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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Part 5

**[Docket No. DHS–2016–0035]**

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Customs and Border Protection–014 Regulatory Audit Archive System (RAAS) System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** The Department of Homeland Security (DHS) is issuing a final rule to extend the exemptions from certain provisions of the Privacy Act to the updated and reissued system of records titled, ''DHS/CBP–014 Regulatory Audit Archive System (RAAS) System of Records.'' Specifically, the Department exempts portions of the ''DHS/CBP–014 Regulatory Audit Archive System (RAAS) System of Records'' from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** This final rule is effective June 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: John Connors, (202) 344–1610, Privacy Officer, U.S. Customs and Border Protection, Privacy and Diversity Office, 1300 Pennsylvania Avenue NW., Washington, DC 20229. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) published a notice of proposed rulemaking in the **Federal Register,** 81 FR 19932, April 6, 2016, proposing to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS reissued the DHS/CBP–014 Regulatory Audit Archive System (RAAS) System of Records in the **Federal Register** on April 6, 2016 (81 FR 19985), to provide notice to the public that DHS/CBP was updating the categories of records to include the capture of Employer Identification Numbers (EINs) or Social Security numbers (SSNs), also known as a Federal Taxpayer Identifying Number, pursuant to 19 CFR 24.5, 19 CFR 149.3, and E.O. 9397, as amended by E.O. 13748. This final rule exempts portions of the new categories of records pursuant to 5 U.S.C. 552a(k)(2).

**II. Public Comments**

DHS received no comments on the NPRM and will implement the rulemaking as proposed.

**List of Subjects in 6 CFR Part 5**

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS amends Chapter I of Title 6, Code of Federal Regulations, as follows:

## PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for part 5 continues to read as follows:

**Authority:** Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In appendix C to part 5, revise the introductory text of paragraph 25, and paragraph 25(a), to read as follows:

**Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act**

* * * * *

25. The Department of Homeland Security (DHS)/U.S. Customs and Border Protection-014 Regulatory Audit Archive System (RAAS) System of Records consists of electronic and paper records and will be used by DHS and its Components. The DHS/CBP–014 RAAS System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to: the enforcement of civil and criminal laws; investigations; inquiries; and proceedings there under. The DHS/CBP–014 RAAS System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its Components and may contain personally identifiable information collected by other Federal, State, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

* * * * *

Dated: May 23, 2016.

**Karen L. Neuman,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2016–13311 Filed 6–6–16; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2015–2958; Directorate Identifier 2014–NM–248–AD; Amendment 39–18545; AD 2016–11–18]**

**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 all The

Boeing Company Model 787 airplanes. This AD was prompted by the disclosure that the inner diameters of some batches of landing gear pins were not shot peened in accordance with design specifications, and need to be replaced. This AD requires inspection for improperly manufactured landing gear pins, and replacement if necessary. We are issuing this AD to detect and correct insufficient shot peening that could lead to stress corrosion cracking and failure of the landing gear pin, and cause landing gear collapse and inability to control the airplane at high speeds on the ground.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

**ADDRESSES:** For service information identified in this final rule, 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–2015–2958.

## 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–2015–2958; 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 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:** Melanie Violette, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@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 all The Boeing Company Model 787 airplanes. The NPRM published in the **Federal Register** on July 23, 2015 (80 FR 43642) (''the NPRM''). The NPRM was prompted by a report indicating that the inner diameters of some batches of landing gear pins were not shot peened and need to be replaced. The NPRM proposed to require inspection for improperly manufactured landing gear pins, and replacement if necessary. We are issuing this AD to detect and correct insufficient shot peening that could lead to stress corrosion cracking and failure of the landing gear pin, and cause landing gear collapse and inability to control the airplane at high speeds on the ground.

## 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.

### Request To Use Revised Service Information

One commenter, Junji Miura, found several errors in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014, and requested that we include a reference to the upcoming corrections. The commenter stated that Boeing will correct these errors in the next revision, and that referencing this revision in this AD will avoid the need for a global alternative method of compliance (AMOC).

We agree with the request. Boeing has issued Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. We have reviewed this service information, which was issued to correct typographical errors and part numbers, and to update statements, but adds no new actions. The changes in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, address the commenter's concerns. We have revised the service information references throughout this final rule to refer to Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, and we have added a new paragraph (h) to this AD to provide credit for the original service information. We have redesignated subsequent paragraphs accordingly.

### Request for Correction to Paragraphs (g) and (h) of This AD

Boeing requested a correction to paragraphs (g) and (h) of the proposed AD to replace the word ''or'' with the word ''and'' in the phrase ''part number or serial number.''

We agree to correct the applicable paragraphs of this AD because the intent was to require replacement of the pin only if both the part number and serial number are identified in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. In paragraphs (g) and (i) of this AD, we revised the phrase ''part number or serial number'' to ''part number and serial number.''

### Request for Clarification of Airplanes Affected by Inspection Requirements

One commenter, Raja Rehman, requested that we clarify the required actions for airplanes that are covered by this AD, but not listed in the ''Effectivity'' section of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014. The commenter asked if the inspection requirements of the proposed AD would apply to all delivered and to-be-delivered Model 787 airplanes, and if Boeing intends to issue a revision to the service bulletin that will cover the additional airplanes. The commenter also asked if an airplane that did not have the affected pins installed at production/delivery, and had never replaced the pins during service would comply with the AD.

We agree that clarification is necessary. The landing gear pin is a removable structural component (rotable part). Through maintenance action, the affected (discrepant) pins could be installed on airplanes that were initially delivered with acceptable pins. Therefore, the applicability of this AD is all Model 787 airplanes—both those that are currently delivered and future deliveries—because the affected pins could be installed on any Model 787 airplane. It is not necessary for the applicability of the AD to match the effectivity of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014, or Issue 002, dated April 6, 2016. This difference has been coordinated with Boeing.

We have modified paragraph (g) to require the inspections only for airplanes that received their original airworthiness certificate or original export certificate of airworthiness on or before the effective date of this AD. These are the airplanes that either had the affected (discrepant) pins installed

in production, or may have had them installed through maintenance action. Paragraph (i), which remains applicable to all Model 787 airplanes, prohibits installation of the affected pins in the future.

**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 for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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**

We reviewed Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. The service information describes procedures to inspect and replace certain landing gear pins. 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 13 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 | 3 work-hours × $85 per hour = $255 | $0 | $255 | $3,315 |

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

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement | Up to 19 work-hours × $85 per hour = $1,615 | $35,569 | Up to $37,184 |

**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):

**2016–11–18 The Boeing Company:** Amendment 39–18545; Docket No. FAA–2015–2958; Directorate Identifier 2014–NM–248–AD.

**(a) Effective Date**

This AD is effective July 12, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 787 airplanes, certificated in any category.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by the disclosure that the inner diameters of some batches of landing gear pins were not shot peened in accordance with design specifications, and need to be replaced. We are issuing this AD to detect and correct insufficient shot peening that could lead to stress corrosion cracking and failure of the landing gear pin, and cause landing gear collapse and inability to control the airplane at high speeds on the ground.

**(f) Compliance**

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

**(g) Inspection and Replacement**

For airplanes on which the original airworthiness certificate or the original export certificate of airworthiness was issued on or before the effective date of this AD: At the applicable time specified in paragraph 5, ''Compliance,'' of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, do a landing gear pin part number and serial number inspection, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016. A review of airplane maintenance or delivery records is acceptable in lieu of this inspection if the part number and serial number of the installed landing gear pins can be conclusively determined from that review.

(1) If the part number and serial number do not match the list of affected pin numbers: No further action is required by this paragraph at that pin location.

(2) If the part number and serial number match the list of affected pin numbers: At the applicable time specified in paragraph 5, ''Compliance,'' of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016, replace the affected pin with a pin that does not have an affected part number and serial number, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016.

**(h) Credit for Previous Actions**

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD, using Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 001, dated November 14, 2014. This service information is not incorporated by reference in this AD.

**(i) Parts Installation Prohibition**

As of the effective date of this AD, no person may install on any airplane a landing gear pin having an affected part number and serial number identified in Boeing Alert Service Bulletin B787–81205–SB320022–00, Issue 002, dated April 6, 2016.

**(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) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (j)(4)(i) and (j)(4)(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.

**(k) Related Information**

For more information about this AD, contact Melanie Violette, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6422; fax: 425–917–6590; email: *melanie.violette@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 B787–81205–SB320022–00, Issue 002, dated April 6, 2016.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on May 24, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–12847 Filed 6–6–16; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2016–4232; Directorate Identifier 2015–CE–043–AD; Amendment 39–18538; AD 2016–11–11]**

**RIN 2120–AA64**

## Airworthiness Directives; EVEKTOR, spol. S.r.o. Gliders

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders (type certificate previously held by AEROTECHNIK s.r.o.). This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as lack of distinct color marking of the elevator drive. We are issuing this AD to require actions to address the unsafe condition on these products.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of July 12, 2016.

**ADDRESSES:** You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4232; or in person at 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 service information identified in this AD, contact EVEKTOR, spol. s.r.o, Letecka 1008, 686 04 Kunovice, Czech Republic; phone: +420 572 537 428; email: *evektor@evektor.cz;* Internet: *http://www.evektor.cz/en/sales-and-support.* 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 Docket No. FAA–2016–4232.

**FOR FURTHER INFORMATION CONTACT:** Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@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 EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders. The NPRM was published in the **Federal Register** on March 4, 2016 (81 FR 11475). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> Colour marking of elevator drive is not inspected or re-painted during sailplane operation. The elevator drive is asymmetrical and improper installation causes significant elevator deflection changes.

The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4232-0003.*

A review of records revealed that the FAA inadvertently did not address this MCAI for the EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders and the BLANIK LIMITED Model L–13 AC Blanik gliders. This AD addresses this MCAI for the EVEKTOR, spol. s.r.o. Models L 13 SEH VIVAT and L 13 SDM VIVAT gliders and requires painting or re-painting the elevator drive mechanism a contrasting color to prevent the backward installation of the elevator drive bellcrank.

The FAA is addressing the BLANIK LIMITED Model L–13 AC Blanik gliders in another AD action.

## Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 11475, March 4, 2016) 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 the 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 (81 FR 11475, March 4, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 11475, March 4, 2016).

## Related Service Information Under 1 CFR Part 51

We reviewed AEROTECHNIK CZ s.r.o. Mandatory Service Bulletin SEH 13–003a, dated December 15, 1998. The service information describes procedures for painting the left arm of the elevator drive. 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 the AD.

## Costs of Compliance

We estimate that this AD will affect 9 products 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 AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $855, or $95 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 this AD:

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

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

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

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

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4232; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

# PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2016–11–11 EVEKTOR, spol. s.r.o.:** Amendment 39–18538; Docket No. FAA–2016–4232; Directorate Identifier 2015–CE–043–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective July 12, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to EVEKTOR, spol. s.r.o. L 13 SEH VIVAT and L 13 SDM VIVAT gliders (type certificate previously held by AEROTECHNIK s.r.o.), all serial numbers, certificated in any category.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as lack of distinct color marking of the elevator drive. We are issuing this AD to prevent inadvertent backward installation of the elevator drive, which could cause significant elevator deflection changes and lead to loss of control.

**(f) Actions and Compliance**

Unless already done, do the following actions in paragraphs (f)(1) and (f)(2) of this AD.

(1) Within the next 3 calendar months after July 12, 2016 (the effective date of this AD), paint the elevator drive mechanism using a contrasting color (such as red) following the procedures in AEROTECHNIK CZ s.r.o. issued Mandatory Service Bulletin SEH 13–003a, dated December 15, 1998.

(2) As of July 12, 2016 (the effective date of this AD), only install an elevator bellcrank that has been painted as specified in paragraph (f)(1) of this AD and that has been properly oriented to make sure it is not being installed backward.

**(g) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

**(h) Related Information**

Refer to MCAI Civil Aviation Authority AD CAA–AD–4–099/98, dated December 30, 1998, for related information. The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/#!documentDetail;D=FAA-2016-4232-0003.*

**(i) Material Incorporated by Reference**

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

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

(i) AEROTECHNIK CZ s.r.o. issued Mandatory Service Bulletin SEH 13–003a, dated December 15, 1998.

(ii) Reserved.

(3) For service information identified in this AD, contact EVEKTOR, spol. s.r.o, Letecka 1008, 686 04 Kunovice, Czech Republic; phone: +420 572 537 428; email: *evektor@evektor.cz;* Internet: *http://www.evektor.cz/en/sales-and-support.*

(4) You may view this 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. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4232.

(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 May 23, 2016.

**Pat Mullen,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–12606 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2016–0464; Directorate Identifier 2015–NM–046–AD; Amendment 39–18549; AD 2016–11–22]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Services B.V. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by the need for more restrictive airworthiness limitations. This AD requires revising the maintenance or inspection program, as applicable, to incorporate certain maintenance requirement tasks, thresholds, and intervals. We are issuing this AD to reduce the potential for significant failure conditions and consequent loss of controllability of the airplane.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

**ADDRESSES:** For service information identified in this final rule, 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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0464.

### 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–2016–0464; 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 Office (telephone 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:** 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 Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on February 18, 2016 (81 FR 8166) (''the NPRM''). The NPRM was prompted by the need for more restrictive airworthiness limitations. The NPRM proposed to require revising the maintenance or inspection program, as applicable, to incorporate certain maintenance requirement tasks, thresholds, and intervals. We are issuing this AD to reduce the potential for significant failure conditions and consequent loss of controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0027, dated February 20, 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:

> Fokker Services published issue 11 of Engineering Report SE–473, containing Certification Maintenance Requirements (CMRs). This report is Part 1 of the Airworthiness Limitations Section (ALS Part 1) of the Instructions for Continued Airworthiness, referred to in Section 06, Appendix 1, of the Fokker 70/100 Maintenance Review Board (MRB) document.
>
> The complete ALS currently consists of:
>
> Part 1—Report SE–473 (CMRs), Part 2—Report SE–623, Airworthiness Limitation Items (ALIs) and Safe Life Items (SLIs), and Part 3—Report SE–672, Fuel ALIs and Critical Design Configuration Control Limitations (CDCCLs).
>
> The instructions contained in those reports have been identified as mandatory actions for continued airworthiness.
>
> For the reasons described above, this [EASA] AD requires implementation of the maintenance actions as specified in ALS Part 1 of the Instructions for Continued Airworthiness, Fokker Services Engineering Report SE–473 at issue 11.

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–2016–0464.

## Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

## Changes to Paragraph Reference

We have updated paragraph (h) of this AD. In paragraph (h) of the NPRM, we inadvertently referenced paragraph (g)(2) of the NPRM. Paragraph (h) of this AD has been updated to reference paragraph (g)(1) of this AD.

## Conclusion

We reviewed the relevant data, considered the comment 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 for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

We reviewed ''Fokker 70/100 Certification Maintenance Requirements,'' of Fokker Services B.V. Engineering Report, Airworthiness Limitations Section (ALS), SE–473, Issue 11, released January 19, 2015. This service information describes certification 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.

## Costs of Compliance

We estimate that this AD affects 8 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour 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 $680, 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.

## 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):

**2016–11–22 Fokker Services B.V.:** Amendment 39–18549. Docket No. FAA–2016–0464; Directorate Identifier 2015–NM–046–AD.

**(a) Effective Date**

This AD is effective July 12, 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 05, Time Limits/Maintenance Checks.

**(e) Reason**

This AD was prompted by the need for more restrictive airworthiness limitations. We are issuing this AD to reduce the potential for significant failure conditions and consequent loss of controllability of the airplane.

**(f) Compliance**

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

**(g) Revision of Maintenance or Inspection Program**

(1) Within 12 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the certification maintenance requirements (CMR) specified in ''Fokker 70/100 Certification Maintenance Requirements,'' of Fokker Services B.V. Engineering Report, Airworthiness Limitations Section (ALS), SE–473, Issue 11, released January 19, 2015.

(2) Do the applicable initial CMR inspection at the time specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable, as specified in ''Fokker 70/100 Certification Maintenance Requirements,'' of Fokker Services B.V. Engineering Report, ALS, SE–473, Issue 11, released January 19, 2015. If any discrepancy is found during any inspection, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency; or Fokker B.V. Service's EASA Design Organization Approval (DOA). Repair any discrepancy before further flight.

(i) For CMR inspection 783100–CM–01: Within 1 year or 3,000 flight hours after the effective date of this AD, whichever occurs first, but not later than 12,000 flight hours after accomplishing Maintenance Review Board (MRB) Task 783100–00–04.

(ii) For CMR inspection 783500–CM–01: Within 1 year or 3,000 flight hours after the effective date of this AD, whichever occurs first, but not later than 10,000 flight hours after accomplishing MRB Task 783100–01–01.

**(h) No Alternative Inspections or Inspection Intervals**

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

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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 the EASA; or Fokker Services B.V.'s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**(j) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0027, dated February 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–2016–0464.

**(k) Material Incorporated by Reference**

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

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

(i) Fokker Services B.V. Engineering Report, Airworthiness Limitations Section (ALS), SE–473, Issue 11, released January 19, 2015.

(ii) Reserved.

(3) 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.*

(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 May 26, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–13101 Filed 6–6–16; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–5810; Directorate Identifier 2014–NM–116–AD; Amendment 39–18526; AD 2016–10–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Services B.V. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This AD was prompted by a design review that revealed that a wiring failure, external to the center wing fuel tank, could cause a hot short circuit to a maximum level sensor wire, and result in excessive heating of the maximum level sensor element. This AD requires modifying the wiring of the maximum level sensors in the center wing fuel tank, performing after-installation tests, and corrective action if necessary. This AD also requires revising the airplane maintenance or inspection program to incorporate fuel airworthiness limitation items and critical design configuration control limitations. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD becomes effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 12, 2016.

**ADDRESSES:** For service information identified in this final rule, 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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5810.

**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–2015–5810; 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 regulation evaluation, any comments received, and other information. The street address for the Docket Office (telephone 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:** 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 certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on November 27, 2015 (80 FR 74039) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0138, dated May 30, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. The MCAI states:

* * * [T]he FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.

The review conducted by Fokker Services on the Fokker 70/100 design, in response to these regulations, revealed that a wiring failure, external to the centre wing fuel tank, causing a hot short circuit to a maximum (max) level sensor wire may result in excessive heating of the max level sensor element.

This condition, if not corrected, could create an ignition source in the centre wing fuel tank vapour space, possibly resulting in a fuel tank explosion and consequent loss of the aeroplane.

EASA issued AD 2012–0240 [*http://ad.easa.europa.eu/blob/easa_ad_2012_0240.pdf/AD_2012-0240],* to address this unsafe condition, which required installation of three fuses in the wiring of the max level sensor(s) in the centre wing fuel tank per Fokker Services Service Bulletin (SB) SBF100–28–073. After that AD was issued, it was found that this technical solution caused fuel spills during refueling and, consequently, EASA cancelled AD 2012–0240.

More recently, Fokker Services issued SBF100–28–078, which cancelled SBF100–28–073, to correct the unsafe condition without the risk of fuel spills.

For the reasons described above, this [EASA] AD requires removal of one fuse from post-SBF100–28–073 aeroplanes, and installation of only two fuses on pre-SBF100–28–073 aeroplanes and, subsequently, the implementation of the associated Critical Design Configuration Control Limitation (CDCCL) items.

More information this subject can be found in Fokker Services All Operators Message AOF100.186#03.

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–2015–5810.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Explanation of Changes Made to This AD**

We have made the following changes to this AD. These changes are for formatting purposes and do not affect the requirements of this AD.

- Added a new paragraph (j) to this AD to specify the required service information, and redesignated subsequent paragraphs accordingly.
- Revised paragraph (g) of this AD by referring to the document citations in paragraph (j) of this AD.

**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 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 Fokker Service Bulletin SBF100–28–078, dated January 23, 2014, and Fokker Manual Change Notification MCNM–F100–166, dated January 23, 2014.

This service information describes procedures for modifying the wiring of the maximum level sensors in the center wing fuel tank, after-installation tests, and corrective action 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 15 airplanes of U.S. registry.

We also estimate that it takes up to 9 work-hours per product to modify the wiring of the maximum level sensors in the center wing fuel tank, as specified in this AD. The average labor rate is $85 per work-hour. Required parts will cost about $1,700 per product. Based on these figures, we estimate the cost of this modification on U.S. operators to be up to $36,975, or up to $2,465 per product.

We also estimate that it takes about 1 work-hour per product to revise the maintenance or inspection program as specified in this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this revision on U.S. operators to be $1,275, 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.

## 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):

**2016–10–15 Fokker Services B.V.:** Amendment 39–18526. Docket No. FAA–2015–5810; Directorate Identifier 2014–NM–116–AD.

**(a) Effective Date**

This AD becomes effective July 12, 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, equipped with a center wing tank.

**(d) Subject**

Air Transport Association (ATA) of America Code 28, Fuel.

