have been employed in previous auctions. Specifically, we propose to employ the Part 1 rules governing competitive bidding design, designated entity preferences, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Specifically, small entities will benefit from the proposal to provide small businesses with a bidding

credit of 15 percent and very small businesses with a bidding credit of 25 percent. Providing small businesses and very small businesses with bidding credits will provide an economic benefit to small entities by making it easier for small entities to acquire spectrum or access to spectrum in these bands.

339. In section IV.F of the *NPRM,* the Commission proposes service rules that permit a licensee to employ the spectrum for any non-Federal fixed or mobile use, subject to the Commission's proposed Part 30 flexible use and other applicable rules (including service rules to avoid harmful interference). The technical rules we propose or seek comment on will allow licensees of mmW band spectrum to operate while also protecting licensees of nearby spectrum, some of whom are small entities, from harmful interference.

340. We propose to permit partitioning and disaggregation by licensees in the mmW bands. These secondary market rules apply equally to all entities, whether small or large. We believe the opportunity to enter into secondary market agreements for mmW band spectrum will provide an economic benefit to all entities, whether large or small. Therefore, the benefits and burdens resulting from secondary market agreements for spectrum are equivalent for small and large businesses.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

341. None.

List of Subjects in 47 CFR Parts 1, 2, 15, 25, 30 and 101

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 15, 25, and 101 and add a new part 30 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for 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, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

■ 2. Section 1.907 is amended by revising the definitions for ''Wireless Radio Services'' and ''Wireless Telecommunications Services'' to read as follows:

§ 1.907 Definitions.

* * * * *

Wireless Radio Services. All radio services authorized in parts 13, 20, 22, 24, 26, 27, 30, 74, 80, 87, 90, 95, 96, 97 and 101 of this chapter, whether commercial or private in nature.

Wireless Telecommunications Services. Wireless Radio Services, whether fixed or mobile, that meet the definition of ''telecommunications service'' as defined by 47 U.S.C. 153, as amended, and are therefore subject to regulation on a common carrier basis. Wireless Telecommunications Services include all radio services authorized by parts 20, 22, 24, 26, 27, and 30 of this chapter. In addition, Wireless Telecommunications Services include Public Coast Stations authorized by part 80 of this chapter, Commercial Mobile Radio Services authorized by part 90 of this chapter, common carrier fixed microwave services, Local Television Transmission Service (LTTS), Local Multipoint Distribution Service (LMDS), and Digital Electronic Message Service (DEMS), authorized by part 101 of this chapter, and Citizens Broadband Radio Services authorized by part 96 of this chapter.

■ 3. Section 1.1307 is amended by adding an entry for ''Upper Microwave Flexible Use Service (part 30)'' above the entry for ''Radio Broadcast Services (part 73)'' in Table 1 in paragraph (b)(1) and revising paragraph (b)(2)(i) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
* * * * *	
Upper Microwave Flexible Use Service (part 30).	Non-building-mounted antennas: height above ground level to lowest point of antenna <10 m and power >1640 W EIRP.

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if:
	Building-mounted antennas: Total power of all channels >1000 W ERP (1640 W EIRP).
* * * * *	

(2)(i) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible Use Service pursuant to part 30 of this chapter; the Maritime Services (ship earth stations only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, or the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS), or the Medical Device Radiocommunication Service (MedRadio) pursuant to part 95 of this chapter; or the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter.

* * * * *

■ 4. Section 1.9001 is amended by revising paragraph (a) to read as follows:

§ 1.9001 Purpose and scope.

(a) The purpose of part 1, subpart X is to implement policies and rules pertaining to spectrum leasing arrangements between licensees in the services identified in this subpart and spectrum lessees. This subpart also implements policies for private commons arrangements. These policies and rules also implicate other Commission rule parts, including parts 1, 2, 20, 22, 24, 25, 27, 30, 80, 90, 95, and 101 of title 47, chapter I of the Code of Federal Regulations.

* * * * *

■ 5. Section 1.9005 is amended by revising paragraphs (hh) through (kk) and adding paragraph (ll) to read as follows:

§ 1.9005 Included services.

* * * * *

(hh) The Multipoint Video Distribution and Data Service (part 101 of this chapter);

(ii) The 700 MHz Guard Bands Service (part 27 of this chapter);

(jj) The ATC of a Mobile Satellite Service (part 25 of this chapter);

(kk) The 600 MHz band (part 27 of this chapter); and

(ll) The Upper Microwave Flexible Use Service (part 30 of this chapter).