**(e) Reason**

This AD was prompted by a design review which revealed that a wiring failure, external to the center wing fuel tank, could cause a hot short circuit to a maximum level sensor wire, and result in excessive heating of the maximum level sensor element. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, 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) Wiring Modification**

Within 24 months after the effective date of this AD: Modify the wiring of the maximum level sensors of the center wing fuel tank, as specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Before further flight after accomplishing the modification, do all applicable tests and corrective actions, in accordance with Part 5 of the Accomplishment Instructions of the service information identified in paragraph (j) of this AD.

(1) For post-SBF100–28–073 configuration airplanes: Do the modification in accordance with Part 1 or Part 3, as applicable, of the Accomplishment Instructions of the service information identified in paragraph (j) of this AD.

(2) For pre-SBF100–28–073 configuration airplanes: Do the modification in accordance with Part 2 or Part 4, as applicable, of the Accomplishment Instructions of the service information identified in paragraph (j) of this AD.

**(h) Revise the Maintenance or Inspection Program**

Within 30 days after installing the modification specified in paragraph (g)(1) or (g)(2) of this AD, as applicable: Revise the airplane maintenance or inspection program, as applicable, to incorporate the fuel airworthiness limitation items and critical design configuration control limitations (CDCCLs) specified in paragraph 2.L.(1)(c) of Fokker Service Bulletin SBF100–28–078, dated January 23, 2014.

**(i) No Alternative Actions, Intervals, and/or CDCCLs**

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

**(j) Required Service Information**

Do the actions specified in this AD in accordance with Fokker Service Bulletin SBF100–28–078, dated January 23, 2014, and Fokker Manual Change Notification MCNM–F100–166, dated January 23, 2014, as applicable.

**(k) 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:* 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 Fokker B.V. Service's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(l) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0138, dated May 30, 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–2015–5810.

**(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 this AD specifies otherwise.

(i) Fokker Service Bulletin SBF100–28–078, dated January 23, 2014, including the attached required drawings specified in paragraphs (m)(2)(i)(A), (m)(2)(i)(B), and (m)(2)(i)(C) of this AD, as applicable.

(A) Drawing W41192, Sheet 052, Issue AW, ''Retro-Fit Wiring Diagram, Tank Fueling/Defueling, Center Tank,'' undated;

(B) Drawing W41192, Sheet 054, Issue AW, ''Retro-Fit Wiring Diagram, Tank Fueling/Defueling,'' undated; and

(C) Drawing W59520–405, ''Cableloom Connection List,'' Sheet 3, Issue F, dated May 12, 2011.

(ii) Fokker Manual Change Notification MCNM–F100–166, dated January 23, 2014.

(3) 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.*

(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 May 12, 2016.

**Suzanne Masterson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–11928 Filed 6–6–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–7533; Directorate Identifier 2015–NM–080–AD; Amendment 39–18528; AD 2016–11–01]**

**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 and –300 series airplanes, Model A330–200 Freighter series airplanes, and Model A340–541 and A340–642 airplanes. This AD was prompted by a report of an under-torqued forward engine mount bolt. This AD requires a one-time torque check of the forward and aft engine mount bolts and corrective actions if necessary. We are issuing this AD to detect and correct improperly torqued engine mount bolts, which could lead to detachment of the engine from the airplane during flight and consequent damage to the airplane and injury to persons on the ground.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 12, 2016.

**ADDRESSES:** 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–2015–7533.

### 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–2015–7533; 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 Office (telephone 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:** 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 and –300 series airplanes, Model A330–200 Freighter series airplanes, and Model A340–541 and A340–642 airplanes. The NPRM published in the **Federal Register** on December 29, 2015 (80 FR 81216) (''the NPRM''). The NPRM was prompted by a report of an under-torqued forward engine mount bolt. The NPRM proposed to require a one-time torque check of the forward and aft engine mount bolts, and corrective actions if necessary. We are issuing this AD to detect and correct improperly torqued engine mount bolts, which could lead to detachment of the engine from the airplane during flight and consequent damage to the airplane and injury to persons on the ground.

The European Aviation Safety Agency, which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0082, dated May 11, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition on certain Airbus Model A330–200 and –300 series airplanes, Model A330–200 Freighter series airplanes, and Model A340–541 and A340–642 airplanes. The MCAI states:

> In 2013, during a pre-delivery test on an A330 aeroplane fitted with Pratt & Whitney (PW) PW4170 engines, an issue with N1 [low pressure spool] vibrations level on [engine] ENG1 was identified. While performing an engine removal, one forward engine mount bolt was found improperly torqued. The investigation concluded this was due to a production line engine installation quality issue. Further analysis showed that some aeroplanes, delivered between June 2006 and January 2014, may have had the rear (AFT) and forward (FWD) engine mount bolts improperly torqued.
>
> This condition, if not detected and corrected, could ultimately lead to an in-flight detachment of the engine from the aeroplane, possibly resulting in damage to the aeroplane and/or injury to persons on the ground.
>
> Prompted by these findings, Airbus issued four Alert Operators Transmissions (AOT) A71L004–14 (for A330 aeroplanes fitted PW engines), AOT A71L006–14 (for A330 aeroplanes fitted with General Electric (GE) engines), AOT A71L005–14 (for A330 aeroplanes fitted with Rolls Royce (RR) Trent 700 engines) and AOT A71L008–14 (for A340 aeroplanes fitted with RR Trent 500 engines) to provide torque check instructions.
>
> For the reasons described above, this [EASA] AD requires a one-time torque check of the FWD and AFT engine mount bolts and, depending on findings, re-torque of the affected [engine mount] bolt(s) and/or replacement of all four [engine mount] bolts and associated nuts.

Findings (or discrepancies) include one engine mount bolt that is loose or able to rotate, two or more engine mount bolts that are loose or able to rotate, or one or more engine mount bolts that are fully broken. Corrective actions include re-torqueing the affected engine mount bolt(s), and replacing all engine mount bolts and associated nuts with new engine mount bolts and nuts on the engine where the loose or fully broken engine mount bolt(s) were detected. This AD specifies reporting of all findings (including no discrepancies). The corrective actions include re-torqueing loose engine mount bolts before further flight. 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–2015–7533.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

**Changes to the NPRM**

Paragraphs (h)(1)(ii) and (i) of the proposed AD refer to the accomplishment of Airbus Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012. However, operators might also accomplish Airbus Service Bulletin A330–71–3028, Revision 02, dated August 31, 2015. Therefore, we have revised paragraphs (h)(1)(ii) and (i) of this AD to refer to the actions specified in ''Airbus Service Bulletin A330–71–3028.''

Paragraph (m)(1) of the proposed AD refers to Airbus AOT A71L008–14, dated September 29, 2014, and is an exception to the service information specified in paragraph (l) of the proposed AD. However, paragraph (l) of the proposed AD refers to Airbus AOT A71L008–14, Revision 01, dated December 18, 2014. We have revised paragraph (m)(1) of this AD to refer to Airbus AOT A71L008–14, Revision 01, dated December 18, 2014.

For consistency, we have also replaced the words ''bolt(s)'' and ''pylon bolt(s)'' in this AD with ''engine mount bolt(s)'' in order to match the language in the MCAI. In the service information referenced in this AD, the term ''pylon'' is also used in some sentences to describe the engine mount bolts.

**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 except for 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.

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**

We have reviewed the following service information.

- Airbus AOT A71L004–14, Revision 01, dated April 7, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at four positions at the forward engine pylon 1 and pylon 2 of Airbus Model A330 series airplanes having PW engines, doing corrective actions, and reporting all findings.
- Airbus AOT A71L005–14, Revision 01, dated December 11, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at four positions at the forward engine pylon 1 and pylon 2 of Airbus Model A330 series airplanes having RR Trent 700 engines, doing corrective actions, and reporting all findings.
- Airbus AOT A71L006–14, dated July 22, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at five FWD and four AFT positions at the forward engine pylon 1 and pylon 2 of Airbus Model A330 series airplanes having GE engines, doing corrective actions, and reporting all findings.
- Airbus AOT A71L008–14, Revision 01, dated December 18, 2014. The service information describes procedures for doing a one-time torque check to determine if there are any loose or fully broken engine mount bolts at four positions at the forward engine pylon 1 and pylon 2 of Airbus Model A340 series airplanes having Trent 500 engines, doing corrective actions, and reporting all findings.

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 55 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 per product to report torque check 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 $60,755, or $1,105 per product.

In addition, we estimate that any necessary follow-on actions will take about 20 work-hours and require parts costing $90,200 for a cost of $91,900 per product. We have no way of determining the number of aircraft that might need these 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 Office of Management and Budget (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.

## 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):

**2016–11–01 Airbus:** Amendment 39–18528. Docket No. FAA–2015–7533; Directorate Identifier 2015–NM–080–AD.

**(a) Effective Date**

This AD is effective July 12, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Airbus airplanes specified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, from manufacturer serial number (MSN) 0715 through MSN 1507 inclusive, and MSN 1509, except airplanes on which all engines have been removed and/or replaced since the date of the first flight of the airplane.

(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.

(4) Airbus Model A340–541 airplanes.

(5) Airbus Model A340–642 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 71, Powerplant.

**(e) Reason**

This AD was prompted by a report of an under-torqued forward engine mount bolt. We are issuing this AD to detect and correct improperly torqued engine mount bolts, which could lead to detachment of the engine from the airplane during flight, and consequent damage to the airplane and injury to persons on the ground.

**(f) Compliance**

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

**(g) Definition of Affected Engine**

For the purpose of this AD, an affected engine is an engine that has never been removed and/or replaced since first flight of the airplane.

**(h) Action for Airbus Model A330 Airplanes Equipped With Pratt and Whitney (PW) Engines**

(1) For Airbus Model A330–200, –200 Freighter, and –300 series airplanes equipped with PW engines: At the earlier of the times specified in paragraph (h)(1)(i) and (h)(1)(ii) of this AD, accomplish a one-time torque check of the forward (FWD) and rear (AFT) engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection Requirements,'' of Airbus Alert Operators Transmission (AOT) A71L004–14, Revision 01, dated April 7, 2014.

(i) Within 2,000 flight hours after the effective date of this AD.

(ii) During the accomplishment of actions specified in Airbus Service Bulletin A330–71–3028, if done after the effective date of this AD.

(2) If, during the torque check required by paragraph (h)(1) of this AD, only one FWD engine mount bolt is found that rotates: Do the actions specified in paragraph (h)(2)(i), (h)(2)(ii), (h)(2)(iii), or (h)(2)(iv) of this AD, as applicable.

(i) For Airbus Model A330–200 and -300 series airplanes with an average flight time of greater than 132 minutes and having accumulated less than 2,350 flight cycles and less than 24,320 flight hours since first flight of the airplane: Before further flight, re-torque the affected engine mount bolt, and, within 2,350 flight cycles or 24,320 flight hours since first flight of the airplane, whichever occurs first, replace the 4 engine mount bolts and associated nuts, in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(ii) For Airbus Model A330–200 and –300 series airplanes with an average flight time of 132 minutes or lower and having accumulated less than 1,950 flight cycles and less than 20,210 flight hours since first flight of the airplane: Before further flight, re-torque the affected engine mount bolt, and within 2,350 flight cycles or 24,320 flight hours since first flight of the airplane, whichever occurs first, replace the 4 engine mount bolts and associated nuts, in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(iii) For Airbus Model A330–200 Freighter series airplanes having accumulated less than 2,140 flight cycles and less than 6,600 flight hours since first flight of the airplane: Before further flight, re-torque the affected engine mount bolt and within 2,140 flight cycles or 6,600 flight hours since first flight of the airplane, whichever occurs first, replace the 4 engine mount bolts and associated nuts, in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(iv) For airplanes identified in paragraphs (h)(2)(iv)(A), (h)(2)(iv)(B), and (h)(2)(iv)(C) of this AD: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(A) Airbus Model A330–200 and –300 series airplanes with an average flight time of greater than 132 minutes and having accumulated 2,350 flight cycles or more or 24,320 flight hours or more since first flight of the airplane.

(B) Airbus Model A330–200 and –300 series airplanes with an average flight time of 132 minutes or lower and having accumulated 1,950 flight cycles or more or 20,210 flight hours or more since first flight of the airplane.

(C) Airbus Model A330–200 Freighter series airplanes having accumulated 2,140 flight cycles or more or 6,600 flight hours or more since first flight of the airplane.

(3) If, during the torque check required by paragraph (h)(1) of this AD, two or more FWD engine mount bolts are found that rotate: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(4) If, during the torque check required by paragraph (h)(1) of this AD, one or more FWD engine mount bolts are found fully broken: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014, except as required by paragraph (m)(2) of this AD.

(5) If, during the torque check required by paragraph (h)(1) of this AD, only one AFT engine mount bolt is found that rotates: Before further flight, re-torque the affected engine mount bolt, and replace the 4 engine mount bolts and associated nuts at the next engine removal, in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(6) If, during the torque check required by paragraph (h)(1) of this AD, two or more AFT engine mount bolts are found that rotate: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(7) If, during the torque check required by paragraph (h)(1) of this AD, one or more AFT engine mount bolts are found fully broken: Before further flight, replace the 4 engine mount bolts and associated nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L004–14, Revision 01, dated April 7, 2014, except as required by paragraph (m)(2) of this AD.

**(i) Clarification of Concurrent Actions for Airbus Model A330–223F, A330–223, A330–321, A330–322, and A330–323 Airplanes Equipped With Pratt and Whitney (PW) Engines**

AD 2013–14–04, Amendment 39–17509 (78 FR 68352, November 14, 2013), requires a torque check of FWD engine mount bolts using Airbus Service Bulletin A330–71–3028, Revision 01, dated February 20, 2012. If accomplishing the torque check of FWD engine mount bolts, as specified in Airbus Service Bulletin A330–71–3028, within the compliance times specified in paragraph (g) of AD 2013–14–04, perform the torque check of the AFT engine mount bolts at the same time as required by paragraph (h)(1) of this AD.

**(j) Action for Airbus Model A330 Airplanes Equipped With General Electric (GE) Engines**

(1) For Airbus Model A330–200, –200 Freighter, and –300 series airplanes equipped with GE engines: Within 2,000 flight hours after the effective date of this AD, accomplish a one-time torque check of the FWD and AFT engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection Requirements,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(2) If, during the torque check required by paragraph (j)(1) of this AD, only one FWD engine mount bolt is found that rotates: Do the actions specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 4,000 flight cycles and less than 30,800 flight hours since first flight of the airplane: Before further flight, re-torque affected FWD engine mount bolt(s), in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014, and, within 4,000 flight cycles or 30,800 flight hours since first flight of the airplane, whichever is first, replace the 5 engine mount bolts, as applicable, and their associated nuts with new engine mount bolts and nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(ii) For airplanes that have accumulated 4,000 flight cycles or more or 30,800 flight hours or more since first flight of the airplane: Before further flight, replace the 5 FWD engine mount bolts, as applicable, and their associated nuts with new engine mount bolts and nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(3) If, during the torque check required by paragraph (j)(1) of this AD, two or more FWD engine mount bolts are found that rotate: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (p)(1) of this AD.

(4) If, during the torque check required by paragraph (j)(1) of this AD, one or more FWD engine mount bolts are found fully broken: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (p)(1) of this AD.

(5) If, during the torque check required by paragraph (j)(1) of this AD, only one AFT engine mount bolt is found that rotates: Before further flight, re-torque the affected AFT engine mount bolt(s) in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014, and, at the next engine removal, replace the 4 engine mount bolts and associated nuts with new engine mount bolts and nuts in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014.

(6) If, during the torque check required by paragraph (j)(1) of this AD, two or more AFT engine mount bolts are found that rotate: Repair before further flight using a method approved in accordance with the procedures specified in paragraph (p)(1) of this AD.

(7) If, during the torque check required by paragraph (j)(1) of this AD, one or more AFT engine mount bolts are found fully broken: Before further flight, do all applicable corrective actions in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L006–14, dated July 22, 2014, except as required by paragraph (m)(2) of this AD.

**(k) Action for Airbus Model A330 Airplanes Equipped With Rolls-Royce (RR) Trent 700 Engines**

(1) For Airbus Model A330–200, –200 Freighter, and –300 series airplanes equipped with RR Trent 700 Engines: Within 2,000 flight hours after the effective date of this AD, accomplish a one-time torque check of the FWD and AFT engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection Requirements,'' of Airbus AOT A71L005–14, Revision 01, dated December 11, 2014.

(2) If, during the torque check required by paragraph (k)(1) of this AD, any discrepancy is detected (one engine mount bolt rotates, two or more engine mount bolts rotate, or one or more engine mount bolts are fully broken): Within the compliance time specified in Airbus AOT A71L005–14, Revision 01, dated December 11, 2014, accomplish all applicable corrective actions in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L005–14, Revision 01, dated December 11, 2014, except as required by paragraphs (m)(1) and (m)(2) of this AD.

**(l) Action for Airbus Model A340–541 and –642 Airplanes Equipped With RR Trent 500 Engines**

(1) For Airbus Model A340–541 and –642 airplanes equipped with RR Trent 500 Engines: Within 2,000 flight hours after the effective date of this AD, accomplish a one-time torque check of FWD and AFT engine mount bolts on each affected engine, at the locations specified in, and in accordance with the instructions of Section 4.2.2, ''Inspection requirements,'' of Airbus AOT A71L008–14, Revision 01, dated December 18, 2014.

(2) If, during the torque check required by paragraph (l)(1) of this AD, any discrepancy is detected (one engine mount bolt rotates, two or more engine mount bolts rotate, or one or more engine mount bolts are fully broken): Within the compliance time specified in Airbus AOT A71L008–14, Revision 01, dated December 18, 2014, accomplish all applicable corrective actions, in accordance with the instructions of Section 4.2.3, ''Findings,'' of Airbus AOT A71L008–14, Revision 01, dated December 18, 2014, except as required by paragraphs (m)(1) and (m)(2) of this AD.

**(m) Service Information Exceptions**

(1) Where Airbus AOTs A71L005–14, Revision 01, dated December 11, 2014; A71L006–14, dated July 22, 2014; and A71L008–14, Revision 01, dated December 18, 2014; specify to contact Airbus for further actions, 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) Where Airbus AOT A71L004–14, Revision 01, dated April 7, 2014; AOT A71L005–14, Revision 01, dated December 11, 2014; AOT A71L006–14, dated July 22, 2014; and AOT A71L008–14, Revision 01, dated December 18, 2014, specify actions ''if one pylon bolt fully broken,'' this AD requires that those actions be done if one or more engine mount bolt is found fully broken during any torque check required by paragraph (h)(1), (j)(1), (k)(1) or (l)(1) of this AD.

**(n) Reporting**

At the applicable time specified in paragraphs (n)(1) and (n)(2) of this AD: After accomplishment of any torque check required by paragraphs (h), (j), (k), and (l) of this AD, report all inspection results to Airbus, including no findings, in accordance with the ''Reporting'' section of the applicable service information specified in paragraphs (h), (j), (k), and (l) of this AD.

(1) If the torque check was done on or after the effective date of this AD: Submit the report within 30 days after the torque check.

(2) If the torque check was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

**(o) Credit for Previous Actions**

(1) This paragraph provides credit for the actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71L004–14, dated April 1, 2014 (for Airbus Model A330 Airplanes Equipped with PW Engines), which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71L005–14, dated September 29, 2014 (for Airbus Model A330 Airplanes Equipped with RR Trent 700 Engines), which is not incorporated by reference in this AD.

(3) This paragraph provides credit for the actions required by paragraph (l) of this AD, if those actions were performed before the effective date of this AD using Airbus AOT A71L008–14, dated September 29, 2014 (for Airbus Model A340 Airplanes Equipped with RR Trent 500 Engines), which is not incorporated by reference in this AD.

**(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 with14 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 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.

**(q) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0082, dated May 11, 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–2015–7533.

**(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.

(i) Airbus AOT A71L004–14, Revision 01, dated April 7, 2014.

(ii) Airbus AOT A71L005–14, Revision 01, dated December 11, 2014.

(iii) Airbus AOT A71L006–14, dated July 22, 2014.

(iv) Airbus AOT A71L008–14, Revision 01, dated December 18, 2014.

(3) 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.*

(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 May 12, 2016.

**Suzanne Masterson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–12056 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–8466; Directorate Identifier 2015–NM–045–AD; Amendment 39–18542; AD 2016–11–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Services B.V. Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This AD was prompted by the need for more restrictive fuel system airworthiness limitations. This AD requires revising the maintenance program or inspection program, as applicable, to incorporate certain fuel system airworthiness limitations. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

**ADDRESSES:** For service information identified in this final rule, 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. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8466.