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 6. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 7. Section 2.1091 is amended by revising paragraph (c)(1) introductory text to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) * * *

(1) Mobile devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible Use Service pursuant to part 30 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if:

* * * * *

■ 8. Section 2.1093 is amended by revising paragraph (c)(1) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) * * *

(1) Portable devices that operate in the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Service (PCS) pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Upper Microwave Flexible Use Service pursuant to part 30 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS) and the Medical Device Radiocommunication Service (MedRadio), pursuant to subparts H and I of part 95 of this chapter, respectively, unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under §§ 15.253(f), 15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter; and the Citizens Broadband Radio Service pursuant to part 96 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

■ 9. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 10. Section 15.255 is proposed to be amended by revising the section heading, paragraph (b) introductory text, paragraphs (b)(1)(i) and (ii), and paragraphs (b)(2), (b)(4), and (c)(1); removing paragraph (d); redesignating paragraphs (e) through (h) as paragraphs (d) through (g); revising newly redesignated paragraph (d)(2); and adding new paragraph (h) to read as follows:

§ 15.255 Operation within the band 57–71 GHz .

* * * * *

(b) Within the 57–71 GHz band, emission levels shall not exceed the following equivalent isotropically radiated power (EIRP):

(1) * * *

(i) The average power of any emission shall not exceed 40 dBm and the peak power of any emission shall not exceed 43 dBm; OR

(ii) For fixed point to point transmitters located outdoors, the average power of any emission shall not exceed 82 dBm, and shall be reduced by 2 dB for every dB that the antenna gain is less than 51 dBi. The peak power of any emission shall not exceed 85 dBm, and shall be reduced by 2 dB for every dB that the antenna gain is less than 51 dBi.

(A) The provisions in this paragraph for reducing transmit power based on antenna gain shall not require that the power levels be reduced below the limits specified in paragraph (b)(1)(i) of this section.

(B) The provisions of § 15.204(c)(2) and (4) that permit the use of different antennas of the same type and of equal or less directional gain do not apply to intentional radiator systems operating under this provision. In lieu thereof, intentional radiator systems shall be certified using the specific antenna(s) with which the system will be marketed and operated. Compliance testing shall be performed using the highest gain and the lowest gain antennas for which certification is sought and with the intentional radiator operated at its maximum available output power level. The responsible party, as defined in § 2.909 of this chapter, shall supply a list of acceptable antennas with the application for certification.

(2) For fixed field disturbance sensors that occupy 500 MHz or less of bandwidth and that are contained wholly within the frequency band 61.0–61.5 GHz, the average power of any emission, measured during the transmit interval, shall not exceed 40 dBm, and the peak power of any emission shall not exceed 43 dBm. In addition, the average power of any emission outside of the 61.0–61.5 GHz band, measured during the transmit interval, but still within the 57–71 GHz band, shall not exceed 10 dBm, and the peak power of any emission shall not exceed 13 dBm.

* * * * *

(4) The peak power shall be measured with an RF detector that has a detection bandwidth that encompasses the 57–71 GHz band and has a video bandwidth of at least 10 MHz. The average emission levels shall be measured over the actual time period during which transmission occurs.

(c) * * *

(1) The power density of any emissions outside the 57–71 GHz band shall consist solely of spurious emissions.

* * * * *

(d) * * *

(2) Peak transmitter conducted output power shall be measured with an RF detector that has a detection bandwidth that encompasses the 57–71 GHz band

and that has a video bandwidth of at least 10 MHz.

* * * * *

(h) Measurement procedures that have been found to be acceptable to the Commission in accordance with § 2.947 of this chapter may be used to demonstrate compliance.

PART 25—SATELLITE COMMUNICATIONS

■ 11. The authority citation for part 25 continues to read as follows:

Authority: Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, 705, and 721 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 605, and 721, unless otherwise noted.

■ 12. Section 25.202 is amended by revising footnote 2 to the table in paragraph (a)(1) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a) * * *

(1) * * *

[2] FSS is co-primary if the FSS licensee also holds the Upper Microwave Flexible Use license for the area where the earth station is located. Otherwise, FSS is secondary to the Upper Microwave Flexible Use Service.