**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–2015–8466; 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 Office (telephone 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:** 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 Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3059) (''the NPRM''). The NPRM was prompted by the need for more restrictive fuel system airworthiness

limitations. The NPRM proposed to require revising the maintenance program or inspection program, as applicable, to incorporate certain fuel system airworthiness limitations. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0032, dated February 24, 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 F28 Mark 0070 and 0100 airplanes. The MCAI states:

> Fokker Services published issue 5 of Engineering Report SE–672, containing Fuel Airworthiness Limitation Items (ALIs) and Critical Design Configuration Control Limitations (CDCCLs). This report is Part 3 of the Airworthiness Limitations Section (ALS Part 3) of the Instructions for Continued Airworthiness, referred to in Section 06, Appendix 1, of the Fokker 70/100 Maintenance Review Board (MRB) document.
>
> The complete ALS currently consists of:
>
> Part 1—Report SE–473, Certification Maintenance Requirements (CMRs), Part 2—Report SE–623, ALIs and Safe Life Items (SLIs), and Part 3—Report SE–672, Fuel ALIs and CDCCLs.
>
> The instructions contained in those reports have been identified as mandatory actions for continued airworthiness.
>
> For the reasons described above, this [EASA] AD requires implementation of the maintenance actions as specified in ALS Part 3 of the Instructions for Continued Airworthiness, Fokker Services Engineering Report SE–672 at issue 5.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, 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–2015–8466.

## Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM 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 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 Fokker Services B.V. Engineering Report SE–672, ''Fokker 70/100 Fuel ALI's and CDCCL's,'' Issue 5, released December 11, 2014. The service information describes fuel system airworthiness limitation items and critical design configuration control limitations. 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 8 airplanes of U.S. registry.

We also estimate that it takes about 1 work-hour 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 $680, 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.

## 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):

**2016–11–15 Fokker Services B.V.:** Amendment 39–18542. Docket No. FAA–2015–8466; Directorate Identifier 2015–NM–045–AD.

**(a) Effective Date**

This AD is effective July 12, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Reason**

This AD was prompted by the need for more restrictive fuel system airworthiness limitations. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, 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) Maintenance Program Revision**

(1) Within 12 months after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the fuel system airworthiness limitation items (ALIs) and critical design configuration control limitations (CDCCLs) specified in Fokker Services B.V. Engineering Report SE–672, ''Fokker 70/100 Fuel ALI's and CDCCL's,'' Issue 5, released December 11, 2014.

(2) The initial compliance times and repetitive intervals for the actions are at the applicable times specified within Fokker Services B.V. Engineering Report SE–672, ''Fokker 70/100 Fuel ALI's and CDCCL's,'' Issue 5, released December 11, 2014. If any discrepancy is found, repair 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). Repair any discrepancy before further flight.

**(h) No Alternative Inspections, Inspection Intervals, or CDCCLs**

After accomplishment of the actions specified in paragraph (g) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (i)(1) of this AD.

**(i) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, 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 the EASA; or Fokker Services B.V.'s EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**(j) Related Information**

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0032, dated February 24, 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–2015–8466.

**(k) Material Incorporated by Reference**

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

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

(i) Fokker Services B.V. Engineering Report SE–672, Fokker 70/100 Fuel ALI's and CDCCL's, Issue 5, released December 11, 2014.

(ii) Reserved.

(3) 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.*

(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 May 23, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–13050 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD; Amendment 39–18534; AD 2016–11–07]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt and Whitney engines. This AD was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. This AD requires doing the following actions on the left strut and right strut: A one-time cleaning of certain forward strut drain lines; installing new forward strut drain lines and insulation blankets; a leak check of the forward strut drain lines; and repair if any leak is found. This AD also requires revising the maintenance or inspection program, as applicable, to incorporate a certain airworthiness limitation. We are issuing this AD to prevent blockage of forward strut drain lines. This condition could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 12, 2016.

**ADDRESSES:** For service information identified in this final rule, 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–2015–8130.

**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–2015–8130; 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:**

Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 777–200 and –300 series airplanes equipped with Pratt and Whitney engines. The NPRM published in the **Federal Register** on December 31, 2015 (80 FR 81788) (''the NPRM''). The NPRM was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. The NPRM proposed to require doing the following actions on the left strut and right strut: A one-time cleaning of certain forward strut drain lines; installing new forward strut drain lines and insulation blankets; a leak check of the forward strut drain lines; and repair if any leak is found. The NPRM also proposed to require revising the maintenance or inspection program, as applicable, to incorporate a certain airworthiness limitation. We are issuing this AD to prevent blockage of forward strut drain lines. This condition could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

## Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM.

## Support for the NPRM

Boeing, United Airlines, and Airline Pilots Association International have no objections to the NPRM.

## 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 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 the following service information:

- Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013. This service information describes procedures for a general visual inspection for hydraulic fluid contamination of the interior of the strut forward dry bay and corrective actions.
- Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015. The service information describes procedures for installing new forward strut drain lines and insulation blankets on the left and right engines.
- Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line,'' as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014. This service information describes an airworthiness limitation task for the functional check of the forward strut drain line.

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 54 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 |
|---|---|---|---|---|
| Cleaning strut drain lines, installing new drain lines and insulation blankets, doing a leak check, and revising the maintenance or inspection program. | 16 work-hours × $85 per hour = $1,360. | $17,080 | $18,440 | $995,760 |

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

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):

**2016–11–07 The Boeing Company:** Amendment 39–18534; Docket No. FAA–2015–8130; Directorate Identifier 2014–NM–175–AD.

**(a) Effective Date**

This AD is effective July 12, 2016.

**(b) Affected ADs**

This AD affects the ADs specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) AD 2014–20–10, Amendment 39–17983 (79 FR 60331, October 7, 2014) (''AD 2014–20–10'').

(2) AD 2015–17–13, Amendment 39–18246 (80 FR 52948, September 2, 2015) (''AD 2015–17–13'').

**(c) Applicability**

This AD applies to The Boeing Company Model 777–200 and –300 series airplanes, certificated in any category, equipped with Pratt and Whitney engines, as identified in Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015.

**(d) Subject**

Air Transport Association (ATA) of America Code 71, Powerplant.

**(e) Unsafe Condition**

This AD was prompted by reports of blocked drain lines at the engine forward strut that caused flammable fluid to accumulate in a flammable leakage zone. We are issuing this AD to prevent blockage of forward strut drain lines. This condition could cause flammable fluids to collect in the forward strut area and potentially cause an uncontrolled fire or cause failure of engine attachment structure and consequent airplane loss.

**(f) Compliance**

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

**(g) Actions**

Within 4,000 flight cycles or 750 days after the effective date of this AD, whichever occurs later: Accomplish the actions specified in paragraphs (g)(1) through (g)(4) of this AD on the left and right struts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and accomplish the revision specified in paragraph (g)(5) of this AD.

(1) Disconnect and remove the forward strut drain lines.

(2) Clean the left system disconnect, the strut forward lower spar, and the forward fireseal pan drain lines.

(3) Install new forward strut drain lines and insulation blankets.

(4) Do a leak check of the forward strut drain lines for any leak, and repair if any leak is found.

(5) Revise the maintenance or inspection program, as applicable, to incorporate Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line'' as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data (MPD) Document Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622W001–9, dated October 2014. The initial compliance time for Airworthiness Limitation 54–AWL–01 is within 2,000 flight cycles or 1,500 days, whichever occurs first, after doing the actions specified in paragraphs (g)(1) through (g)(4) of this AD.

**(h) No Alternative Actions or Intervals**

After accomplishing the revision required by paragraph (g)(5) 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 (k) of this AD.

**(i) Terminating Action for Other ADs**

(1) Accomplishing the actions required by paragraph (g) of this AD terminates the actions required by paragraph (g) of AD 2015–17–13 at the modified area only.

(2) Accomplishing the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD terminates the inspections required by paragraph (g) of AD 2014–20–10 at the modified area only, provided the actions are accomplished concurrently, or the actions specified in paragraph (i)(2)(ii) of this AD are done after accomplishing the actions specified in paragraph (i)(2)(i) of this AD.

(i) The actions specified in paragraphs (g)(1) through (g)(4) of this AD on the left and right struts are done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015; and the revision specified in paragraph (g)(5) of this AD is done.

(ii) A one-time general visual inspection for hydraulic fluid contamination (including contamination caused by hydraulic fluid in its liquid, vapor, and/or solid (coked) form) of the interior of the strut forward dry bay, and all applicable related investigative and corrective actions (including checking drain lines for blockage due to hydraulic fluid coking, and cleaning or replacing drain lines to allow drainage) are done in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, except where Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013, specifies to contact Boeing for repair, the repair must be done using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

**(j) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (g)(1) through (g)(4) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–71–0055, dated June 12, 2014, which is not incorporated by reference in 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 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) 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 Kevin Nguyen, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6501; fax: 425–917–6590; email: *kevin.nguyen@faa.gov.*

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

**(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) Boeing Special Attention Service Bulletin 777–54–0028, Revision 1, dated December 10, 2013.

(ii) Boeing Special Attention Service Bulletin 777–71–0055, Revision 1, dated April 15, 2015.

(iii) Airworthiness Limitation 54–AWL–01, ''Forward Strut Drain Line,'' as specified in Section D.4, Pratt and Whitney Forward Strut Drain Line, dated March 2014, of the Boeing 777 Maintenance Planning Data Document Section 9, Airworthiness Limitations and Certification Maintenance Requirements, D622W001–9, dated October 2014.

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

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

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

Issued in Renton, Washington, on May 20, 2016.

**Victor Wicklund,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–12599 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–AD; Amendment 39–18544; AD 2016–11–17]**

**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 787–8 airplanes. This AD was prompted by a report of wire chafing caused by a left wing spoiler actuator wire not having enough separation from a certain bracket when the spoiler is in the deployed position. This AD requires measuring the separation between a certain electro-mechanical actuator wire of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit; and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct wire chafing. Such chafing could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

**DATES:** This AD is effective July 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 12, 2016.

**ADDRESSES:** For service information identified in this final rule, 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–2015–3987.

### 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–2015–3987; 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:** Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@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 787–8 airplanes. The NPRM published in the **Federal Register** on October 19, 2015 (80 FR 63132) (''the NPRM''). The NPRM was prompted by a report of insufficient clearance and wire chafing between the wiring to the number 4 spoiler electro-mechanical actuator and a bracket of the flap variable camber trim unit with the spoiler fully deployed. The NPRM proposed to require measuring the separation between a certain electro-mechanical actuator wire of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct wire chafing. Such chafing could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

### 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.

### Support for the NPRM

United Airlines stated that it agrees with the NPRM, has completed the actions specified in Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014, and has no technical findings/issues to report.

We acknowledge United Airlines' comment.

An anonymous commenter stated that it is in the airplane manufacturer's best interest to address the faulty wire as soon as possible as this safety issue may have an impact on profits because of the impact to the company's image.

We agree with the commenter in so much as the identified unsafe condition needs to be addressed on the affected airplanes. No change to this final rule was requested.

**Request To Clarify the Issue That Prompted the NPRM**

Boeing requested that we revise the Discussion section of the NPRM to clarify that the safety issue was prompted by a report of wire chafing caused by insufficient clearance between the wiring to the number 4 spoiler electro-mechanical actuator and a bracket of the flap variable camber trim unit with the spoiler fully deployed.

We agree with Boeing's statement regarding the action that prompted this AD. We have revised the Discussion section of this final rule accordingly.

**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 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 Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014. The service information describes procedures for accomplishing the following actions.

- Measuring the separation between the electro-mechanical actuator wire W801182 of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit.
- Related investigative actions and corrective actions such as doing a general visual inspection for chafing of the electro-mechanical actuator wire W801182 of the left wing, spoiler 4; adjusting the electro-mechanical actuator wire W801182 of the left wing, spoiler 4; and replacing the electro-mechanical actuator wire W801182 of the left wing, spoiler 4.

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 12 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| Measurement | 6 work-hours × $85 per hour = $510 | $510 | $6,120 |

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Related investigative and corrective actions | 2 work-hours × $85 per hour = $170 | $24 | $194 |

According to the manufacturer, all 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 the available 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):

**2016–11–17 The Boeing Company:** Amendment 39–18544 ; Docket No. FAA–2015–3987; Directorate Identifier 2015–NM–066–AD.

**(a) Effective Date**

This AD is effective July 12, 2016.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to certain The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014.

**(d) Subject**

Air Transport Association (ATA) of America Code 24, Electrical power.

**(e) Unsafe Condition**

This AD was prompted by a report of wire chafing caused by a left wing spoiler actuator wire not having enough separation from a certain bracket when the spoiler is in the deployed position. We are issuing this AD to detect and correct wire chafing; such chafing could result in an electrical short and potential fire in a flammable fluid leakage zone and possible loss of several functions essential for safe flight.

**(f) Compliance**

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

**(g) Wire Separation Measurement, Related Investigative Actions, and Corrective Actions**

Within 24 months after the effective date of this AD: Measure the separation between the electro-mechanical actuator wire W801182 of the left wing, spoiler 4, and the support bracket of the flap variable camber trim unit, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014. Do all applicable related investigative and corrective actions before further flight.

**(h) Alternative Methods of Compliance (AMOCs)**

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

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

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

**(i) Related Information**

For more information about this AD, contact Sean J. Schauer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6479; fax: 425–917–6590; email: *sean.schauer@faa.gov.*

**(j) Material Incorporated by Reference**

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

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

(i) Boeing Alert Service Bulletin B787–81205–SB270024–00, Issue 001, dated September 24, 2014.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on May 20, 2016.

**Victor Wicklund,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–12842 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

### Office of the Secretary

### 15 CFR Part 6

**[Docket No. 160523449–6449–01]**

**RIN 0605–AA44**

## Civil Monetary Penalty Adjustments for Inflation

**AGENCY:** Office of the Chief Financial Officer and Assistant Secretary for Administration, Department of Commerce.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule is being issued to adjust for inflation each civil monetary penalty (CMP) provided by law within the jurisdiction of the Department of Commerce (Commerce Department). The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology effective for 2016 which provides for initial catch up adjustments for inflation in 2016, and under a revised methodology for each year thereafter. The revised methodologies provide for the improvement of the effectiveness of CMPs and to maintain their deterrent effect. The initial catch up adjustment for inflation of a CMP in 2016 shall not exceed 150 percent of the amount of the CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015). The initial catch up adjustments for inflation to CMPs are required to be published through an interim final rule not later than July 1, 2016, and the adjustments for inflation shall take effect not later than August 1, 2016. For each year thereafter, the adjustments for inflation to CMPs shall take effect not later than January 15. These adjustments for inflation apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations.

These adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new CMP level.

**DATES:** This rule is effective July 7, 2016; comments must be received on or before July 7, 2016.

**ADDRESSES:** You may submit comments, identified by the *regulations.gov* docket number DOC–2016–0004, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=DOC-2016-0004* click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Acting Deputy Chief Financial Officer, Office of Financial Management, Department of Commerce, 1401 Constitution Ave NW., Room D200, Washington, DC 20230.

*Instructions:* You must submit comments by one of the above methods to ensure that Commerce Department receives the comments and considers them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

Commerce Department will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Ayers, Acting Deputy Chief Financial Officer and Director for Financial Management, Office of Financial Management, at (202) 482–1207, Department of Commerce, 1401 Constitution Avenue NW., Room D200, Washington, DC 20230. The Commerce Department Civil Monetary Penalties; Adjustment for Inflation are available for downloading from Commerce Department, Office of Financial Management's Web site at the following address: *http://www.osec.doc.gov/ofm/OFM_Publications.html.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), provided for adjustments for inflation to CMPs to ensure that CMPs continue to maintain their deterrent value and that CMPs due to the Federal Government were properly accounted for and collected. On October 24, 1996, November 1, 2000, December 14, 2004, December 11, 2008, and December 7, 2012, Commerce Department published in the **Federal Register** a schedule of CMPs adjusted for inflation as required by law.

A CMP is defined as any penalty, fine, or other sanction that:

1. Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and,

2. Is assessed or enforced by an agency pursuant to Federal law; and,

3. Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74) further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to improve the effectiveness of CMPs and to maintain their deterrent effect. This amendment requires agencies to: (1) Adjust the CMP levels in effect as of November 2, 2015, with initial catch up adjustments for inflation through an interim final rulemaking; and (2) make subsequent annual adjustments for inflation to CMPs.

Agencies are required to publish interim final rules with initial catch up adjustments for inflation by July 1, 2016, and the adjustments for inflation shall take effect no later than August 1, 2016. For each year thereafter, the adjustments for inflation to CMPs shall take effect not later than January 15.

The maximum amount for an initial catch up adjustment for inflation shall not exceed 150 percent of the amount of that CMP on the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (November 2, 2015).

These adjustments for inflation apply only to CMPs with a dollar amount, and will not apply to CMPs written as functions of violations. These adjustments for inflation apply only to those CMPs, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new CMP level.

For an initial catch up adjustment for inflation to a CMP, agencies may adjust for inflation the amount of a CMP by less than the otherwise required amount if after publishing a notice of proposed rulemaking and providing an opportunity for comment, the agency determines in a final rule that increasing that CMP by the otherwise required amount will have a negative economic impact; or the social costs of increasing that CMP by the otherwise required amount outweigh the benefits. The concurrence of the Director of the Office of Management and Budget will be required if the adjustment for inflation is less than the otherwise required amount.

This regulation adjusts for inflation CMPs that are provided by law within the jurisdiction of Commerce Department. The actual CMP assessed for a particular violation is dependent upon a variety of factors. For example, the National Oceanic and Atmospheric Administration's (NOAA) Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy), a compilation of NOAA internal guidelines that are used when assessing CMPs for violations for most of the statutes NOAA enforces, will be interpreted in a manner consistent with this regulation to maintain the deterrent effect of the CMPs. The CMP ranges in the Penalty Policy are intended to aid enforcement attorneys in determining the appropriate CMP to assess for a particular violation. The Penalty Policy is maintained and made available to the public on the NOAA Office of the General Counsel, Enforcement Section, Web site at: *http://www.gc.noaa.gov/enforce-office3.html.*

The initial catch up adjustments for inflation to CMPs set forth in this regulation were determined pursuant to the revised methodology prescribed by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which requires the maximum CMP, or the minimum and maximum CMP, as applicable, to be increased by the cost-of-living adjustment. The term ''cost -of-living adjustment'' is defined by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. For the initial catch up adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index of October of the calendar year during which the amount of such CMP was established or adjusted under a provision of law other than the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015. For subsequent adjustments for inflation to CMPs, the cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index for the month of October preceding the date of the adjustment exceeds the Consumer Price Index for the previous month of October.

**Classification**

Pursuant to 5 U.S.C. 553(b)B, there is good cause to issue this rule without prior public notice or opportunity for public comment because it would be impracticable and unnecessary. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701(b)(1)) requires initial catch up adjustments for inflation to CMPs and to provide the new CMP levels through an interim final rulemaking, to be published by July 1, 2016. This law also requires agencies to make subsequent annual adjustments for inflation to CMPs notwithstanding section 553 of title 5, United States Code. Additionally, the methodologies used for adjusting CMPs for inflation is given by statute, with no discretion provided to agencies regarding the substance of the adjustments for inflation to CMPs. Commerce Department is charged only with performing ministerial computations to determine the dollar amount of adjustments for inflation to CMPs. Accordingly, prior public notice and comment are not required for this rule.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements.

**Regulatory Analysis**

*E.O. 12866, Regulatory Review*

This rule is not a significant regulatory action as the term is defined in Executive Order 12866.

*Regulatory Flexibility Act*

Because notice of proposed rulemaking and opportunity for comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility act (5 U.S.C. 601, *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

**List of Subjects in 15 CFR Part 6**

Law enforcement, Civil monetary penalties.

Dated: May 31, 2016.

**Jennifer Ayers,**

*Acting Deputy Chief Financial Officer and Director for Financial Management, Department of Commerce.*

**Authority and Issuance**

■ For the reasons stated in the preamble, Commerce Department revises 15 CFR part 6 to read as follows:

## PART 6—CIVIL MONETARY PENALTY ADJUSTMENTS FOR INFLATION

Sec.

§ 6.1 Definitions.
§ 6.2 Purpose and scope.
§ 6.3 Limitation on initial catch up adjustments for inflation.
§ 6.4 Adjustments for inflation.
§ 6.5 Effective date of adjustments for inflation.
§ 6.6 Subsequent adjustments for inflation.

**Authority:** Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–134, 110 Stat. 1321 (31 U.S.C. 3701 note); Sec. 701 of Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 1 note; 28 U.S.C. 2461 note).

### § 6.1 Definitions.

(a) *Commerce Department* means the United States Department of Commerce.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law, or has a maximum amount provided for by Federal law; and

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

### § 6.2 Purpose and scope.

The purpose of this part is to make adjustments for inflation to civil monetary penalties, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410; 28 U.S.C. 2461), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114–74), of each civil monetary penalty provided by law within the jurisdiction of the United States Department of Commerce (Commerce Department).

### § 6.3 Limitation on initial catch up adjustments for inflation.

The initial catch up adjustment for inflation to a civil monetary penalty shall not exceed 150 percent of the amount of that civil monetary penalty that was in effect as of November 2, 2015.

### § 6.4 Adjustments for inflation.

The civil monetary penalties provided by law within the jurisdiction of Commerce Department, as set forth in paragraphs (a) through (f) of this section, are hereby adjusted for inflation in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, from the amount of such civil monetary penalties that was in effect as of November 2, 2015, to the amounts of such civil monetary penalties, as thus adjusted. The year stated in parenthesis represents the year that the civil monetary penalty was last set by law or adjusted by law (excluding adjustments for inflation).

(a) *United States Department of Commerce.* (1) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act of 1986 (1986), violation, maximum from $5,500 to $10,781.

(2) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act of 1986 (1986; newly reported penalty), violation, maximum $10,781.

(3) 31 U.S.C. 3729(a)(1)(G), False Claims Act (1986); violation, minimum from $5,500 to $10,781; maximum from $11,000 to $21,563.

(b) *Bureau of Industry and Security.* (1) 15 U.S.C. 5408(b)(1), Fastener Quality Act (1990), violation, maximum from $32,500 to $44,539.

(2) 22 U.S.C. 6761(a)(1)(A), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $25,000 to $36,256.

(3) 22 U.S.C. 6761(a)(l)(B), Chemical Weapons Convention Implementation Act (1998), violation, maximum from $5,000 to $7,251.

(4) 50 U.S.C. 1705(b), International Emergency Economic Powers Act (2007), violation, maximum $284,582.

(5) 22 U.S.C. 8142(a), United States Additional Protocol Implementation Act (2006), violation, maximum from $27,500 to $29,464.

(c) *Census Bureau.* (1) 13 U.S.C. 304, Collection of Foreign Trade Statistics (2002), each day's delinquency of a violation; total of not to exceed maximum violation, from $1,000 to $1,312; maximum per violation, from $10,000 to $13,118.

(2) 13 U.S.C. 305(b), Collection of Foreign Trade Statistics (2002), violation, maximum from $10,000 to $13,118.

(d) *Economics and Statistics Administration.* (1) 22 U.S.C. 3105(a), International Investment and Trade in Services Act (1990); failure to furnish information, minimum from $2,500 to $4,454; maximum from $32,500 to $44,539.

(e) *International Trade Administration.* (1) 19 U.S.C. 81s,

Foreign Trade Zone (1934), violation, maximum from $1,100 to $2,750.

(2) 19 U.S.C. 1677f(f)(4), U.S.-Canada FTA Protective Order (1988), violation, maximum from $130,000 to $197,869.

(f) *National Oceanic and Atmospheric Administration.* (1) 51 U.S.C. 60123(a), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $10,000 to $10,874.

(2) 51 U.S.C. 60148(c), Land Remote Sensing Policy Act of 2010 (2010), violation, maximum from $10,000 to $10,874.

(3) 16 U.S.C. 773f(a), Northern Pacific Halibut Act of 1982 (2007), violation, maximum from $200,000 to $227,666.

(4) 16 U.S.C. 783, Sponge Act (1914), violation, maximum from $650 to $1,625.

(5) 16 U.S.C. 957(d), (e), and (f), Tuna Conventions Act of 1950 (1962):

(i) Violation of 16 U.S.C. 957(a), maximum from $32,500 to $81,250.

(ii) Subsequent violation of 16 U.S.C. 957(a), maximum from $70,000 to $175,000.

(iii) Violation of 16 U.S.C. 957(b), maximum from $1,100 to $2,750.

(iv) Subsequent violation of 16 U.S.C. 957(b), maximum from $6,500 to $16,250.

(v) Violation of 16 U.S.C. 957(c), maximum from $140,000 to $350,000.

(6) 16 U.S.C. 957(i), Tuna Conventions Act of 1950 [1] (new penalty), violation, maximum $178,156.

(7) 16 U.S.C. 959, Tuna Conventions Act of 1950 [2] (new penalty), violation, maximum $178,156.

(8) 16 U.S.C. 971f(a), Atlantic Tunas Convention Act of 1975,[3] violation, maximum from $140,000 to $178,156.

(9) 16 U.S.C. 973f(a), South Pacific Tuna Act of 1988 (1988), violation, maximum from $350,000 to $494,672.

(10) 16 U.S.C. 1174(b), Fur Seal Act Amendments of 1983 (1983), violation, maximum from $11,000 to $23,548.

(11) 16 U.S.C. 1375(a)(1), Marine Mammal Protection Act of 1972 (1972), violation, maximum from $11,000 to $27,500.

(12) 16 U.S.C. 1385(e), Dolphin Protection Consumer Information Act,[4] violation, maximum from $130,000 to $178,156.

(13) 16 U.S.C. 1437(d)(1), National Marine Sanctuaries Act (1992), violation, maximum from $140,000 to $167,728.

(14) 16 U.S.C. 1540(a)(1), Endangered Species Act of 1973:

(i) Violation as specified (1988), maximum from $32,500 to $49,467.

(ii) Violation as specified (1988), maximum from $13,200 to $23,744.

(iii) Otherwise violation (1978), maximum from $650 to $1,625.

(15) 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act (1990), violation, maximum from $140,000 to $178,156.

(16) 16 U.S.C. 2437(a), Antarctic Marine Living Resources Convention Act of 1984,[5] violation, maximum from $6,500 to $178,156.

(17) 16 U.S.C. 2465(a), Antarctic Protection Act of 1990,[6] violation, maximum from $6,500 to $178,156.

(18) 16 U.S.C. 3373(a), Lacey Act Amendments of 1981 (1981):

(i) 16 U.S.C. 3373(a)(1), violation, maximum from $11,000 to $25,464.

(ii) 16 U.S.C. 3373(a)(2), violation, maximum from $275 to $637.

(19) 16 U.S.C. 3606(b)(1), Atlantic Salmon Convention Act of 1982,[7] violation, maximum from $140,000 to $178,156.

(20) 16 U.S.C. 3637(b), Pacific Salmon Treaty Act of 1985,[8] violation, maximum from $140,000 to $178,156.

(21) 16 U.S.C. 4016(b)(1)(B), Fish and Seafood Promotion Act of 1986 (1986); violation, minimum from $500 to $1,078; maximum from $6,500 to $10,781.

(22) 16 U.S.C. 5010, North Pacific Anadromous Stocks Act of 1992,[9] violation, maximum from $130,000 to $178,156.

(23) 16 U.S.C. 5103(b)(2), Atlantic Coastal Fisheries Cooperative Management Act,[10] violation, maximum from $140,000 to $178,156.

(24) 16 U.S.C. 5154(c)(1), Atlantic Striped Bass Conservation Act,[11] violation, maximum from $140,000 to $178,156.

(25) 16 U.S.C. 5507(a), High Seas Fishing Compliance Act of 1995 (1995), violation, maximum from $130,000 to $154,742.

(26) 16 U.S.C. 5606(b), Northwest Atlantic Fisheries Convention Act of 1995,[12] violation, maximum from $140,000 to $178,156.

(27) 16 U.S.C. 6905(c), Western and Central Pacific Fisheries Convention Implementation Act,[13] violation, maximum from $140,000 to $178,156.

(28) 16 U.S.C. 7009(c) and (d), Pacific Whiting Act of 2006,[14] violation, maximum from $140,000 to $178,156.

(29) 22 U.S.C. 1978(e), Fishermen's Protective Act of 1967 (1971):

(i) Violation, maximum from $11,000 to $27,500.

(ii) Subsequent violation, maximum from $32,500 to $81,250.

(30) 30 U.S.C. 1462(a), Deep Seabed Hard Mineral Resources Act (1980), violation, maximum, from $32,500 to $70,117.

(31) 42 U.S.C. 9152(c), Ocean Thermal Energy Conversion Act of 1980 (1980), violation, maximum from $32,500 to $70,117.

(32) 16 U.S.C. 1827a, Billfish Conservation Act of 2012 [15] (new penalty), violation, maximum $178,156.

(33) 16 U.S.C. 7407(b)(1), Port State Measures Agreement Act of 2015 [16] (new penalty), violation, maximum $178,156.

(34) 16 U.S.C. 1826g(f), High Seas Driftnet Fishing Moratorium Protection Act [17] (new penalty), violation, maximum $178,156.

**§ 6.5 Effective date of adjustments for inflation.**

The adjustments for inflation made by § 6.4, of the civil monetary penalties there specified, are effective on July 7, 2016, and said civil monetary penalties, as thus adjusted by the adjustments for inflation made by § 6.4, apply only to those civil monetary penalties, including those whose associated violation predated such adjustment, which are assessed by Commerce Department after the effective date of the new civil monetary penalty level, and before the effective date of any future adjustments for inflation to civil monetary penalties thereto made subsequent to July 7, 2016 as provided in § 6.6.

**§ 6.6 Subsequent adjustments for inflation.**

The Secretary of Commerce or his or her designee by regulation shall make subsequent adjustments for inflation to Commerce Department's civil monetary penalties annually, which shall take effect not later than January 15, 2017,

[1] This National Oceanic and Atmospheric Administration maximum civil monetary penalty, as prescribed by law, is the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

[2] See footnote 1.

[3] See footnote 1.

[4] This National Oceanic and Atmospheric Administration maximum civil monetary penalty was revised by law in 2015 to be the maximum civil penalty per 16 U.S.C. 1858(a), Magnuson-Stevens Fishery Conservation and Management Act civil monetary penalty (item (15)).

[5] See footnote 4.

[6] See footnote 4.

[7] See footnote 1.

[8] See footnote 1.

[9] See footnote 4.

[10] See footnote 1.

[11] See footnote 1.

[12] See footnote 1.

[13] See footnote 1.

[14] See footnote 1.

[15] See footnote 1.

[16] See footnote 1.

[17] See footnote 1.

and for each year thereafter, notwithstanding section 553 of title 5, United States Code.

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## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 710, 745, and 774

**[Docket No. 160302176–6176–01]**

**RIN 0694–AG88**

## Implementation of the February 2015 Australia Group (AG) Intersessional Decisions and the June 2015 AG Plenary Understandings

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the recommendations presented at the February 2015 Australia Group (AG) intersessional implementation meeting, and later adopted pursuant to the AG silent approval procedure, and the understandings reached at the June 2015 AG Plenary meeting. This rule amends three Commerce Control List (CCL) entries to reflect the February 2015 intersessional recommendations that were adopted by the AG. Specifically, this rule amends the CCL entry that controls chemical precursors by adding the chemical diethylamine (C.A.S. 109–89–7), which was not previously identified on the AG's ''Chemical Weapons Precursors'' common control list. This rule also amends the CCL entry that controls certain human and zoonotic pathogens and toxins by adding two viruses that were not previously identified on the AG ''List of Human and Animal Pathogens and Toxins for Export Control'' and by updating the nomenclature of certain viruses that were already identified on this AG common control list. In addition, this rule amends the CCL entry that controls equipment capable of handling biological materials to reflect the AG intersessional updates to the controls on biocontainment chambers, isolators, and biological safety cabinets and the controls on aerosol inhalation equipment described on the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' Consistent with the understandings adopted at the June 2015 AG Plenary meeting, this rule also amends the CCL entry that controls equipment capable of handling biological materials by updating the controls on freeze-drying (lyophilization) equipment.

Finally, this rule amends the EAR to reflect the addition of Angola and Burma as States Parties to the Chemical Weapons Convention (CWC) and also amends the Chemical Weapons Convention Regulations (CWCR) to reflect the addition of these two countries as States Parties.

**DATES:** This rule is effective June 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343, Email: *Richard.Duncan@bis.doc.gov*.

**SUPPLEMENTARY INFORMATION:** The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the recommendations presented at the Australia Group (AG) Intersessional meeting held in The Hague, Netherlands, on February 4, 2015, and adopted pursuant to the AG silent approval procedure in April 2015, and the understandings reached at the AG Plenary meeting held in Perth, Australia, from June 1–5, 2015. The AG is a multilateral forum consisting of 41 participating countries that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

### Amendments to the CCL Based on the February 2015 AG Intersessional Recommendations

This rule amends three Export Control Classification Numbers (ECCNs) on the Commerce Control List (CCL) (see Supplement No. 1 to part 774 of the EAR), as described below, to reflect the February 2015 intersessional recommendations that were adopted by the AG.

*Amendments to ECCN 1C350 (Precursor Chemicals)*

This final rule amends ECCN 1C350 on the CCL, to reflect the addition of the chemical diethylamine (C.A.S. 109–89–7) to the AG's ''Chemical Weapons Precursors'' common control list, by adding this chemical to 1C350.d, which controls precursor chemicals identified on the AG common control list that are not also ''scheduled'' chemicals (*i.e.,* chemicals identified as Schedule 1, Schedule 2, or Schedule 3 chemicals) under the Chemical Weapons Convention (CWC).

Like the other precursor chemicals controlled under ECCN 1C350.d, diethylamine requires a license for chemical/biological (CB) reasons to destinations indicated under CB Column 2 on the Commerce Country Chart (see Supplement No. 1 to part 738 of the EAR) and for anti-terrorism (AT) reasons to destinations in Country Group E:1 (see Supplement No. 1 to part 742 of the EAR). Because none of the precursor chemicals controlled under ECCN 1C350.d (including diethylamine) are identified as ''scheduled'' chemicals under the CWC, these precursor chemicals do not require a license for chemical weapons (CW) reasons. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the sanctions that apply to Iran, North Korea, and Syria.)

*Amendments to ECCN 1C351 (Human and Animal Pathogens and ''Toxins'')*

This final rule amends ECCN 1C351 on the CCL to reflect the addition of two viruses (severe acute respiratory syndrome-related coronavirus, a.k.a. SARS-related coronavirus, and reconstructed 1918 influenza virus) that were not previously identified on the AG ''List of Human and Animal Pathogens and Toxins for Export Control'' and to update the nomenclature for seventeen viruses that were already identified on this AG common control list and in ECCN 1C351.a (nineteen viruses were updated on the AG common control list, but only seventeen viruses in ECCN 1C351.a required updating). Prior to the publication of this final rule, the two viruses that are being added to ECCN 1C351.a were listed under ECCN 1C351.b, which controls viruses identified on the ''select agents'' lists maintained by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, and the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services, but not identified on the AG ''List of Human and Animal Pathogens and Toxins for Export Control.''

The license requirements applicable to the viruses affected by the amendments in this final rule (including the two viruses that are being moved

from 1C351.b to 1C351.a) remain unchanged. Specifically, all of these viruses continue to require a license for CB reasons to destinations indicated under CB Column 1 on the Commerce Country Chart and for AT reasons to destinations indicated in AT Column 1 on the Commerce Country Chart.

This final rule also makes conforming changes to ECCN 1C351 by renumbering certain items in ECCN 1C351.a to reflect the addition of the two aforementioned viruses (*i.e.,* the SARS-related coronavirus and the reconstructed 1918 influenza virus) and the updates to the nomenclature for seventeen other viruses listed in 1C351.a. The following table lists the viruses that are controlled under ECCN 1C351.a, as a result of the amendments made by this final rule, and indicates the previous and current names and CCL designations for each of these viruses. The names and CCL designations of thirteen viruses were not affected by this rule (these viruses continue to be designated as 1C351.a.1 through .a.8 and 1C351.a.42 through .a.46, as indicated in the following table). Twenty-six additional viruses in 1C351.a, whose names are not updated by this rule, have new CCL designations. All seventeen of the viruses in 1C351.a whose names are updated by this final rule also have new CCL designations, as do the two aforementioned viruses that are being moved from 1C351.b to 1C351.a (both of whose names are updated, as well).

| Previous names of AG-controlled viruses | Current names of AG-controlled viruses | Previous CCL designation | Current CCL designation |
|---|---|---|---|
| African horse sickness virus | No change | ECCN 1C351.a.1 | No change. |
| African swine fever virus | No change | ECCN 1C351.a.2 | No change. |
| Andes virus | No change | ECCN 1C351.a.3 | No change. |
| Avian influenza virus | No change | ECCN 1C351.a.4 | No change. |
| Bluetongue virus | No change | ECCN 1C351.a.5 | No change. |
| Chapare virus | No change | ECCN 1C351.a.6 | No change. |
| Chikungunya virus | No change | ECCN 1C351.a.7 | No change. |
| Choclo virus | No change | ECCN 1C351.a.8 | No change. |
| Congo-Crimean haemorrhagic fever virus | Crimean-Congo hemorrhagic fever virus | ECCN 1C351.a.9 | ECCN 1C351.a.10. |
| Dengue fever virus | Dengue virus | ECCN 1C351.a.10 | ECCN 1C351.a.11. |
| Dobrava-Belgrade virus | No change | ECCN 1C351.a.11 | ECCN 1C351.a.12. |
| Eastern equine encephalitis virus | No change | ECCN 1C351.a.12 | ECCN 1C351.a.13. |
| Ebola virus | Ebolavirus (includes all members of the Ebolavirus genus). | ECCN 1C351.a.13 | ECCN 1C351.a.14. |
| Foot and mouth disease virus | Foot-and-mouth disease virus | ECCN 1C351.a.14 | ECCN 1C351.a.15. |
| Goat pox virus | Goatpox virus | ECCN 1C351.a.15 | ECCN 1C351.a.16. |
| Guanarito virus | No change | ECCN 1C351.a.16 | ECCN 1C351.a.17. |
| Hantaan virus | No change | ECCN 1C351.a.17 | ECCN 1C351.a.18. |
| Hendra virus (Equine morbillivirus) | No change | ECCN 1C351.a.18 | ECCN 1C351.a.19. |
| Herpes virus (Aujeszky's disease) | Suid herpesvirus 1 (Pseudorabies virus; Aujeszky's disease). | ECCN 1C351.a.19 | ECCN 1C351.a.51. |
| Hog cholera virus (syn.: swine fever virus) | Classical swine fever virus (Hog cholera virus). | ECCN 1C351.a.20 | ECCN 1C351.a.9. |
| Japanese encephalitis virus | No change | ECCN 1C351.a.21 | ECCN 1C351.a.20. |
| Junin virus | No change | ECCN 1C351.a.22 | ECCN 1C351.a.21. |
| Kyasanur Forest virus | Kyasanur Forest disease virus | ECCN 1C351.a.23 | ECCN 1C351.a.22. |
| Laguna Negra virus | No change | ECCN 1C351.a.24 | ECCN 1C351.a.23. |
| Lassa fever virus | Lassa virus | ECCN 1C351.a.25 | ECCN 1C351.a.24. |
| Louping ill virus | No change | ECCN 1C351.a.26 | ECCN 1C351.a.25. |
| Lujo virus | No change | ECCN 1C351.a.27 | ECCN 1C351.a.26. |
| Lumpy skin disease virus | No change | ECCN 1C352.a.28 | ECCN 1C351.a.27. |
| Lymphocytic choriomeningitis virus | No change | ECCN 1C351.a.29 | ECCN 1C351.a.28. |
| Machupo virus | No change | ECCN 1C351.a.30 | ECCN 1C351.a.29. |
| Marburg virus | Marburgvirus (includes all members of the Marburgvirus genus). | ECCN 1C351.a.31 | ECCN 1C351.a.30. |
| Monkey pox virus | Monkeypox virus | ECCN 1C351.a.32 | ECCN 1C351.a.31. |
| Murray Valley encephalitis virus | No change | ECCN 1C351.a.33 | ECCN 1C351.a.32. |
| Newcastle disease virus | No change | ECCN 1C351.a.34 | ECCN 1C351.a.33. |
| Nipah virus | No change | ECCN 1C351.a.35 | ECCN 1C351.a.34. |
| Omsk haemorrhagic fever virus | Omsk hemorrhagic fever virus | ECCN 1C351.a.36 | ECCN 1C351.a.35. |
| Oropouche virus | No change | ECCN 1C351.a.37 | ECCN 1C351.a.36. |
| Peste des petits ruminants virus | Peste-des-petits ruminants virus | ECCN 1C351.a.38 | ECCN 1C351.a.37. |
| Porcine enterovirus type 9 (syn.: swine vesicular disease virus). | Swine vesicular disease virus | ECCN 1C351.a.39 | ECCN 1C351.a.52. |
| Powassan virus | No change | ECCN 1C351.a.40 | ECCN 1C351.a.39. |
| Rabies virus and other members of the Lyssavirus genus. | No change | ECCN 1C351.a.41 | ECCN 1C351.a.40. |
| Reconstructed replication competent forms of the 1918 pandemic influenza virus. | Reconstructed 1918 influenza virus | ECCN 1C351.b.1 | ECCN 1C351.a.41. |
| Rift Valley fever virus | No change | ECCN 1C351.a.42 | No change. |
| Rinderpest virus | No change | ECCN 1C351.a.43 | No change. |
| Rocio virus | No change | ECCN 1C351.a.44 | No change. |
| Sabia virus | No change | ECCN 1C351.a.45 | No change. |
| SARS-associated coronavirus (SARS-CoV) | Severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus). | ECCN 1C351.b.2 | ECCN 1C351.a.47. |
| Seoul virus | No change | ECCN 1C351.a.46 | No change. |
| Sheep pox virus | Sheeppox virus | ECCN 1C351.a.47 | ECCN 1C351.a.48. |
| Sin nombre virus | Sin Nombre virus | ECCN 1C351.a.48 | ECCN 1C351.a.49. |

| Previous names of AG-controlled viruses | Current names of AG-controlled viruses | Previous CCL designation | Current CCL designation |
|---|---|---|---|
| St. Louis encephalitis virus | No change (correction needed on AG common control list, only). | ECCN 1C351.a.49 | ECCN 1C351.a.50. |
| Teschen disease virus | Porcine Teschovirus | ECCN 1C351.a.50 | ECCN 1C351.a.38. |
| Tick-borne encephalitis virus (Russian Spring-Summer encephalitis virus). | No change (correction needed on AG common control list, only). | ECCN 1C351.a.51 | ECCN 1C351.a.53. |
| Variola virus | No change | ECCN 1C351.a.52 | ECCN 1C351.a.54. |
| Venezuelan equine encephalitis virus | No change | ECCN 1C351.a.53 | ECCN 1C351.a.55. |
| Vesicular stomatitis virus | No change | ECCN 1C351.a.54 | ECCN 1C351.a.56. |
| Western equine encephalitis virus | No change | ECCN 1C351.a.55 | ECCN 1C351.a.57. |
| Yellow fever virus | No change | ECCN 1C351.a.56 | ECCN 1C351.a.58. |

With the transfer of two viruses (*i.e.,* severe acute respiratory syndrome-related coronavirus, a.k.a. SARS-related coronavirus, and reconstructed 1918 influenza virus) from ECCN 1C351.b to 1C351.a by this rule, only one virus continues to be controlled under 1C351.b: Tick-borne encephalitis virus (Siberian subtype, formerly West Siberian virus), which is listed in 1C351.b.3. This rule makes a conforming change to ECCN 1C351.b.3 by updating the cross reference therein to tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus) to reflect the re-designation of that virus (now listed under ECCN 1C351.a.53) by the amendments to ECCN 1C351.a described above.