* * * * *

■ 13. Part 30 is added to read as follows:

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

Subpart A—General

Sec.

30.1 Creation of upper microwave flexible use service.
30.2 Definitions.
30.3 Eligibility.
30.4 Frequencies.
30.5 Service areas.
30.6 Permissible communications.

Subpart B—Applications and Licenses

30.101 Initial authorizations.
30.102 Authorization of operation of local area networks in 37–38.6 GHz band.
30.103 Transition of existing local multipoint distribution service and 39 GHz licenses.
30.104 License term.
30.105 Construction requirements.
30.106 Geographic partitioning and spectrum disaggregation.
30.107 Discontinuance of service.

Subpart C—Technical Standards

30.201 Equipment authorization.
30.202 Power limits.
30.203 Emission limits.
30.204 Field strength limits.
30.205 Information sharing requirements.
30.206 Federal coordination requirements.
30.207 International coordination.
30.208 RF safety.
30.209 Interoperability.

Subpart D—Competitive Bidding Procedures

30.301 Upper microwave flexible use service subject to competitive bidding.
30.302 Designated entities and bidding credits.

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302.

§ 30.1 Creation of upper microwave flexible use service.

As of [effective date of final rule], Local Multipoint Distribution Service licenses for the 27.5–28.35 GHz band, and licenses issued in the 38.6–40 GHz band under the rules in part 101 of this chapter shall be reassigned to the Upper Microwave Flexible Use Service. Local Multipoint Distribution Service licenses in bands other than 27.5–28.35 GHz shall remain in that service and shall be governed by the part 101 rules applicable to that service.

§ 30.2 Definitions.

The following definitions apply to this part:

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater. (See § 2.202 of this chapter).

Base station. A station at a fixed location used as part of a mobile service.

Effective Radiated Power (ERP) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna.

Fixed service. A radio communication service between specified fixed points.

Fixed station. A station in the fixed service.

Local Area Operations. Operations confined to physical facility boundaries, such as a factory.

Mobile service. A radio communication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Point-to-point station. A station that transmits a highly directional signal from a fixed transmitter location to a fixed receive location.

Universal Licensing System. The Universal Licensing System (ULS) is the consolidated database, application filing system, and processing system for all Wireless Radio Services. ULS supports electronic filing of all applications and related documents by applicants and licensees in the Wireless Radio Services, and provides public access to licensing information.

§ 30.3 Eligibility.

Any entity who meets the technical, financial, character, and citizenship qualifications that the Commission may require in accordance with such Act, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

§ 30.4 Frequencies.

The following frequencies are available for assignment in the Upper Microwave Flexible Use Service:

(a) 27.5 GHz–28.35 GHz band;

(b) 38.6–40 GHz band:

Channel group A		Channel group B	
Channel No.	Frequency band limits (MHz)	Channel No.	Frequency band limits (MHz)
1–A	38,600–38,650	1–B	39,300–39,350
2–A	38,650–38,700	2–B	39,350–39,400
3–A	38,700–38,750	3–B	39,400–39,450
4–A	38,750–38,800	4–B	39,450–39,500
5–A	38,800–38,850	5–B	39,500–39,550
6–A	38,850–38,900	6–B	39,550–39,600
7–A	38,900–38,950	7–B	39,600–39,650
8–A	38,950–39,000	8–B	39,650–39,700
9–A	39,000–39,050	9–B	39,700–39,750
10–A	39,050–39,100	10–B	39,750–39,800
11–A	39,100–39,150	11–B	39,800–39,850

Channel group A		Channel group B	
Channel No.	Frequency band limits (MHz)	Channel No.	Frequency band limits (MHz)
12–A	39,150–39,200	12–B	39,850–39,900
13–A	39,200–39,250	13–B	39,900–39,950
14–A	39,250–39,300	14–B	39,950–40,000

(c) 37–38.6 GHz band: 37,000–37,533 MHz; 37,534–38,066 MHz; and 38,067–38,600 MHz.

§ 30.5 Service areas.

(a) Except as noted in paragraphs (b) and (c) of this section, the service areas for the Upper Microwave Flexible Use Service are counties.

(b) Common Carrier Fixed Point-to-Point Microwave Stations licensed in the 38.6–40 GHz bands licensed with Rectangular Service Areas shall maintain their Rectangular Service Area as defined in their authorization. The frequencies associated with Rectangular Service Area authorizations that have expired, cancelled, or otherwise been recovered by the Commission will automatically revert to the applicable county licensee.

(c) Upper Microwave Flexible Use authorizations issued pursuant to a special filing window for Holders of Fixed Satellite Service earth stations shall have a service area consisting of the census tract within which the relevant earth station is located.

§ 30.6 Permissible communications.

(a) Except as noted in paragraphs (b) and (c) of this section, a licensee in the frequency bands specified in § 30.4 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in § 2.106 of this chapter (column 5).

(b) County licenses in the 37–38.6 GHz band shall not authorize local area operations. Such local area operations shall be authorized pursuant to the provisions of § 30.102.

(c) Fixed Satellite Service shall be provided in a manner consistent with part 25 of this chapter.

Subpart B—Applications and Licenses

§ 30.101 Initial authorizations.

Except with respect to local area operations in the 37–38.6 GHz band, an applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 30.4. Applications for individual sites are not required and will not be accepted, except where required for environmental assessments, in accordance with §§ 1.1301 through 1.1319 of this chapter.

§ 30.102 Authorization of operation of local area networks in 37–38.6 GHz band.

Any party who meets the eligibility requirements in § 30.3 may operate local area operations in the 37–38.6 GHz band within the boundaries of property they own.

§ 30.103 Transition of existing local multipoint distribution service and 39 GHz licenses.

Local Multipoint Distribution Service licenses issued on a Basic Trading Area basis and 39 GHz licenses issued on an Economic Area basis shall be disaggregated into county-based licenses on [effective date of final rule]. For each county in the Basic Trading Area or Economic Area which is part of the original license, the licensee shall receive a separate license. If there is a Rectangular Service Area licensee within the service area of a 39 GHz Economic Area licensee, the disaggregated license shall not authorize operation with the service area of the Rectangular Service Area license.

§ 30.104 License term.

Initial authorizations will have a term not to exceed ten years from the date of initial issuance or renewal.

§ 30.105 Construction requirements.

(a) Upper Microwave Flexible Use Service licensees must make a buildout showing as part of their renewal applications. Licensees providing mobile, point-to-multipoint, or point-to-point service, must demonstrate that they are providing reliable signal coverage and service to at least 40 percent of the population within the service area of the licensee, and that they are using facilities to provide service in that area either to customers or for internal use. In determining the percentage of population covered in each county, the population covered by a licensee's service area will be measured at the census block level, using the centroid of each census block from the most recent U.S. Census. If the total population of the census blocks covered by the licensees reliable signal is 40% or greater the licensee will be deemed to have met the performance requirement. Failure to meet this requirement will result in automatic cancellation of the license.

(b) Existing 39 GHz licensees shall not be required to make a showing pursuant to this rule and shall be governed by the provisions of § 101.17 of this chapter if the expiration date of their license is prior to March 1, 2021.

§ 30.106 Geographic partitioning and spectrum disaggregation.

(a) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of a license pursuant to § 1.948 of this chapter. Upper Microwave Flexible Use Service licensees may apply to partition their licensed geographic service area or disaggregate their licensed spectrum at any time following the grant of their licenses.

(b) *Technical standards*—(1) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1983 North American Datum (NAD83).

(2) Spectrum may be disaggregated in any amount.

(3) The Commission will consider requests for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(4) For purposes of partitioning and disaggregation, part 30 systems must be designed so as not to exceed the signal level specified for the particular spectrum block in § 30.204 at the licensee's service area boundary, unless the affected adjacent service area licensees have agreed to a different signal level.

(c) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 30.104.

(d)(1) Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 30.105. Under the first

option, the partitioner and partitionee each certifies that they will collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area. If the partitioner and partitionee collectively fail to meet the construction requirement, then the licenses of both the partitioner and partitionee will automatically cancel. Under the second option, the partitioner and partitionee each certifies that it will independently meet the construction requirement for its respective partitioned license area. If the partitioner or partitionee fails to meet the construction requirement for its respective partitioned license area, then the relevant license will automatically cancel.

(2) Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 30.105. Under the first option, the disaggregator and disaggregatee each certifies that they will collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area. If the disaggregator and disaggregatee collectively fail to meet the construction requirement, then the licenses of both the disaggregator and disaggregatee will automatically cancel. Under the second option, the disaggregator and disaggregatee each certifies that it will independently meet the construction requirement for its respective disaggregated license area. If the disaggregator or disaggregatee fails to meet the construction requirement for its respective disaggregated license area, then the relevant license will automatically cancel.