*Amendments to ECCN 2B352 (Equipment Capable of Use in Handling Biological Materials)*

This final rule amends ECCN 2B352 on the CCL to reflect changes to the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software'' based on the February 2015 intersessional recommendations that were adopted by the AG. Specifically, this rule amends the controls on biocontainment chambers, isolators, and biological safety cabinets described in 2B352.g.2 to more fully identify the characteristics that such equipment must possess in order to be controlled under ECCN 2B352. As amended by this rule, ECCN 2B352.g.2 controls biocontainment chambers, isolators, or biological safety cabinets having all of the following characteristics, for normal operation: (i) A fully enclosed workspace where the operator is separated from the work by a physical barrier; (ii) the ability to operate at negative pressure; (iii) the means to safely manipulate items in the workspace; and (iv) the supply and exhaust air to and from the workspace is high-efficiency particulate air (HEPA) filtered.

Consistent with the AG intersessional changes described above, this rule also adds two notes to ECCN 2B352 to further clarify the scope of the controls in 2B352.g.2. Note 1 to ECCN 2B352.g.2 indicates that the items subject to these controls include class III biosafety cabinets, as specified in the World Health Organization (WHO) Laboratory Biosafety Manual (3rd edition, Geneva, 2004) or constructed in accordance with national standards, regulations or guidance. Note 2 to ECCN 2B352.g.2 indicates that these controls do not apply to isolators specially designed for barrier nursing or transportation of infected patients.

This rule also amends the controls on aerosol inhalation equipment described in ECCN 2B352.h to include nose-only exposure apparatus. As amended by this final rule, ECCN 2B352.h now controls the following aerosol inhalation equipment designed for aerosol challenge testing with microorganisms, viruses or toxins: (i) Whole-body exposure chambers having a capacity of 1 cubic meter or greater; and (ii) nose-only exposure apparatus utilizing directed aerosol flow and having a capacity for the exposure of 12 or more rodents, or 2 or more animals other than rodents, and closed animal restraint tubes designed for use with such apparatus.

All items controlled under ECCN 2B352 require a license for CB reasons to destinations indicated under CB Column 2 on the Commerce Country Chart and for AT reasons to destinations indicated in AT Column 1 on the Commerce Country Chart.

**Amendments to the CCL Based on the June 2015 AG Plenary Understandings**

*Amendments to ECCN 2B352 (Equipment Capable of Use in Handling Biological Materials)*

This final rule also amends ECCN 2B352 on the CCL to reflect changes to the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software'' based on the understandings reached at the June 2015 AG Plenary meeting. Specifically, this rule amends 2B352.e to control steam, gas or vapor sterilizable freeze-drying equipment with a condenser capacity of 10 kg of ice or greater in 24 hours (10 liters of water or greater in 24 hours) and less than 1000 kg of ice in 24 hours (less than 1,000 liters of water in 24 hours). This change is being made in recognition of the increasing viability of gas or vapor sterilizable freeze-drying equipment as an efficient and low-cost alternative to steam sterilization.

**Conforming Change to ECCN 1C351 (Human and Animal Pathogens and ''Toxins'')**

In addition to the AG plenary and intersessional changes described above, this rule amends ECCN 1C351 by adding a fifth note to the License Requirement Notes in the License Requirements section of this ECCN. This new License Requirement Note is intended to provide guidance, consistent with the AG ''List of Human and Animal Pathogens and Toxins for Export Control,'' in determining whether a particular pathogen or ''toxin'' is controlled under ECCN 1C351. License Requirement Note 5 reads as follows:

*Biological agents and pathogens are controlled under ECCN 1C351 when they are an isolated live culture of a pathogen agent, or a preparation of a toxin agent that has been isolated or extracted from any source or material, including living material that has been deliberately inoculated or contaminated with the agent. Isolated live cultures of a pathogen agent include live cultures in dormant form or in dried preparations, whether the agent is natural, enhanced or modified.*

**Addition of Angola and Burma as States Parties to the Chemical Weapons Convention (CWC)**

This rule also amends the EAR to reflect the addition of Angola and Burma as States Parties to the CWC on October 16, 2015, and August 7, 2015, respectively. Specifically, this rule amends Supplement No. 2 to part 745 of the EAR (States Parties to the CWC) to add Angola and Burma in alphabetical order. Because Angola and Burma are not AG participating

countries, their addition to the list of CWC States Parties in Supplement No. 2 to part 745 does not affect the CB Column 1 and CB Column 2 license requirements for these countries that are indicated in Supplement No. 1 to part 738 of the EAR (Commerce Country Chart). The CB Column 3 license requirements indicated for Burma, in the Commerce Country Chart, also continue to apply. However, a license is no longer required for CB or CW reasons for exports to Angola or Burma of mixtures and test kits controlled under ECCN 1C395.a and .b, respectively, although a license would be required if any of the end-user or end-use requirements in part 744 of the EAR apply.

In order to maintain consistency between the EAR and the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–721), with respect to those countries that are identified as States Parties to the CWC, this rule also amends Supplement No. 1 to part 710 of the CWCR (States Parties to the CWC) to add Angola and Burma in alphabetical order.

*Effect of This Rule on the Scope of the CB Controls in the EAR*

The changes made by this rule only marginally affect the scope of the EAR controls on precursor chemicals, human and animal pathogens/toxins, and equipment capable of use in handling biological materials.

The amendments to ECCN 1C350, which add the chemical diethylamine (C.A.S. 109–89–7), are expected to have only a small impact on the scope of the CB controls in this ECCN. This chemical has corrosive properties that, in combination with its flammable characteristics, cause it to be categorized as a hazardous substance. As such, this chemical is regulated by the Occupational Safety and Health Administration (OSHA), the Drug Enforcement Administration (DEA), and the Environmental Protection Agency (EPA) and also is listed in the Department of Transportation's (DOT) Hazardous Materials Table (see 49 CFR 171.101). For these reasons, together with the limited number of commercial applications for this chemical, there is a relatively low volume of exports of this chemical from the United States. Therefore, the addition of this chemical to ECCN 1C350 is not expected to have a significant impact on the number of export license applications that must be submitted to BIS for items controlled under this ECCN.

The scope of the CCL-based CB controls on human and animal pathogens and toxins was not affected by the addition of two viruses (*i.e.,* severe acute respiratory syndrome-related coronavirus, a.k.a. SARS-related coronavirus, and reconstructed 1918 influenza virus) to ECCN 1C351.a because these viruses were controlled under ECCN 1C351.b prior to the publication of this rule, and the license requirements that apply to items listed under 1C351.a are identical to those that apply to items listed under 1C351.b. Therefore, these changes are not expected to have a significant impact on the number of license applications that will have to be submitted for such items.

The addition of new License Requirement Note 5 to ECCN 1C351 is merely intended to provide guidance, consistent with the AG ''List of Human and Animal Pathogens and Toxins for Export Control,'' for determining whether a particular pathogen or ''toxin'' is controlled under this ECCN. It does not affect the scope of the controls of this ECCN and, therefore, is not expected to have any discernable effect on the number of license applications that will have to be submitted for items controlled under ECCN 1C351.

Although the updates in this rule to the controls on freeze-drying (lyophilization) equipment (see ECCN 2B352.e), biocontainment chambers, isolators, and biological safety cabinets (see ECCN 2B352.g.2) and aerosol inhalation equipment (see ECCN 2B352.h) represent an expansion in the number of items that require a license under ECCN 2B352, the expanded controls apply to only a relatively small percentage of these types of items that were not controlled under ECCN 2B352 prior to the publication of this rule. Consequently, any increase in the number of license applications resulting from this change is not expected to be significant, when considered as a percentage of these types of items.

Finally, the amendments adding Angola and Burma to Supplement No. 2 to part 745 of the EAR (States Parties to the CWC) and Supplement No. 1 to part 710 of the CWCR are expected to have only a small impact on the scope of the controls applicable to exports to these countries of items on the CCL that are also identified on the AG common control lists. Because Angola and Burma are not AG participating countries, the CB Column 1 and CB Column 2 license requirements for these countries, as indicated in Supplement No. 1 to part 738 of the EAR (Commerce Country Chart), continue to apply. In addition, the CB Column 3 license requirements indicated for Burma, in the Commerce Country Chart, continue to apply. However, under ECCN 1C395, a license is no longer required for CB or CW reasons for exports to Angola or Burma of mixtures and test kits controlled by ECCN 1C395.a and .b, respectively. Therefore, collectively, these changes are expected to result in a small decrease in the number of license applications that will have to be submitted for these two countries.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015 (80 FR 48233 (Aug. 11, 2015)), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58

minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget, by email to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230 or by email to *RPD2@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to the Australia Group (AG). The AG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of chemical and biological weapons. The AG consists of 41 member countries that act on a consensus basis and the amendments set forth in this rule implement changes made to the AG common control lists (as a result of the adoption of the recommendations made at the February 2015 AG intersessional meeting and the understandings reached at the June 2015 AG plenary meeting) and other changes that are necessary to ensure consistency with the controls maintained by the AG. Because the United States is a significant exporter of the items in this rule, immediate implementation of this provision is necessary for the AG to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by AG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

**List of Subjects**

*15 CFR Part 710*

Chemicals, Exports, Foreign trade, Imports, Treaties.

*15 CFR Part 745*

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 774*

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 710 of the Chemical Weapons Convention Regulations (15 CFR parts 710–721) and parts 745 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

## PART 710—[AMENDED]

■ 1. The authority citation for Part 710 continues to read as follows:

**Authority:** 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

■ 2. Supplement No. 1 to Part 710 is amended by revising the undesignated center heading ''List of States Parties as of November 1, 2013'' to read ''List of States Parties as of June 1, 2016'' and by adding, in alphabetical order, the countries ''Angola'' and ''Burma''.

## PART 745—[AMENDED]

■ 3. The authority citation for Part 745 continues to read as follows:

**Authority:** 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 4. Supplement No. 2 to Part 745 is amended by revising the undesignated center heading ''List of States Parties as of November 1, 2013'' to read ''List of States Parties as of June 1, 2016'' and by adding, in alphabetical order, the countries ''Angola'' and ''Burma''.

## PART 774—[AMENDED]

■ 5. The authority citation for Part 774 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 6. In Supplement No. 1 to Part 774, Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C350 is amended by revising paragraph d.24 and adding a new paragraph d.25 in the ''Items'' paragraph, under the ''List of Items Controlled'' section, to read as follows:

**Supplement No. 1 to Part 774—The Commerce Control List**

* * * * *

**1C350 Chemicals that may be used as precursors for toxic chemical agents (see List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Items:*

* * * * *

d. * * *

d.24. (C.A.S. #16893–85–9) Sodium hexafluorosilicate;

d.25. (C.A.S. #109–89–7) Diethylamine.

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C351 is amended by adding a Note 5 to the ''License Requirement Notes,'' under the ''License Requirements'' section, and by revising paragraphs a. and b. in the ''Items'' paragraph, under the ''List of Items Controlled'' section, to read as follows:

**1C351 Human and animal pathogens and ''toxins'', as follows (see List of Items Controlled).**

**License Requirements**

* * * * *

**License Requirement Notes:** * * *

*5. Biological agents and pathogens are controlled under this ECCN 1C351 when they are an isolated live culture of a pathogen agent, or a preparation of a toxin agent that has been isolated or extracted from any source or material, including living material that has been deliberately inoculated or contaminated with the agent. Isolated live cultures of a pathogen agent include live cultures in dormant form or in dried preparations, whether the agent is natural, enhanced or modified.*

**List of Items Controlled**

* * * * *

*Items:*

a. Viruses identified on the Australia Group (AG) ''List of Human and Animal

Pathogens and Toxins for Export Control,'' as follows:

a.1. African horse sickness virus;

a.2. African swine fever virus;

a.3. Andes virus;

a.4. Avian influenza (AI) viruses identified as having high pathogenicity (HP), as follows:

a.4.a. AI viruses that have an intravenous pathogenicity index (IVPI) in 6-week-old chickens greater than 1.2; *or*

a.4.b. AI viruses that cause at least 75% mortality in 4- to 8-week-old chickens infected intravenously.

**Note:** Avian influenza (AI) viruses of the H5 or H7 subtype that do not have either of the characteristics described in 1C352.a.4 (specifically, 1C352.a.4.a or a.4.b) should be sequenced to determine whether multiple basic amino acids are present at the cleavage site of the haemagglutinin molecule (HA0). If the amino acid motif is similar to that observed for other HPAI isolates, then the isolate being tested should be considered as HPAI and the virus is controlled under 1C352.a.4.

a.5. Bluetongue virus;

a.6. Chapare virus;

a.7. Chikungunya virus;

a.8. Choclo virus;

a.9. Classical swine fever virus (Hog cholera virus);

a.10. Crimean-Congo hemorrhagic fever virus;

a.11. Dengue virus;

a.12. Dobrava-Belgrade virus;

a.13. Eastern equine encephalitis virus;

a.14. Ebolavirus (includes all members of the Ebolavirus genus);

a.15. Foot-and-mouth disease virus;

a.16. Goatpox virus;

a.17. Guanarito virus;

a.18. Hantaan virus;

a.19. Hendra virus (Equine morbillivirus);

a.20. Japanese encephalitis virus;

a.21. Junin virus;

a.22. Kyasanur Forest disease virus;

a.23. Laguna Negra virus;

a.24. Lassa virus;

a.25. Louping ill virus;

a.26. Lujo virus;

a.27. Lumpy skin disease virus;

a.28. Lymphocytic choriomeningitis virus;

a.29. Machupo virus;

a.30. Marburgvirus (includes all members of the Marburgvirus genus);

a.31. Monkeypox virus;

a.32. Murray Valley encephalitis virus;

a.33. Newcastle disease virus;

a.34. Nipah virus;

a.35. Omsk hemorrhagic fever virus;

a.36. Oropouche virus;

a.37. Peste-des-petits ruminants virus;

a.38. Porcine Teschovirus;

a.39. Powassan virus;

a.40. Rabies virus and all other members of the Lyssavirus genus;

a.41. Reconstructed 1918 influenza virus;

**Technical Note:** 1C351.a.41 includes reconstructed replication competent forms of the 1918 pandemic influenza virus containing any portion of the coding regions of all eight gene segments.

a.42. Rift Valley fever virus;

a.43. Rinderpest virus;

a.44. Rocio virus;

a.45. Sabia virus;

a.46. Seoul virus;

a.47. Severe acute respiratory syndrome-related coronavirus (SARS-related coronavirus);

a.48. Sheeppox virus;

a.49. Sin Nombre virus;

a.50. St. Louis encephalitis virus;

a.51. Suid herpesvirus 1 (Pseudorabies virus; Aujeszky's disease);

a.52. Swine vesicular disease virus;

a.53. Tick-borne encephalitis virus (Far Eastern subtype, formerly known as Russian Spring-Summer encephalitis virus—see 1C351.b.3 for Siberian subtype);

a.54. Variola virus;

a.55. Venezuelan equine encephalitis virus;

a.56. Vesicular stomatitis virus;

a.57. Western equine encephalitis virus; *or*

a.58. Yellow fever virus.

b. Viruses identified on the APHIS/CDC ''select agents'' lists (see Related Controls paragraph #2 for this ECCN), but not identified on the Australia Group (AG) ''List of Human and Animal Pathogens and Toxins for Export Control,'' as follows:

b.1. [Reserved];

b.2. [Reserved]; *or*

b.3. Tick-borne encephalitis virus (Siberian subtype, formerly West Siberian virus—see 1C351.a.53 for Far Eastern subtype).

* * * * *

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended in the ''Items'' paragraph, under the List of Items Controlled section, by revising paragraph e., by revising paragraph g.2., by adding Notes 1 and 2 to paragraph g.2., and by revising paragraph h., to read as follows:

**2B352 Equipment Capable of Use in Handling Biological Materials, as Follows (See List of Items Controlled).**

* * * * *

**List of Items Controlled**

* * * * *

*Items:*

* * * * *

e. Steam, gas or vapor sterilizable freeze-drying equipment with a condenser capacity of 10 kg of ice or greater in 24 hours (10 liters of water or greater in 24 hours) and less than 1000 kg of ice in 24 hours (less than 1,000 liters of water in 24 hours).

* * * * *

g. * * *

g.2. Biocontainment chambers, isolators, or biological safety cabinets having all of the following characteristics, for normal operation:

g.2.a. Fully enclosed workspace where the operator is separated from the work by a physical barrier;

g.2.b. Able to operate at negative pressure;

g.2.c. Means to safely manipulate items in the workspace; *and*

g.2.d. Supply and exhaust air to and from the workspace is high-efficiency particulate air (HEPA) filtered.

**Note 1 to 2B352.g.2:** 2B352.g.2 controls class III biosafety cabinets, as specified in the WHO Laboratory Biosafety Manual (3rd edition, Geneva, 2004) or constructed in accordance with national standards, regulations or guidance.

**Note 2 to 2B352.g.2:** 2B352.g.2 does not control isolators ''specially designed'' for barrier nursing or transportation of infected patients.

h. Aerosol inhalation equipment designed for aerosol challenge testing with microorganisms, viruses or toxins, as follows:

h.1. Whole-body exposure chambers having a capacity of 1 cubic meter or greater.

h.2. Nose-only exposure apparatus utilizing directed aerosol flow and having a capacity for the exposure of 12 or more rodents, or two or more animals other than rodents, and closed animal restraint tubes designed for use with such apparatus.

* * * * *

Dated: May 31, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2016–13271 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 706

### Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972, as amended (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that *USS GERALD R. FORD* (CVN 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective June 7, 2016 and is applicable beginning May 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Commander Theron R. Korsak, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that *USS GERALD R. FORD* (CVN 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(g), pertaining to the placement of the sidelights above the hull; Annex I, paragraph 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship; Rule 21(a), pertaining to the placement of the masthead lights over the fore and aft centerline of the ship; and, Rule 21 (b), pertaining to the placement of the side lights arc of visibility. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

## PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended by:

■ a. In Table Two, adding, in alpha numerical order, by vessel number, an entry for *USS GERALD R. FORD* (CVN 78);

■ b. In Table Three, adding, in alpha numerical order, by vessel number, an entry for *USS GERALD R. FORD* (CVN 78); and

■ c. In Table Five, adding, in alpha numerical order, by vessel number, an entry for *USS GERALD R. FORD* (CVN 78).

**§ 706.2 Certifications of the Secretary of the Navy Under Executive Order 11964 and 33 U.S.C. 1605.**

* * * * *

TABLE TWO

| Vessel | No. | Masthead lights, distance to stbd of keel in meters; rule 21(a) | Forward anchor light, distance below flight dk in meters; § 2(K), annex I | Forward anchor light, number of; rule 30(a)(i) | AFT anchor light, distance below flight dk in meters; rule 21(e), rule 30(a)(ii) | AFT anchor light, number of; rule 30(a)(ii) | Side lights, distance below flight dk in meters; § 2(g), annex I | Side lights, distance forward of forward masthead light in meters; § 3(b), annex I | Side lights, distance inboard of ship's sides in meters; § 3(b), annex I |
|---|---|---|---|---|---|---|---|---|---|
| * | | * | * | | * | * | * | | * |
| *USS GERALD R. FORD* .... | CVN 78 | 31.57 | ..... | ..... | ..... | ..... | 0.13 | ..... | ..... |
| * | | * | * | | * | * | * | | * |

* * * * *

TABLE THREE

| Vessel | No. | Masthead lights arc of visibility; rule 21(a) | Side lights arc of visibility; rule 21(b) | Stern light arc of visibility; rule 21(c) | Side lights distance inboard of ship's sides in meters; 3(b) annex 1 | Stern light, distance forward of stern in meters; rule 21(c) | Forward anchor light, height above hull in meters; 2(K) annex 1 | Anchor lights relation-ship of aft light to forward light in meters; 2(K) annex 1 |
|---|---|---|---|---|---|---|---|---|
| *USS GERALD R. FORD* ..... | CVN 78 | ..... | 115.6 | ..... | ..... | ..... | ..... | ..... |
| * | * | * | | * | * | * | | * |

* * * * *

TABLE FIVE

| Vessel | No. | Masthead lights not over all other lights and obstructions; annex I, sec. 2(f) | Forward masthead light not in forward quarter of ship; annex I, sec. 3(a) | After masthead light less than ½ ship's length aft of forward masthead light; annex I, sec.3(a) | Percentage horizontal separation attained |
|---|---|---|---|---|---|
| * * * | * | * | | * | * |
| *USS GERALD R. FORD* | CVN 78 | | X | | |
| * * * | * | * | | * | * |

Approved: May 9, 2016.