§ 30.107 Discontinuance of service.

(a) An Upper Microwave Flexible Use License authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service after the initial license term.

(b) For licensees with common carrier regulatory status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the licensee in the individual license area. For licensees with non-common carrier status, permanent discontinuance of service is defined as 180 consecutive days during which a licensee does not operate.

(c) A licensee that holds a 600 MHz band authorization or an AWS authorization in the 1695–1710 MHz, 1755–1780 MHz, 1915–1920 MHz, 1995–2000 MHz, 2000–2020 MHz, 2155–2180 MHz, and 2180–2200 MHz bands, that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

Subpart C—Technical Standards

§ 30.201 Equipment authorization.

(a) Each transmitter utilized for operation under this part must be of a type that has been authorized by the Commission under its certification procedure.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

§ 30.202 Power limits.

(a) For fixed and base stations operating in connection with mobile systems, the power is limited to:

(1) An equivalent isotropically radiated power (EIRP) of 1640 watts when transmitting with an emission bandwidth of 100 MHz or less, except in rural areas, the maximum EIRP shall be 3280 watts;

(2) An EIRP of 1640 watts/100 MHz when transmitting with an emission bandwidth greater than 100 MHz, except in rural areas, the maximum EIRP shall be 3280 watts/100 MHz.

(b) For fixed stations operating solely in point-to-point and point-to-multipoint modes, the power is limited to a maximum EIRP of +55dBW.

(c) For mobile stations, the power is limited to 20 watts.

§ 30.203 Emission limits.

(a) The power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power (P) in EIRP by at least 43 + 10 log10 (P) dB.

(b)(1) Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(2) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(3) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

§ 30.204 Field strength limits.

The predicted or measured median field strength at any location on the geographical border of a licensee's service area shall not exceed 47 dBμV/m unless the adjacent affected service area licensee(s) agree(s) to a different field strength. This value applies to both the initially offered service areas and to partitioned service areas.

§ 30.205 Information sharing requirements.

(a) Each operator of a Fixed Service or Mobile Service system in the 27.5–28.35 GHz or 37.5–40 GHz band will make the technical information about its system listed in paragraphs (b) and (c) of this section available to FSS operators by one or more of the following means:

(1) An online database operated by the Upper Microwave Flexible Use licensee;

(2) An online database operated by a third-party database manager, or

(3) A continuously transmitted pilot signal receivable throughout the terrain within which a FSS facility could cause interference to or receive interference from the terrestrial system.

(b) All licensees deploying fixed systems in the 27.5–28.35 GHz or 37.5–40 GHz bands will make the following information about each such system available to FSS operators in those bands by one or more of the means described in paragraph (a) of this section:

(1) Licensee's name and address.

(2) Transmitting station name.

(3) Transmitting station coordinates.

(4) Frequencies and polarizations.

(5) Transmitting equipment, its stability, effective isotropic radiated power, emission designator, and type of modulation (digital).

(6) Transmitting antenna(s), model, gain, and a radiation pattern provided or certified by the manufacturer.

(7) Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.

(8) Transmitting antenna boresight(s) angle of elevation with respect to the horizon.

(9) Receiving station name.

(10) Receiving station coordinates.

(11) Receiving antenna(s), model, gain, and, if required, a radiation pattern provided or certified by the manufacturer.

(12) Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

(13) Receiving antenna boresight(s) angle of elevation with respect to the horizon.

(14) Path azimuth and distance.

(c) All licensees deploying mobile service base stations in the 27.5–28.35 GHz or 37.5–40 GHz bands will make the following information about each such base station available to FSS operators by one or both of the means described in paragraph (a) of this section:

(1) Licensee's name and address.

(2) Transmitting station name.

(3) Transmitting station coordinates.

(4) Frequencies and polarizations.

(5) Transmitting equipment, its stability, maximum effective isotropic radiated power, emission designator, and types of modulation.

(6) Transmitting antenna(s), model, maximum gain, and maximum extent of all possible radiation patterns provided or certified by the manufacturer.

(7) Transmitting antenna center line height(s) above ground level and ground elevation above mean sea level.

(8) Transmitting antenna boresight(s) maximum and minimum angles of elevation with respect to the horizon.