**A.B. Fischer,**

*Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

Dated: May 31, 2016.

**N.A. Hagerty-Ford,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2016–13260 Filed 6–6–16; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2016–0324]**

**RIN 1625–AA08**

## Special Local Regulations; Marine Events Held in the Sector Long Island Sound Captain of the Port Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing two special local regulations for two separate marine events within the Coast Guard Sector Long Island Sound (LIS) Captain of the Port (COTP) Zone. This temporary final rule is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these regulated areas is prohibited unless authorized by COTP Sector Long Island Sound.

**DATES:** This rule is effective without actual notice from 12:01 a.m. on June 7, 2016 until 5 p.m. on June 12, 2016. For the purposes of enforcement, actual notice will be used from the date the rule was signed, 18 May, 2016, until June 7, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0324 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, contact Petty Officer Jay TerVeen, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468–4446, email *Jay.C.TerVeen@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NAD 83 North American Datum 1983

### II. Background Information and Regulatory History

This rulemaking establishes two special local regulations for one regatta and one air show. Each event and its corresponding regulatory history are discussed below.

Jones Beach (Air Show): A special local regulation was established in 2015 for the Jones Beach Air Show event when the Coast Guard issued a final rule entitled, ''Special Local Regulations and Safety Zones; Marine Events held in the Sector Long Island Sound Captain of the Port Zone''. This rulemaking was published on May 18, 2015 in the **Federal Register** (80 FR 28176).

The Harvard-Yale Regatta is a reoccurring marine event with regulatory history and is cited in 33 CFR 100.100(1.1). This event has been included in this rule due to deviation from the cite date.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because doing so would be impracticable and contrary to the public interest. There is insufficient time to publish an NPRM, take public comments, and issue a final rule before these events take place. Thus, waiting for a comment period to run would inhibit the Coast Guard's mission to keep the ports and waterways safe.

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

### III. Legal Authority and Need for Rule

The legal basis for this temporary rule is 33 U.S.C. 1233.

The COTP Sector LIS has determined that the special local regulations established by this temporary final rule are necessary to provide for the safety of life on navigable waterways during these events.

### IV. Discussion of the Rule

This rule establishes two special local regulations for one regatta and one air show. The locations of these regulated areas are as follows:

SPECIAL LOCAL REGULATIONS

| | | |
|---|---|---|
| 1 ..... | Jones Beach Air Show ... | Location: There will be three areas created for the special local regulation. The first area, ''No Entry Area'', is on the navigable waterway located along the south shore of Jones Beach State Park. The second area, ''Slow/No Wake Area'', is located on the navigable waterway between Meadowbrook State Parkway and Wantagh State Parkway. The third area, ''No Southbound Traffic Area'', in the navigable waters of Zach's Bay. |
| 2 ..... | Harvard-Yale Regatta .... | Location: All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N. 072°5′14.46″ W. to Bartlett Cove 41°25′35.9″ N. 072°5′42.89″ W. (NAD 83). |

This rule establishes additional vessel movement rules within areas specifically under the jurisdiction of the special local regulations during the periods of enforcement unless authorized by the COTP or designated representative.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive order and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order12866. Accordingly, it has not been reviewed by the Office of Management and Budget. The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: (1) The enforcement of these regulated areas will be relatively short in duration, (2) persons or vessels desiring entry into the ''No Entry'' area or a deviance from the stipulations within the ''Slow/No Wake Area'' may be authorized to do so by the COTP Sector Long Island Sound or designated representative, may do so with permission from the COTP Sector LIS or a designated representative; (3) vessels can operate within the regulated area provided they do so in accordance with the regulation and (4) before the effective period, public notifications will be made to local mariners through appropriate means, which may include the Local Notice to Mariners as well as Broadcast Notice to Mariners.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit these regulated areas may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Orders 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This temporary rule involves the establishment of two regulated areas. It is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

*G. Protest Activities*

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

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233

■ 2. Add § 100.T01–0324 to read as follows:

**§ 100.T01–0324 Special Local Regulations; Marine Events held in the Sector Long Island Sound Captain of the Port Zone.**

(a) *Location.* This section will be enforced at the locations listed for each event in the Table to § 100.T01–0324.

(b) *Enforcement period.* This rule will be enforced on the dates and times listed for each event in TABLE 1 to § 100.T01–0324.

(c) *Definitions.* The following definitions apply to this section: A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. ''Official patrol vessels'' may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 100.35 apply.

(2) Operators of vessels desiring to deviate from these regulations should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so.

(3) Any vessel given permission to deviate from these regulations must comply with all directions given to them by the COTP Sector Long Island Sound, or the designated on-scene representative.

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

TABLE TO § 100.T01–0324—SPECIAL LOCAL REGULATIONS

| | | |
|---|---|---|
| 1 ..... | Jones Beach Air Show ... | • Date: May 26–29, 2016<br>• Time:<br>(1) The ''No Entry Area'' will be enforced each day from the start of the air show until 30 minutes after it concludes.<br>(2) The Slow/No Wake Area and the ''No Southbound Traffic Area'' will be enforced each day for six hours after the air show concludes.<br>• Location: ''No Entry Area'': Waters of the Atlantic Ocean off Jones Beach State Park, Wantagh, NY contained within the following described area; Beginning in approximate position 40°34′54″ N., 073°33′21″ W., then running east along the shoreline of Jones Beach State Park to approximate position 40°35′53″ N., 073°28′48″ W.; then running south to a position in the Atlantic Ocean off of Jones Beach at approximate position 40°35′05″ N., 073°28′34″ W.; then running west to approximate position 40°33′15″ N., 073°33′09″ W.; then running north to the point of origin.<br>''Slow/No Wake Area'': All navigable waters between Meadowbrook State Parkway and Wantagh State Parkway and contained within the following area. Beginning in approximate position 40°35′49.01″ N. 73°32′33.63″ W. then north along the Meadowbrook State Parkway to its intersection with Merrick Road in approximate position 40°39′14.00″ N. 73°34′00.76″ W. then east along Merrick Road to its intersection with Wantagh State Parkway in approximate position 40°39′51.32″ N. 73°30′43.36″ W. then south along the Wantagh State Parkway to its intersection with Ocean Parkway in approximate position 40°35′47.30″ N. 73°30′29.17″ W. then west along Ocean Parkway to its intersection with Meadowbrook State Parkway at the point of origin in approximate position 40°35′49.01″ N. 73°32′33.63″ W.<br>''No Southbound Traffic Area'': All navigable waters of Zach's Bay south of the line connecting a point near the western entrance to Zach's Bay in approximate position 40°36′29.20″ N., 073°29′22.88″ W. and a point near the eastern entrance of Zach's Bay in approximate position 40°36′16.53″ N., 073°28′57.26″ W. |

TABLE TO § 100.T01–0324—SPECIAL LOCAL REGULATIONS—Continued

| | | |
|---|---|---|
| 2 ..... | Harvard-Yale Regatta .... | • Date: June 12, 2016<br>• Time: 2:00 p.m. to 5:00 p.m.<br>• Location: ''All waters of the Thames River at New London, Connecticut, between the Penn Central Draw Bridge 41°21′46.94″ N. 072°5′14.46″ W. to Bartlett Cove 41°25′35.9″ N. 072°5′42.89″ W. (NAD 83).<br>• Additional Stipulations: Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessels situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel. The last 1,000 feet of the race course near the finish line will be delineated by four temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event. Spectator craft shall not anchor: to the west of the race course, between Scotch Cap and Bartlett Point Light, or within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course. During the effective period all vessels shall proceed at a speed not to exceed six knots in the regulated area. Spectator vessels shall not follow the crews during the races. Swimming is prohibited in the vicinity of the race course during the races. A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating dry-docks. |

Dated: May 18, 2016.

**E.J. Cubanski, III,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.*

[FR Doc. 2016–13414 Filed 6–6–16; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2016–0355]**

**RIN 1625–AA08**

## Special Local Regulation for Marine Events; James River, Midlothian, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard will establish a special local regulation during the VBC Sprints Regatta event on the James River. The event consists of a series of crew rowing and sculling races to be held on the waters of the James River, near Robious Landing Park in Midlothian, Virginia. This regulated area will restrict vessel traffic and is necessary to provide for the safety of life on the navigable waters during the event.

**DATES:** This rule is effective from 8:30 a.m. through 6 p.m. on June 18, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0355 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, U.S. Coast Guard; telephone 757–668–5580, email *hamptonroadswaterway@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because information about the Regatta on June 18, 2016 not received in sufficient time to permit publication of an NPRM.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the regulated area's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this special local regulation under authority in 33 U.S.C. 1233. The Coast Guard is establishing a temporary special local regulation on specified waters of the James River near Robious Landing Park in Midlothian, Virginia. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the regulated area during the VBC Sprints Regatta.

### IV. Discussion of the Rule

The Captain of the Port Hampton Roads is establishing special local regulation on the specified waters of the James River bound by the following coordinates: 37°33′35.193″ N. 077°38′51.6156″ W.; thence to 37°33′33.7608″ N./077°38′51.1044″ W.; thence to 37°33′33.75″ N./077°38′8.88″ W.; thence to 37°33′36.0174″ N./077°38′8.8008″ W. (NAD 1983), in the vicinity of Robious Landing Park in Midlothian, VA. This regulated area still allows for navigation on the waterway. This regulated area will be enforced from 8:30 a.m. to 6 p.m. on June 18, 2016. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

The Captain of the Port will utilize various methods, including those listed in 33 CFR 165.7, provide notice to the affected segments of the public of the regulated area and restrictions. This includes publication in the Local Notice to Mariners Broadcast and Marine Information Broadcasts.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the regulated area. Vessel traffic will be able to safely transit around this regulated area which will impact a small designated area of the James River in Midlothian, VA for less than one day and in an area where vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the regulated area and the rule allows vessels to seek permission to enter the regulated area.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the instruction. This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

### *G. Protest Activities*

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

## List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Add temporary § 100.35T05–0355 to read as follows:

### § 100.35T05–0355 James River, Midlothian, VA.

(a) *Definitions:* For the purposes of this section, *Captain of the Port* means the Commander, Sector Hampton Roads. *Representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized to act on the behalf of the Captain of the Port. *Participants* mean individuals and vessels involved in the rowing and sculling races of the VBC Sprints Regatta.

(b) *Location.* The regulated area is established for the waters for the James River near the Robious Landing Park within the areas bounded by coordinates 37°33′35.193″ N./077°38′51.6156″ W.; thence to 37°33′33.7608″ N./077°38′51.1044″ W.; thence to 37°33′33.75″ N./077°38′8.88″ W.; thence to 37°33′36.0174″ N./077°38′8.8008″ W. (NAD 1983) in Midlothian, VA.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing special local regulations in § 100.35 of this part.

(2) With the exception of participants, entry into or remaining in this safety zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(3) All vessels underway within this regulated area at the time it is implemented are to depart the area immediately, unless they are participants.

(4) The Captain of the Port, Hampton Roads or his representative can be contacted at telephone number (757) 668–5555.

(5) The Coast Guard and designated security vessels enforcing the regulated area can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(6) This section does not apply to participants and vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(7) The U.S. Coast Guard may be assisted in the patrol and enforcement of the regulated area by Federal, State, and local agencies.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. to 6 p.m. on June 18, 2016.

Dated: May 17, 2016.

**Christopher S. Keane,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2016–13413 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2016–0468]**

## Drawbridge Operation Regulation; Columbia River, Portland, OR and Vancouver, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Interstate 5 (I–5) Bridges across the Columbia River, mile 106.5, between Portland, Oregon, and Vancouver, Washington. The deviation is necessary to facilitate the movement of heavier than normal roadway traffic associated with the Independence Day fireworks show near the I–5 Bridges. This deviation allows the bridges to remain in the closed-to-navigation position during the event.

**DATES:** This deviation is effective from 9 p.m. to 11:59 p.m. on July 4, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2016–0468] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Oregon Department of Transportation has requested that the I–5 Bridges across the Columbia River remain closed to vessel traffic to facilitate heavier than normal roadway traffic volume associated with a fireworks show on July 4, 2016 near the bridges. The I–5 Bridges cross the Columbia River at mile 106.5, and provide three designated navigation channels with vertical clearances ranging from 39 to 72 feet above Columbia River Datum 0.0 while the lift spans are in the closed-to-navigation position. The normal operating schedule for the I–5 Bridges is codified at 33 CFR 117.869. This deviation period is from 9 p.m. to 11:59 p.m. on July 4, 2016. The deviation allows the lift spans of the I–5 Bridges across the Columbia River, mile 106.5, to remain in the closed-to-navigation position, and need not open for maritime traffic during that period. The bridge shall operate in accordance with 33 CFR 117.869 at all other times. Waterway usage on this part of the Columbia River includes vessels ranging from commercial tug and tow vessels to recreational pleasure craft.

Vessels able to pass under the bridges in the closed positions may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: June 1, 2016.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2016–13360 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2016–0469]**

## Drawbridge Operation Regulation; Hood Canal, Port Gamble, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of deviation from drawbridge regulation.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hood Canal Floating Drawbridge across Hood Canal (Admiralty Inlet), mile 5.0, near Port Gamble, WA. This deviation allows the bridge to open the Main span half-way, 300 feet; as opposed to a full opening, which is 600 feet to allow for the

replacement of bridge anchor cables for this section of the bridge.

**DATES:** This deviation is effective from 6 a.m. on August 1, 2016, until 7 p.m. on October 15, 2016.

**ADDRESSES:** The docket for this deviation, [USCG–2016–0469] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Washington Department of Transportation (WSDOT) has requested that the Hood Canal Floating Drawbridge be allowed to only open half of the Main span from 6 a.m. on August 1, 2016 until 7 p.m. on October 15, 2016 to facilitate safe and uninterrupted bridge anchor cable replacements. The Hood Canal Floating Drawbridge crosses Hood Canal, mile 5.0, near Port Gamble, WA. The bridge has two fixed spans (East and West), and one draw span (Main). The East span provides 50 feet of vertical clearance, the West span provides 35 feet of vertical clearance and the Main span provides zero feet of vertical clearance in the closed-to-navigation position. The Main span provides unlimited vertical clearance in the open-to-navigation position. Vertical clearances are referenced to mean high-water elevation.

The deviation period allows the Main span of the Hood Canal Floating Drawbridge across Hood Canal, mile 5.0, to only open half-way from 6 a.m. on August 1, 2016 until 7 p.m. on October 15, 2016.

During the time of the deviation, the drawbridge will not be able to operate according to the normal operating schedule. The normal operating schedule for the bridge is in accordance with 33 CFR 117.1045. The bridge shall operate in accordance to 33 CFR 117.1045 at all other times. Waterway usage on this part of Hood Canal includes commercial tugs and barges, U.S. Navy vessels, and small pleasure craft. Coordination has been completed with known waterway users, and no objections to the deviation have been received.

Vessels able to pass through the East and West spans may do so at anytime. The Main span does not provide passage in the closed-to-navigation position. The bridge will be able to open half the Main span for Navy vessels during emergencies, when requested by the Department of the Navy. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: June 1, 2016.

**Steven M. Fischer,**

*Bridge Administrator, Thirteenth Coast Guard District.*

[FR Doc. 2016–13359 Filed 6–6–16; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2016–0461]**

## Safety Zones; Annual Events in the Captain of the Port Detroit Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce various safety zones for annual marine events in the Captain of the Port Detroit zone from 9:20 p.m. on May 29, 2016 through 9:45 p.m. on September 4, 2016. Enforcement of these zones is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During each enforcement period, no person or vessel may enter the respective safety zone without permission of the Captain of the Port.

**DATES:** The regulations in 33 CFR 165.941 will be enforced without actual notice at various dates and times between 9:20 p.m. on June 7, 2016 through 9:45 p.m. on September 4, 2016. For purposes of enforcement, actual notice will be used from June 1, 2016 until June 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email PO1 Todd Manow, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI, 48207; telephone (313)568–9580; email *Todd.M.Manow@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Safety Zones; Annual Events in the Captain of the Port Detroit Zone, at the following dates and times for the following events, which are listed in chronological order by date and time of the event:

(1) *Catawba Island Club Memorial Day Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(56) will be enforced from 9:20 p.m. to 9:40 p.m. on May 29, 2016.

(2) *Bay-Rama Fishfly Festival Fireworks, New Baltimore, MI.* The safety zone listed in § 165.941(a)(29), all waters of Lake St. Clair-Anchor Bay, off New Baltimore City Park, within a 300-yard radius of the fireworks launch site located at position 42°41′ N., 082°44′ W. (NAD 83), usually on an evening during the first week in June, will be enforced from 9 p.m. to 11 p.m. on June 23, 2016.

(3) *St. Clair Shores Fireworks, St. Clair Shores, MI.* The safety zone listed in § 165.941(a)(39) will be enforced from 9:45 p.m. to 11 p.m. on June 24, 2016.

(4) *Washington Township Firefighters Summerfest, Toledo, OH.* The safety zone listed in § 165.941(a)(2) will be enforced from 8:30 p.m. to 10:30 p.m. on June 25, 2016.

(5) *Sigma Gamma Fireworks, Grosse Pointe Farms, MI.* The safety zone listed in § 165.941(a)(51) will be enforced from 9:45 p.m. to 10:45 p.m. on June 27, 2016.

(6) *Ford (formerly Target) Fireworks, Detroit, MI.* The first safety zone, listed in § 165.941(a)(50)(i)(A), all waters of the Detroit River bounded by the arc of a circle with a 900-foot radius with its center in position 42°19′23″ N., 083°04′34″ W. (NAD 83), on the waterfront area adjacent to 1351 Jefferson Avenue, Detroit, Michigan will be enforced from 8 a.m. on June 24, 2016 to 8 p.m. on June 27, 2016.

The second safety zone, listed in § 165.941(a)(50)(i)(B), a portion of the Detroit River bounded on the South by the International Boundary line, on the West by 083°03′30″ W. (NAD 83), on the North by the City of Detroit shoreline and on the East by 083°01′15″ W. (NAD 83), will be enforced from 8 p.m. to 11:55 p.m. on June 27, 2016.

The third safety zone listed in § 165.941(a)(50)(i)(C), a portion of the Detroit River bounded on the South by the International Boundary line, on the

West by the Ambassador Bridge, on the North by the City of Detroit shoreline, and on the East by the downstream end of Belle Isle, will be enforced from 6 p.m. to 11:59 p.m. on June 27, 2016.

(7) *Roostertail Fireworks, Detroit, MI.* The safety zone listed in § 165.941(a)(1), all waters of the Detroit River within a 300-foot radius of the fireworks launch site on shore near the Roostertail Restaurant, will be enforced from 10 p.m. to 10:30 p.m. on June 27, 2015. In the event of inclement weather on the evening of June 27, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on June 28, 2016.

(8) *Bay City Fireworks Festival, Bay City, MI.* The safety zone listed in § 165.941(a)(53), all waters of the Saginaw River near Bay City, MI, from the Veteran's Memorial Bridge south approximately 1000-yards to the River Walk Pier, will be enforced from 8 p.m. to 10:30 p.m. on June 30, and July 1 and 2, 2016. In the case of inclement weather on any scheduled day, this safety zone will be enforced from 8 p.m. to 10:30 p.m. on July 3, 2016.

(9) *Lexington Independence Festival Fireworks, Lexington, MI.* The safety zone listed in § 165.941(a)(42), all waters of Lake Huron within a 300-yard radius of the fireworks barge located 300 yards east of the Lexington break wall, will be enforced from 10 p.m. to 10:30 p.m. on July 1, 2016. In the case of inclement weather on July 1, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 2, 2016.

(10) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(21) will be enforced from 9:30 p.m. to 09:50 p.m. on July 1, 2016.

(11) *Harrisville Fireworks, Harrisville, MI.* The safety zone listed in § 165.941(a)(7), a 450-foot radius of the fireworks launch site located at the end of the break wall at the Harrisville harbor, will be enforced from 10 p.m. to 11 p.m. on July 2, 2016.