(9) Transmitting antenna boresight minimum and maximum azimuths, or designation of omnidirectionality.

(10) Boundary of the area served by the base station for purposes of communication with mobile user equipment.

(11) Receiving antenna(s), model, gain, and maximum extent of all possible radiation patterns provided or certified by the manufacturer.

(12) Receiving antenna center line height(s) above ground level and ground elevation above mean sea level.

(13) Receiving antenna boresight maximum and minimum angles of elevation with respect to the horizon.

(14) Receiving antenna boresight minimum and maximum azimuths, or designation of omnidirectionality.

§ 30.206 Federal coordination requirements.

Licensees in the 37–38 GHz band must protect co-channel Space Research Service (space-to-Earth) facilities from interference. Upper Microwave Flexible Use Licensees licensed in the 37–38 GHz band operating near Space Research Service facilities must coordinate any operations that could permit mobile, fixed, and portable stations to operate near those facilities.

§ 30.207 International coordination.

Operations in the 27.5–28.35 GHz and 38.6–40 GHz bands are subject to international agreements with Canada and Mexico.

§ 30.208 RF safety.

Licensees and manufacturers are subject to the radio frequency radiation exposure requirements specified in §§ 1.1307(b), 1.1310, 2.1091, and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

§ 30.209 Interoperability.

(a) Mobile and portable stations that operate on any portion of frequencies within the 27.5–28.35 GHz or the 37–40 GHz bands must be capable of operating on all frequencies within those particular bands using the same air interfaces that the equipment utilizes on any frequencies in the 27.5–28.35 GHz or the 37–40 GHz bands, respectively.

(b) The basic interoperability requirement in paragraph (a) of this section does not require a licensee to use any particular industry standard. Devices may also contain functions that are not operational in U.S. Territories.

Subpart D—Competitive Bidding Procedures

§ 30.301 Upper microwave flexible use service subject to competitive bidding.

Mutually exclusive initial applications for 38.6–40.0 GHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 30.302 Designated entities and bidding credits.

(a) A winning bidder that qualifies as a small business and has not claimed a rural service provider bidding credit may use the bidding credits set forth in § 1.2110(f)(2) of this chapter, except that the 35 percent bidding credit in § 1.2110(f)(2)(i)(A) of this chapter shall not be available.

(b) A rural service provider (as defined in § 1.2110(f)(4) of this chapter who has not claimed a small business bidding credit will be eligible to receive a 15 percent bidding credit.

PART 101—FIXED MICROWAVE SERVICES

■ 14. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 15. Section 101.17 is amended by adding paragraph (c) to read as follows:

§ 101.17 Performance requirements for the 38.6–40.0 GHz frequency band.

* * * * *

(c) Existing 39 GHz licensees shall not be required to make a showing pursuant to this rule if the expiration date of their license is after March 1, 2021.

§ 101.56 [Removed and Reserved]

■ 16. Remove and reserve § 101.56.

■ 17. Section 101.63 is amended by revising paragraph (a) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Each Station, except in Multichannel Video Distribution and Data Service, Local Multipoint Distribution Service, and the 24 GHz Service, authorized under this part must be in operation within 18 months from the initial date of grant.

* * * * *

§ 101.101 [Amended]

■ 18. Section 101.101, the table, is amended by removing the entries ''27,500–28,350'' and ''38,600–40,000.''

■ 19. Section 101.103 is amended by removing paragraph (i) and revising paragraph (g)(1) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(g) * * *

(1) When the transmitting facilities in a Basic Trading Area (BTA) are to be operated in the bands 29,100–29,250 MHz and 31,000–31,300 MHz and the facilities are located within 20 kilometers of the boundaries of a BTA, each licensee must complete the frequency coordination process of paragraph (d)(2) of this section with respect to neighboring BTA licensees that may be affected by its operations prior to initiating service. In addition, all licensed transmitting facilities operating in the bands 31,000–31,075 MHz and 31,225–31,300 MHz and located within 20 kilometers of

neighboring facilities must complete the frequency coordination process of paragraph (d)(2) of this section with respect to such authorized operations before initiating service.

* * * * *

§ 101.107 [Amended]

■ 20. Section 101.107 is amended by removing the entry ''27,500 to 28,350'' from the table in paragraph (a).