(12) *Grosse Ile Yacht Club Fireworks, Grosse Ile, MI.* The safety zone listed in § 165.941(a)(44), all waters of the Detroit River within a 300-yard radius of the fireworks launch site located at the Grosse Ile Yacht Club at position 42°06′ N., 083°09′ W. (NAD 83), will be enforced from 9:45 p.m. to 10:30 p.m. on July 2, 2016. In the case of inclement weather on July 2, 2016, this safety zone will be enforced from 9:45 p.m. to 10:30 p.m. on July 3, 2016.

(13) *Luna Pier Fireworks Show, Luna Pier, MI.* The safety zone listed in § 165.941 (a)(16) will be enforced from 9:30 p.m. to 11 p.m. on July 2, 2016.

(14) *Red, White and Blues Bang Fireworks, Huron, OH.* The safety zone listed in § 165.941(a)(22) will be enforced between from 10:30 p.m. until 10:45 p.m. on July 2, 2016.

(15) *Bay Point Fireworks Display, Marblehead, OH.* The safety zone listed in § 165.941(a)(58) will be enforced from 10 p.m. to 10:30 p.m. on July 2 and 3, 2016.

(16) *Algonac Pickerel Tournament Fireworks, Algonac, MI.* The safety zone listed in § 165.941(a)(37), all waters of the St. Clair River, within a 300-yard radius of the fireworks barge located at position 42°37′ N., 082°32′ W. (NAD 83), North of Russell Island, will be enforced from 10 p.m. to 10:30 p.m. on July 2, 2016. In the case of inclement weather on July 2, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 3, 2016.

(17) *Port Sanilac Fireworks, Port Sanilac, MI.* The safety zone listed in § 165.941(a)(38) will be enforced from 10 p.m. to 11 p.m. on July 2, 2016.

(18) *Grosse Pointe Farms Fireworks, Grosse Pointe Farms, MI.* The safety zone listed in § 165.941(a)(35), all waters of Lake St. Clair, within a 300-yard radius of the fireworks launch site at position 42°23.85′ N., 082°53.25′ W. (NAD 83), at a private park at Harbor Hill and Lake Shore Rd, will be enforced from 10 p.m. to 10:45 p.m. on July 2, 2016.

(19) *Oscoda Township Fireworks, Oscoda, MI.* The safety zone listed in § 165.941(a)(32) will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(20) *Lakeside July 4th Fireworks, Lakeside, OH.* The safety zone listed in § 165.941(a)(20) will be enforced from 9:45 p.m. to 10:30 p.m. on July 4, 2016.

(21) *Grosse Pointe Yacht Club 4th of July Fireworks, Grosse Pointe Shores, MI.* The safety zone listed in § 165.941(a)(41), all U.S. waters of the Lake St. Clair, within a 300 yard radius of position 42°26′ N., 082°52′ W. (NAD 83), approximately 500 feet east of the Grosse Point Yacht Club, will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(22) *Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI.* The safety zone listed in § 165.941(a)(46), all U.S. waters of Lake St. Clair, within a 400 yard radius of position 42°36′30″ N., 082°47′40″ W. (NAD 83), will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(23) *Port Austin Fireworks, Port Austin, MI.* The safety zone listed in § 165.941(a)(33), all waters of Lake Huron within a 300-yard radius of the fireworks launch site, at position 42°03′ N., 082°59′ W. (NAD 83), off of the Port Austin break wall, will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2016.

(24) *City of St. Clair Fireworks, St. Clair, MI.* The safety zone listed in § 165.941(a)(31) will be enforced from 10 p.m. to 10:45 p.m. on July 4, 2016. In the case of inclement weather on July 4, 2016, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 5, 2016.

(25) *Tawas City 4th of July Fireworks, Tawas City, MI.* The safety zone listed in § 165.941(a)(47), all U.S. waters of Lake Huron, within a 300 yard radius of position 44°16′ N., 083°30′ W. (NAD 83), 2000 feet west of the State Dock in East Tawas, will be enforced from 10 p.m. to 11 p.m. on July 4, 2016.

(26) *Huron Riverfest Fireworks, Huron, OH.* The safety zone listed in § 165.941(a)(23) will be enforced between from 10:15 p.m. until 10:30 p.m. on July 8, 2016.

(28) *Marine City Maritime Festival Fireworks, Marine City, MI.* The safety zone listed in § 165.941(a)(13), all waters of the St. Clair River within a 500-foot radius of the fireworks launch site located at position 42°43.15′ N., 082°29.2′ W. (NAD 83), approximately 500 feet offshore from the intersection of Pearl St. and N. Water St, will be enforced from 10 p.m. to 10:30 p.m. on August 5, 2016. In the case of inclement weather on August 5, 2016, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on August 6, 2016.

(29) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941(a)(28) will be enforced from 9:15 p.m. to 9:45 p.m. on September 4, 2016.

Under the provisions of § 165.23, entry into, transiting, or anchoring within these safety zones during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via

U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This document is issued under authority of § 165.941 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these safety zones need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 1, 2016.

**Scott B. Lemasters,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2016–13324 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Parts 207, 209, 211, 215, 237, 242, 245, and 252

## Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

**DATES:** Effective June 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

**SUPPLEMENTARY INFORMATION:** This final rule amends the DFARS as follows—

1. Directs contracting officers to DFARS Procedures, Guidance, and Information (PGI) for information on the Governmentwide moratorium on public-private competitions by adding a cross reference at DFARS 207.302 and 237.102(b);

2. Corrects a typographical error at DFARS 209.505–4(b)(ii);

3. Updates hyperlinks to information on passive radio frequency identification at DFARS 211.275–2(a)(2) and paragraphs (b)(1)(ii) and (d)(2) of DFARS clause 252.211–7006;

4. Corrects a threshold at DFARS 215.408(3)(ii)(A)(*1*)(*i*) to reflect $700,000 in lieu of $750,000 because that threshold was not subject to the inflation adjustment at DFARS Case 2014–D025 published in the **Federal Register** at 80 FR 36903;

5. Updates DFARS 237.102–75 to reference the ''Defense Acquisition Guidebook, Chapter 14, Acquisition of Services'' instead of the ''Guidebook for the Acquisition of Services;''

6. Updates DFARS 237.102–77 to reference the ''Acquisition Requirements Roadmap Tool'' instead of the ''Automated Requirements Roadmap Tool;''

7. Corrects a cross reference at DFARS 242.7202(a) by changing paragraph (e) to paragraph (d) of the clause at 252.242.7004; and

8. Corrects a cross reference at DFARS 245.102(4)(i) by changing PGI 245.201–71 to PGI 245.103–72.

**List of Subjects in 48 CFR 207, 209, 211, 215, 237, 242, 245, and 252**

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 207, 209, 211, 215, 237, 242, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 209, 211, 215, 237, 242, 245, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 207—ACQUISITION PLANNING

■ 2. Add subpart 207.3 to read as follows:

### Subpart 207.3—Contractor Versus Government Performance

Sec.
207.302 Policy.

### Subpart 207.3—Contractor Versus Government Performance

#### 207.302 Policy.

See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76.

## PART 209—CONTRACTOR QUALIFICATIONS

#### 209.505–4 [Amended]

■ 3. In section 209.505–4, amend paragraph (b)(ii) by removing ''nondisclosure'' and adding ''non-disclosure'' in its place everywhere it appears.

## PART 211—DESCRIBING AGENCY NEEDS

#### 211.275–2 [Amended]

■ 4. In section 211.275–2, amend paragraph (a)(2) introductory text by removing ''*http://www.acq.osd.mil/log/rfid/*'' and adding ''*http://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html*'' in its place.

## PART 215—CONTRACTING BY NEGOTIATION

#### 215.408 [Amended]

■ 5. Amend section 215.408, in paragraph (3)(ii)(A)(*1*)(*i*), by removing ''$750,000'' and adding ''$700,000'' in its place.

## PART 237—SERVICE CONTRACTING

■ 6. Amend section 237.102 by adding paragraph (b) to read as follows:

#### 237.102 Policy.

(b) See PGI 207.302 for information on the Governmentwide moratorium and restrictions on public-private competitions conducted pursuant to Office of Management and Budget (OMB) Circular A–76.

* * * * *

■ 7. Revise section 237.102–75 to read as follows:

#### 237.102–75 Defense Acquisition Guidebook.

See PGI 237.102–75 for information on the Defense Acquisition Guidebook, Chapter 14, Acquisition of Services.

#### 237.102–77 [Amended]

■ 8. In section 237.102–77, amend the heading and the introductory text by removing ''Automated'' and adding ''Acquisition'' in both places.

## PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

#### 242.7202 [Amended]

■ 9. In section 242.7202, amend paragraph (a) introductory text by removing ''paragraph (e)'' and adding ''paragraph (d)'' in its place.

## PART 245—GOVERNMENT PROPERTY

#### 245.102 [Amended]

■ 10. In section 245.102, amend paragraph (4)(i) by removing ''PGI 245.201–71'' and adding ''PGI 245.103–72'' in its place.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.211–7006 [Amended]**

■ 11. Amend section 252.211–7006 by—
■ a. Removing the clause date ''(SEP 2011)'' and adding ''(JUN 2016)'' in its place;
■ b. In paragraph (b)(1)(ii) introductory text, removing ''*http://www.acq.osd.mil/log/rfid/*'' and adding ''*http://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html*'' in its place;
■ c. In paragraph (d)(2), removing ''located at *http://www.acq.osd.mil/log/rfid/tag_data.htm*'' and adding ''located in the DoD Suppliers' Passive RFID Information Guide at *http://www.acq.osd.mil/log/sci/ait.html*'' in its place.

[FR Doc. 2016–13258 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 392

**[Docket No. FMCSA–2015–0396]**

**RIN 2126–AB87**

## Driving of Commercial Motor Vehicles: Use of Seat Belts

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA revises the Federal Motor Carrier Safety Regulations (FMCSRs) by requiring passengers in property-carrying commercial motor vehicles (CMVs) to use the seat belt assembly whenever the vehicles are operated on public roads in interstate commerce. This rule holds motor carriers and drivers responsible for ensuring that passengers riding in the property-carrying CMV are using the seat belts required by the Federal Motor Vehicle Safety Standards (FMVSSs).

**DATES:** This rule is effective August 8, 2016.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, Director; Carrier, Driver, and Vehicle Safety Standards, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370.

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9896.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

*A. Purpose and Summary of the Major Provisions*

Section 393.93(b)(2)–(3) of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 393.93) requires every truck and truck tractor manufactured on or after July 1, 1971, to comply with the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) No. 208 (49 CFR 571.208), relating to the installation of seat belt assemblies. They must also comply with FMVSS No. 210 (49 CFR 571.210), dealing with the installation of seat belt assembly anchorages, and FMVSS No. 207 (49 CFR 571.207), addressing seating systems more generally. Under FMVSS No. 208, trucks and multipurpose passenger vehicles with a Gross Vehicle Weight Rating (GVWR) of more than 10,000 pounds manufactured on or after September 1, 1990, are allowed by S4.3.2.1 an option to comply by providing a ''complete passenger protection system,'' but nearly all CMV manufacturers choose the second compliance option (S4.3.2.2) and install a ''belt system.'' This second option requires a seat belt assembly ''at each designated seating position.'' In short, the FMVSS and FMCSRs require seat belts at every seating position in a property-carrying CMV.

In addition, 49 CFR 392.16 requires that a CMV that has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself or herself with the seat belt assembly. In this final rule, FMCSA requires that motor carriers and drivers ensure that passengers riding in property-carrying CMVs use their seat belts when the vehicles are operated on public roads.

*B. Benefits and Costs*

As indicated above, NHTSA requires vehicle manufacturers to install driver and passenger seat belts in large trucks. FMCSA already requires drivers to use their seat belts. However, the FMCSRs were previously silent on the use of seat belts by passengers in trucks. This final rule requires that every passenger in a property-carrying CMV use a seat belt, if one is installed. The only quantifiable cost of the final rule is the value of the person's time necessary to buckle the seat belt, which is negligible. The benefits of this rule are any fatalities or injuries avoided or reduced in severity as a result of seat belt use; these benefits are discussed later.

### II. Rulemaking Documents

*A. Availability of Rulemaking Documents*

For access to docket FMCSA–2015–0396 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*B. Privacy Act*

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 *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

### III. Legal Basis for the Rulemaking

This final rule is based on the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act (49 U.S.C. 31502) authorizes FMCSA to prescribe requirements for the safety of operation and equipment standards of for-hire and private motor carriers. This final rule is directly related to safe motor carrier operations. The 1984 Act (49 U.S.C. 31136) requires FMCSA to adopt regulations to ensure, among other things, that ''commercial motor vehicles are maintained, equipped, loaded, and operated safely'' (sec. 31136(a)(1)). This rule will increase the safety, not only of passengers, but also of CMV drivers whose control of the vehicle could otherwise be affected by unsecured passengers potentially thrown about the cab as a result of emergency steering or braking maneuvers.

A 2012 amendment to the 1984 Act requires FMCSA to ensure that CMV drivers are not coerced to violate certain provisions of the FMCSRs (sec. 31136(a)(5)). Coercion is now prohibited by 49 CFR 390.6. Given the obvious value of this final rule and the ease of compliance, the Agency believes that no one will be coerced *not* to wear a seat belt. It should be noted that the 1984 Act also authorizes FMCSA to ''perform other acts [the Agency] considers appropriate'' (49 U.S.C. 31133(a)(10)).

## IV. Background

This final rule responds to a petition submitted by the Commercial Vehicle Safety Alliance (CVSA) on October 29, 2013 (available in the docket to this rulemaking). CVSA requested that FMCSA require all occupants in a property-carrying CMV to restrain themselves when the vehicle is being driven. The petition referred to data available from the Agency's Large Truck Crash Causation Study (LTCCS) (available at *http://www.fmcsa.dot.gov/research-and-analysis/research/large-truck-crash-causation-study*). Specifically, the petition noted that the 2011 LTCCS data indicate that 34 percent of truck occupants killed in fatal crashes were not wearing seat belts.

Today's final rule follows a Notice of Proposed Rulemaking (NPRM) with the same title, published in the **Federal Register** on December 10, 2015 (80 FR 76649). Although responding to CVSA's petition, the NPRM slightly modified some of the petitioner's requests. FMCSA used the word ''occupant'' in addition to ''passenger'' to make clear that the regulation would apply to any person in the property-carrying CMV. ''Occupants'' would include instructors, evaluators, or any other personnel who might be seated in a property-carrying CMV, regardless of their status. FMCSA also proposed that this requirement be applicable only if there is a seat belt assembly installed in the property-carrying CMV.

## V. Discussion of Comments and Responses

FMCSA received 17 unique comments to this rulemaking. Nine were from individuals and one was from a motor carrier, Werner Enterprises Inc. (Werner). The rest came from industry and safety organizations, including the American Trucking Associations (ATA), Advocates for Highway and Auto Safety (Advocates), NAFA Fleet Management Association (NAFA), National Rural Electric Cooperative Association (NRECA), National Safety Council (NSC), the National Transportation Safety Board (NTSB), and CVSA.

Twelve of the 17 commenters, including all 7 industry and safety organizations and the motor carrier, supported requiring passengers in property-carrying CMVs to use a seat belt, though 2 of the 12 objected to holding the motor carrier responsible for compliance. One commenter asked a question, but did not state whether he supported the rulemaking. Four of the nine individuals who submitted comments did not believe a rulemaking was necessary or did not support the rulemaking because they did not believe drivers should be responsible for a passenger's seat belt use. The other four individuals supported the rulemaking. Three commenters believed the rulemaking should be more extensive.

### *A. Compliance Responsibilities*

*Comments:* Three commenters opposed imposing a new responsibility on drivers to ensure passenger compliance with a seat belt regulation. An individual stated that neither the motor carrier nor the driver should be responsible for requiring passengers to use the seat belts, and mentioned that drivers deal with many other regulations already. Both ATA and Werner stated that a motor carrier could not and should not be responsible for the use of safety belts in CMVs, as they have no practicable way to monitor it.

Two commenters stated that requiring a driver to ensure that passengers were wearing their seat belts would be a distraction while driving. Another commenter stated that the driver would be required to police passengers. An individual thought that the Agency should enforce existing regulations and rules rather than develop new ones, and questioned whether this rule would actually save lives. One commenter believed the rulemaking would be applicable to drivers of passenger-carrying vehicles, which it is not.

ATA requested explicit clarification that the driver, not the motor carrier, would be responsible for passenger compliance with this regulation, stating that the NPRM correctly placed this burden on the driver. ATA said it would be impossible for a carrier to monitor actions of passengers and drivers in all of its vehicles. While acknowledging that a carrier may have some leverage with its drivers, ATA claimed it would have none over other occupants of a CMV. Werner echoed that position because a motor carrier would not have the ability to control a driver's or a passenger's use of seat belts. Werner stated, ''Motor carriers should not be held liable for actions of an occupant of a CMV.''

ATA also argued that the ''proposed rule does not establish how carriers would be deemed to have 'permitted' drivers to violate the seat belt use requirement.'' ATA suggested that FMCSA seek a pattern of this type of violation or an investigation into a carrier's policies before taking action against a motor carrier over passengers not wearing seat belts.

NAFA and NRECA stated that many of their members have policies that require their passengers to use seat belt restraints. NRECA wrote that the rulemaking is consistent with its culture of safety. Werner stated that it has a policy requiring seat belt use as well.

*FMCSA Response:* Many States already hold automobile drivers responsible for their passengers' seat-belt use. This rule extends that principle to all property-carrying CMVs. Commercial drivers are already required to satisfy themselves that the vehicle is in good working order (49 CFR 392.7); requiring them to ensure that occupants have fastened their seat belts is a minor additional requirement.

FMCSA disagrees with ATA's argument that motor carriers should not be held responsible for the activities of their employees and any authorized passengers (including employees and non-employees). Under 49 CFR 390.11, carriers have for decades been held responsible for their drivers' regulatory compliance—for example with the hours-of-service regulations and associated logbook requirements—even though the carrier is not able to physically supervise the driver's performance of these tasks. This rule adds a small burden (with significant potential safety benefits) to the obligations of the carrier and driver.

Furthermore, the contention that a carrier would have no control over non-drivers riding in a truck contradicts the requirements of 49 CFR 392.60, which prohibits the transportation of anyone without specific written authorization from the carrier. The motor carrier, therefore, has knowledge of each occupant of the property-carrying vehicle and can easily require that authorized passengers buckle up.

With regard to driver distraction, the rule does not require that drivers continuously monitor the passenger(s) while the vehicle is in operation. However, it is expected that the driver could observe whether the seat belts were in use before the vehicle is operated on a public road and remind the occupants seat belt usage is required if he or she notices that the passenger has unfastened the seat belt.

### *B. Enforcement*

*Comments:* Both NSC and ATA stated that this rule would cause the States to adopt similar regulations shortly after a final rule, and supported this outcome. NSC believed it is time to establish a new, uniform national standard. It commented that such a standard for property-carrying CMV occupants may further help improve seat belt use, particularly among long-haul trucks that often travel through more than one State.

ATA wrote that CMV enforcement officers would have the authority to cite

large truck occupants for failing to wear a seat belt in all 50 States and attributed increased seat belt usage to widespread enforcement of existing seat belt laws. ATA stated their support for the adoption of primary seat belt laws for all motor vehicles by all States and the implementation of a variety of strategies to enhance the use of seat belts.

*FMCSA Response:* FMCSA agrees that enforcement has encouraged the growing use of seat belts, but existing State laws are not uniform with respect to seat belt use in trucks, especially where truck passengers are concerned. This rule creates that uniformity and removes any uncertainty about regulatory requirements that may exist among motor carriers or different States. FMCSA believes that this rulemaking will address those gaps in existing laws and inconsistent enforcement; and, as a result, compliance and safety will increase even further.

*C. Sleeper Berth Restraints*

*Comments:* One individual mentioned that it would be difficult to require restraints for the second driver of a team operation who is resting in the sleeper berth. A different commenter believed that sleeper berth belt use would be a good idea for a new rulemaking.

The NTSB stated that all the reasons occupants should wear seat belts in the front of the CMV could be applied to the sleeper berth, and that restraints should be required there as well. Advocates, on the other hand, stated ''*Other than co-drivers using a sleeper berth,* all CMV occupants and passengers seated in designated seating positions should be properly belted.'' [Emphasis supplied.]

Werner stated that it has a policy requiring sleeper berth restraints to be utilized.

*FMCSA Response:* The robust sleeper berth restraints required by 49 CFR 393.76(h) are designed to keep occupants from being ejected from the CMV during a violent crash. That provision does not focus on the essential function of sleeper berths, *i.e.,* to allow drivers to sleep, even while the CMV is in motion, and thus to avoid the fatigue that contributes significantly to crash risk. Because FMCSA has no information on the effectiveness of current sleeper berth restraints in reconciling crash protection with fatigue prevention, and because standard seat belts are not required to perform that dual function, the Agency chose not to delay the benefits of the NPRM while attempting to analyze the implications of requiring the use of sleeper berth restraints. Commenters provided no information that would enable the Agency to address that topic in this rulemaking.

*D. Buses*

*Comments:* A commenter believed the proposal would include passenger-carrying vehicles, and stated that safety would be compromised if a driver were held responsible for passengers' seat-belt use. This commenter thought that law enforcement should take the lead on compliance for passengers in a passenger-carrying CMV.