■ 21. Section 101.109 is amended in the table in paragraph (c) by removing the entries ''27,500 to 28,350'' and ''38,600 to 40,000'' and revising footnote 7 to the table.

The revision reads as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

[7] For channel block assignments in the 24,250–25,250 MHz band, the authorized bandwidth is equivalent to an unpaired channel block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

* * * * *

§ 101.113 [Amended]

■ 22. Section 101.113 is amended in the table in paragraph (a) by removing the entries ''27,500–28,350'' and ''38,600 to 40,000.''

§ 101.115 [Amended]

■ 23. Section 101.115 is amended in the table in paragraph (b)(2) by removing the entry ''38,600 to 40,000'' and redesignating footnote 15 as footnote 14.

■ 24. Section 101.147 is amended by revising paragraphs (a) and (t) and removing and reserving paragraph (v).

The revisions read as follows:

§ 101.147 Frequency assignments.

(a) Frequencies in the following bands are available for assignment for fixed microwave services.

928.0–929.0 MHz (28)
932.0–932.5 MHz (27)
932.5–935 MHz (17)
941.0–941.5 MHz (27)
941.5–944 MHz (17) (18)
952.0–960.0 MHz (28)
1,850–1,990 MHz (20) (22)
2,110–2,130 MHz) (1) (3) (7) (20) (23)
2,130–2,150 MHz (20) (22)
2,160–2,180 MHz (1) (2) (20) (23)
2,180–2,200 MHz (20) (22)
2,450–2,500 MHz (12)
2,650–2,690 MHz
3,700–4,200 MHz (8) (14) (25)
5,925–6,425 MHz (6) (14) (25)
6,425–6,525 MHz (24)
6,525–6.875 MHz (14) (33)
6,875–7,125 MHz (10), (34)
10,550–10,680 MHz (19)
10,700–11,700 MHz (8) (9) (19) (25)
11,700–12,200 MHz (24)
12,200–12,700 MHz (31)
12,700–13,200 (22), (34)
13,200–13,250 MHz (4) (24) (25)
14,200–14,400 MHz (24)
17,700–18,820 MHz (5) (10) (15)
17,700–18,300 MHz (10) (15)
18,820–18,920 MHz (22)
18,300–18,580 MHz (5) (10) (15)
18,580–19,300 MHz (22) (30)
18,920–19,160 MHz (5 (10) (15)
19,160–19,260 MHz (22)
19,260–19,700 MHz (5) (10) (15)
19,300–19,700 MHz (5) (10) (15)
21,200–22,000 MHz (4) (11) (12) (13) (24) (25) (26)
22,000–23,600 MHz (4) (11) (12) (24) (25) (26)
24,250–25,250 MHz
29,100–29,250 MHz (5), (16)
31,000–31,300 MHz (16)
42,000–42,500 MHz
71,000–76,000 MHz (5) (17)
81,000–86,000 MHz (5) (17)
92,000–94,000 MHz (17)
94,100–95,000 MHz (17)

* * * * *

(t) *29,100–29,250; 31,000–31,300 MHz.* These frequencies are available for LMDS systems. Each assignment will be made on a BTA service area basis, and the assigned spectrum may be subdivided as desired by the licensee.

* * * * *

§ 101.149 [Removed and Reserved]

■ 25. Remove and reserve § 101.149.

■ 26. Section 101.1005 is amended by revising paragraphs (a) and (b) to read as follows:

§ 101.1005 Frequencies available.

(a) The following frequencies are available for assignment to LMDS in two license blocks:

Block A of 300 MHz
29,100–29,250 MHz
31,075–31,225 MHz
Block B of 150 MHz
31,000–31,075 MHz
31,225–31,300 MHz

(b) In Block A licenses, the frequencies are authorized as follows:

(1) 29,100–29,250 MHz is shared on a co-primary basis with feeder links for non-geostationary orbit Mobile Satellite Service (NGSO/MSS) systems in the band and is limited to LMDS hub-to-subscriber transmissions, as provided in §§ 25.257 and 101.103(h) of this chapter.

(2) 31,075–31,225 MHz is authorized on a primary protected basis and is shared with private microwave point-to-point systems licensed prior to March 11, 1997, as provided in § 101.103(b).

* * * * *

Subpart N—[Removed and Reserved]

■ 27. Remove and reserve Subpart N.

[FR Doc. 2015–31852 Filed 1–12–16; 8:45 am]

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