The NTSB stated that the logic for requiring non-passenger-carrying CMVs to use seat belts is consistent with the logic for requiring seat belt use in passenger-carrying CMVs, and requested additional action for buses. The NTSB submitted several reports of crashes to illustrate the need for an additional rulemaking focusing on passenger-carrying CMVs. The NTSB suggested that the FMSCA address seat belt use for all occupants of passenger-carrying CMVs that are equipped with seat belts and stated, ''A rule to address all CMV passengers who have a restraint available would improve the use of the protective equipment already in place and save lives.''

*FMCSA Response:* The NPRM did not propose, nor does this final rule require, the use of seat belts in passenger-carrying CMVs. The Agency believes that, in the best interest of safety, this rulemaking should be completed as proposed without further delay. For these reasons, this final rule does not address seat belt use in passenger vehicles.

The Agency, however, is committed to passenger safety. FMCSA has developed and distributed extensive pre-trip safety briefing materials, available through its Web site.[1] NHTSA published a final rule requiring lap/shoulder belts for each passenger seat on newly manufactured over-the-road buses and other larger buses, with certain exclusions, effective November 28, 2016 (78 FR 70416, November 25, 2013). As a result of this rule, FMCSA is currently updating its outreach materials to encourage seat belt use when seat belts are available.

*E. Horses and Articulated Trailers*

*Comments:* One individual asked if people caring for horses in trailers would be subject to this rulemaking.

*FMCSA Response:* Attendants who ride in horse trailers are not protected by all of the safety requirements applicable to passengers in the cab of a truck or truck tractor, or a bus. As such, they are not subject to this final rule. Nonetheless, if there are designated seating positions for attendants in horse trailers, and seat belts are available, they should be used when the attendant is not moving about the trailer to care for the horses.

*F. Seat Belt Assembly Removed*

*Comments:* Advocates stated ''Owners and drivers of CMVs who have removed a seat belt assembly from the vehicle should not be able to evade this regulation.'' Advocates voiced concern about seat belts being removed in order to avoid compliance.

*FMCSA Response:* The likelihood that an operator of a vehicle equipped with seat belts for all occupants would remove the belts provided for non-drivers in order to avoid compliance with this rule is very remote. The quantifiable burden of compliance is essentially nil, and there is no obvious reason why anyone would remove the seat belts—it would take more work to remove the seat belts than to instruct drivers and authorized passengers to wear them.

*G. Data*

*Comments:* NSC believed the cost of the rule would be minimal, but stated that benefits could be much higher than FMCSA states in the proposal, and supported this conclusion with 2014 FARS data documenting that:

> . . . of the 337 large truck non-driver occupants involved in fatal crashes who were wearing a lap and/or shoulder belt, 6 percent were killed. Of the 186 non-driver occupants who were not wearing a lap and/or shoulder belt, 20 percent were killed. About 32 percent of these fatally injured unrestrained occupants were ejected from the truck.

The FARS data cited by NSC are consistent with the 2013 FARS data upon which FMCSA relied in its consideration of the potential safety benefits of this rule. NSC commented that ''seat belt use is the most effective countermeasure to prevent ejection. In one study of passenger vehicles, complete ejection was reduced by a factor of about 600, effectively eliminating complete ejections in those vehicles.''[2]

NSC also referred to the FMCSA Seat Belt Usage by Commercial Motor Vehicle Drivers Survey, noting that while 83.7 percent of CMV drivers

[1] *https://www.fmcsa.dot.gov/safety/passenger-safety/pre-trip-safety-information-bus-passengers.*

[2] Funk JR, Cormier JM, Bain CE, Wirth JL, Bonugli EB, Watson RA. Factors Affecting Ejection Risk in Rollover Crashes. Ann Adv Automot Med. 2012 Oct; 56: 203–211.

utilize seat belts, only 72.9 percent of CMV passengers do.[3]

CVSA referred back to the data referenced in its original petition that 34 percent of truck occupants killed in fatal crashes were not wearing a seat belt (based on 2011 LTCCS data) and re-stated the importance of this rulemaking.

ATA supported the use of seat belts and pointed to data from the 2013 Seat Belt Usage by Commercial Motor Vehicle Drivers Survey[4] that show the use of seat belts is increasing

Advocates re-stated the 2013 NHTSA FARS data presented by FMCSA, both in this final rule and the NPRM, to emphasize the ''grim'' nature of the statistics involving fatal crashes, particularly with respect to the ejection risk of unrestrained passengers.

*FMCSA Response:* Although commenters reference various sources concerning seat belt use among truck occupants, FMCSA continues to rely upon 2013 NHTSA FARS data that document the increased risk of fatality and ejection involving unrestrained passengers to support the basis for issuing a final rule, and those numbers fall within the range presented by commenters. The data provided by commenters reinforces the societal and safety benefits of this rulemaking as a measure that will ensure increased seat belt use. Though the projected numbers of lives saved vary in the data, all of the calculations involve no cost and a very small amount of time spent complying with this rule.

## VI. Today's Final Rule

This final rule makes no substantive changes to the 2015 NPRM. Under this final rule, 49 CFR 392.16 is revised to include requirements for seat belt usage by passengers in property-carrying CMVs.

## VII. Regulatory Analyses

### *A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the E.O. The Order defines ''significant regulatory action'' as one 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 government 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.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866, as supplemented by E.O. 13563, or significant within the meaning of Department of Transportation regulatory policies and procedures. This regulation will not result in an annual effect on the economy of $100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy.

According to data from NHTSA's Fatality Analysis Reporting System, available in the docket for this rulemaking,[5] in 2013, 348 non-driver occupants were in the truck at the time the vehicle was involved in a fatal crash and were wearing a lap or shoulder belt. Seventeen of those non-driver occupants were killed. Also in 2013, 122 non-driver occupants of large trucks were involved in fatal crashes and were not wearing a lap and/or shoulder belt; of these, 30 were killed. Sixteen of the 30 were totally or partially ejected from the truck. The fatality rate was five times lower for passengers who wore seat belts versus those who did not. Table 1 below presents the data described above.

TABLE 1—OUTCOMES OF NON-DRIVER TRUCK OCCUPANTS IN FATAL CRASHES

[Source: 2013 NHTSA FARS]

| | *N* | Fatalities | Fatality rate (percent) |
|---|---|---|---|
| Non-Driver Occupants | 470 | 47 | 10.0 |
| Wearing Seat Belts | 348 | 17 | 4.9 |
| Not Wearing Seat Belts | 122 | 30 | 24.6 |

FMCSA believes that some of these fatalities involving occupants not wearing seat belts could have been prevented if this regulation had been in place. This conclusion is indirectly supported by a recent study,[6] published by the Kentucky Injury Prevention and Research Center (KIPRC), which analyzed crash data from years 2000 to 2010. The study finds that ''in a moving semi-truck collision, the odds for an injury were increased by 2.25 times for both semi-truck drivers and sleeper berth passengers who did not use occupant safety restraints'' compared to those who did, with a 95 percent confidence interval ranging from an increased injury risk of 1.15 to 4.41 times to unrestrained occupants. This study provides empirical support to the safety benefits resulting from the use of occupant restraints by drivers and sleeper berth passengers—to whom the rule does not apply. FMCSA assumes that the safety benefits to passengers in property-carrying CMVs would be of similar magnitude to those noted in the KIPRC study.

While all States but one have seat belt laws, failure to use a belt may be either a primary or secondary offense and may not apply to a truck passenger. Furthermore, there may be differences in the vehicle weight threshold at which the law applies. Therefore, adopting a Federal rule applicable to non-driver

[3] Seat Belt Usage by Commercial Motor Vehicle Drivers, 2013 Survey; Executive Summary p. V. (Available in docket for this rule)

[4] 2013 Commercial Motor Vehicle Safety Belt Facts, Figures 1 and 2, available at *https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Safety_Belt%20Factsheet_508.pdf*

[5] *See* ''Restraint Use and Ejection for Large Truck Passenger Fatalities in 2013,'' Docket # FMCSA–2015–0396–0002.

[6] Bunn, Slavova, Robertson. ''Motor Vehicle Injuries Among Semi Truck Drivers and Sleeper Berth Passengers,'' *Journal of Safety Research* 44 (2013) 51–55; available at: *http://dx.doi.org/10.1016/j.jsr.2012.09.003*.

occupants of property-carrying CMVs, as defined in 49 CFR 390.5, will provide a uniform national standard. To maintain eligibility for Motor Carrier Safety Assistance Program grants, States would be required to adopt compatible seat belt rules for non-driver occupants of property-carrying CMVs within 3 years of the effective date of today's final rule.

FMCSA does not know how many trucks carry passengers or precisely how many of those passengers fail to use existing seat belts, though the Seat Belt Usage by CMV Drivers Survey indicates that, as of 2013, 73 percent of passengers in CMVs subject to this rule utilize existing seat belts, leaving a 27 percent share that do not.[7] However, given that the only quantifiable cost of the proposal is the negligible amount of time needed for occupants to buckle their seat belts,[8] the rule would benefit motor carrier employees and passengers. Seat belts have been proven to save lives. While an estimate of the number of CMV-related fatalities and injuries that could be avoided cannot be provided based on the available data, FMCSA believes motor carriers' and drivers' compliance with today's final rule requiring the use of seat belts by non-driver occupants will save lives.

In addition to the data provided in the docket during the NPRM stage of this rulemaking action, FMCSA received data from several commenters, with more extensive claims about lives saved by the use of seat belts.

FMCSA also became aware of another Federal survey on this topic, conducted by the National Institute for Occupational Safety and Health (NIOSH).[9] The NIOSH survey found that 86 percent of long-haul truck drivers self-reported regular use of seat belts, a result comparable to the FMCSA Seat Belt Usage by Commercial Motor Vehicle Drivers Survey that estimated this value to be 83.7 percent. While the NIOSH study does not speak to the frequency of passenger seat belt use, the similarity in the estimated rate of seat belt use among drivers between these surveys reinforces the Agency's confidence in the FMCSA survey's estimates of passenger seat belt use. Additionally, this did not alter the Agency's initial conclusions about data, as the final rule's findings are consistent with the proposed rule's conclusions.

The Agency believes the potential economic impact of this action is positive, because it is likely that some lives will be saved at a cost that would not begin to approach the $100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest, as there were relatively few comments to the proposed rule, and most were generally positive. This proposed rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), FMCSA does not expect the rule to have a significant economic impact on a substantial number of small entities. FMCSA believes the cost is minimal and poses no disproportionate burden to small entities.

Consequently, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities.

*C. Unfunded Mandates Reform Act of 1995*

This rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million (which is the value of $100 million in 1995 after adjusting for inflation to 2014) or more in any 1 year.

*D. Executive Order 12988 (Civil Justice Reform)*

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

*E. Executive Order 13045 (Protection of Children)*

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rule will not create an environmental risk to health or safety that may disproportionately affect children.

*F. Executive Order 12630 (Taking of Private Property)*

FMCSA reviewed rulemaking in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

*G. Executive Order 13132 (Federalism)*

A rule has Federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this rule under Executive Order 13132 and determined that it does not have Federalism implications.

*H. Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

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

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

*J. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or

[7] Seat Belt Usage by Commercial Motor Vehicle Drivers, 2013 Survey; Executive Summary p. V. (Available in docket for this rule)

[8] FMCSA acknowledges that there is a potential cost for the lost freedom of choice to not wear a seat belt, for CMV passengers in the states where no law currently requires them to use the installed seat belts. FMCSA is unable to quantify this cost, but believes that the safety benefits described herein weigh overwhelmingly in favor of requiring the use of seat belts in this case.

[9] NIOSH National Survey of Long-Haul Truck Drivers; Injury and Safety. Available at *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4631642/pdf/nihms726279.pdf.* Accessed March 31, 2016.

require through regulations. No new information collection requirements are associated with this final rule.

*K. National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The CE under paragraph 6(bb) addresses regulations concerning vehicle operation safety standards. A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov*.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

*L. Executive Order 12898 (Environmental Justice)*

Under E.O. 12898, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this rule, nor is there any collective environmental impact that would result from its promulgation.

*M. Executive Order 13211 (Energy Effects)*

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a ''significant energy action'' under that executive order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the rule does not require a Statement of Energy Effects under Executive Order 13211.

*N. E-Government Act of 2002*

The E-Government Act of 2002, Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. FMCSA has not completed an assessment of the handling of PII in connection with today's proposal because the final rule does not involve PII.

*O. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not adopt its own technical standards, there is no need to submit a statement to OMB on this matter.

*P. Privacy Impact Assessment*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This rule will not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. This final rule will not result in a new or revised Privacy Act System of Records for FMCSA.

**List of Subjects for 49 CFR Part 392**

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR part 392 as follows:

## PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 1. The authority citation for part 392 continues to read as follows:

**Authority:** 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103–311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

■ 2. Revise § 392.16 to read as follows:

**§ 392.16 Use of seat belts.**

(a) *Drivers.* No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly.

(b) *Passengers.* No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has seat belt assemblies installed at the seats for other occupants of the vehicle unless all other occupants are properly restrained by such seat belt assemblies.

Issued under the authority of delegation in 49 CFR 1.87.

**T.F. Scott Darling, III,**

*Acting Administrator.*

[FR Doc. 2016–13099 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–EX–P

# Proposed Rules

Federal Register
Vol. 81, No. 109
Tuesday, June 7, 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 AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 210, 215, 220, 225, 226, and 235

**[FNS–2016–0040]**

**RIN 0584–AE08**

### Child Nutrition Program Integrity; Extension of Comment Period

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** This rule proposes to codify several provisions of the Healthy, Hunger-Free Kids Act of 2010 affecting the integrity of the Child Nutrition Programs, including the National School Lunch Program (NSLP), the Special Milk Program for Children, the School Breakfast Program, the Summer Food Service Program (SFSP), the Child and Adult Care Food Program (CACFP) and State Administrative Expense Funds. The Department is proposing to establish criteria for assessments against State agencies and program operators who jeopardize the integrity of any Child Nutrition Program; establish procedures for termination and disqualification of entities in the SFSP; modify State agency site review requirements in the CACFP; establish State liability for reimbursements incurred as a result of a State's failure to conduct timely hearings in the CACFP; establish criteria for increased State audit funding for CACFP; establish procedures to prohibit the participation of entities or individuals terminated from any of the Child Nutrition Programs; establish serious deficiency and termination procedures for unaffiliated sponsored centers in the CACFP; eliminate cost-reimbursement food service management company contracts in the NSLP; and establish procurement training requirements for State agency and school food authority staff in the NSLP. In addition, this rulemaking would make several operational changes to improve oversight of an institution's financial management and would also include several technical corrections to the regulations. The proposed rule is intended to improve the integrity of all Child Nutrition Programs. The comment period is being extended until July 7, 2016, to provide additional time for interested parties to review and submit comments on this proposed rule.

**DATES:** The comment period for the proposed rule that was published on March 29, 2016 (81 FR 17564) has been extended from May 31, 2016 to July 7, 2016. To be assured of consideration, written comments must be postmarked on or before July 7, 2016.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. In order to ensure proper receipt, written comments must be submitted through one of the following methods only:

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Andrea Farmer, Chief, Community Meals Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Programs, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5:00 p.m., Monday through Friday.

Comments sent by other methods not listed above will not be able to be accepted and subsequently, not posted. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Duplicate comments are not considered. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Department will make the comments publicly available on the Internet via *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Karen Smith, Community Meal Programs Branch, Policy and Program Development Division, Child Nutrition Programs, Food and Nutrition Service at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Executive Summary

## I. Public Comment Procedures

Your written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason(s) for any change you recommend or proposal(s) you oppose. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. We invite specific comments on various aspects of the rule as described later in this preamble. We also invite comments from State agencies, sponsors, and providers on the administrative cost of compliance with any of the provisions in the rule. Additionally, we invite comments on the potential impact of the changes in the proposed rule on Program access, particularly in areas through the country where there are a limited number of providers available to operate the Programs. Comments received after the close of the comment period (refer to **DATES**) will not be considered or included in the Administrative Record for the final rule.

We also invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed regulations clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.,* grouping and order of sections, use of headings, and paragraphing) make it clearer or less clear?

(4) Would the rule be easier to understand if it was divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled ''Background and Discussion of the Proposed Rule'' helpful in understanding the rule? How could this description be more helpful in making the rule easier to understand?

## II. Executive Summary

*Purpose of the Regulatory Action*

This proposed rule would codify several provisions of the Healthy,

Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296, that affect the integrity of the Child Nutrition Programs, including the National School Lunch Program (NSLP), the Special Milk Program for Children (SMP), the School Breakfast Program (SBP), the Summer Food Service Program (SFSP), the Child and Adult Care Food Program (CACFP), and State Administrative Expense Funds (SAE). In addition, this rule would incorporate policy changes resulting from several findings from recently conducted targeted management evaluations of the CACFP by the Food and Nutrition Service (FNS), and USDA Office of Inspector General audit findings, as well as other miscellaneous revisions to the regulations. The rule is intended to improve the integrity of all Child Nutrition Programs.

USDA anticipates that the provisions under this proposed rule would be implemented 90 days following publication of the final rule, with the exception of those related to CACFP audit funds and those related to assessments against State agencies and program operators. The provision granting eligible State agencies additional CACFP audit funds will be implemented upon publication of the final rule. Because States and school districts have been working diligently to implement the provisions of the Healthy, Hunger-Free Kids Act, USDA anticipates that the provision establishing criteria for assessments against State agencies and program operators would be implemented one school year following publication of the final rule to provide entities the time they need to complete successful implementation.

*Summary of the Major Provisions of the Regulatory Action*

The major provisions addressed in this rule are:

*Section 303 of the HHFKA: Fines for Violating Program Requirements*—Section 303 of the HHFKA requires the Secretary to establish criteria for the imposition of fines in the Child Nutrition Programs, referred to as assessments in this proposed rule. An assessment refers to a required payment of funds from non-Federal sources. Under section 303, the Secretary or a State agency may establish an assessment against any school food authority or school administering the Child Nutrition Programs if the Secretary or the State agency determines that the school or school food authority failed to correct severe mismanagement of any program, failed to correct repeated violations of program requirements, or disregarded a requirement of which they have been informed. Section 303 also provides the Secretary the authority to establish an assessment against any State agency if the Secretary determines the State agency has failed to correct severe mismanagement of any program, failed to correct repeated violations of program requirements, or disregarded a requirement of which they have been informed.

*Section 322 of the HHFKA: SFSP Disqualification*—Section 322 requires the Secretary to establish procedures for the termination and disqualification of entities participating in the SFSP, to maintain a list of entities that have been terminated or disqualified from SFSP, and to make this list available to States for use in approving or renewing service institutions' applications for SFSP participation.

*Section 331(b) of the HHFKA: State Agency/Sponsor Review Requirements in the CACFP*—Section 331(b) requires the Secretary to develop for State agencies additional criteria or priorities for use in choosing institutions for review, including institutions at risk of having serious management problems and institutions conducting activities other than the CACFP.

*Section 332 of the HHFKA: State Liability for Payments to Aggrieved Child Care Institutions*—Section 332 requires State agencies to pay all valid claims for reimbursement, from non-Federal sources, if the required timeframes for a fair hearing are not met.

*Section 335 of the HHFKA: CACFP Audit Funding*—Section 335 allows the Department to increase the amount of audit funds made available to a CACFP State agency if the State agency demonstrates it can effectively use the funds to improve Program management in accordance with criteria established by the Department.

*Section 362 of the HHFKA: Disqualified Schools, Institutions, and Individuals*—Section 362 makes any school, institution, service institution, facility, or individual that has been terminated from any Child Nutrition Program and who is on the CACFP or SFSP National Disqualified List ineligible for participation in or administration of any Child Nutrition Program.

Costs and Benefits

While all entities—school food authorities, schools, institutions, sponsors sites, sponsoring organizations, day care centers and State agencies—administering Child Nutrition Programs will be affected by this rulemaking, the economic effect is not expected to be significant as explained below.

The comment period for this proposed rule is extended until July 7, 2016 to provide additional time for interested parties to review and submit comments on this proposed rule.

Dated: June 2, 2016.

**Yvette S. Jackson,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2016–13489 Filed 6–6–16; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 730, 747, 748, and 762

**[Docket No. 160303182–6182–01]**

**RIN 0694–AG89**

## Amendment to the Export Administration Regulations: Removal of Special Iraq Reconstruction License

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** In this rule, the Bureau of Industry and Security (BIS) proposes to amend the Export Administration Regulations (EAR) to remove the Special Iraq Reconstruction License (SIRL) from the EAR. The action, if published in final form, would further the objectives of the Retrospective Regulatory Review Initiative that directs BIS and other federal agencies to streamline regulations and reduce unnecessary regulatory burdens on the public. Specifically, the SIRL is outdated and seldom used by exporters, who now have more efficient options for exports and reexports to Iraq and transfers (in-country) in Iraq. This rule also makes conforming changes.

**DATES:** Comments must be received by July 7, 2016.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2016–0017.
- *By email directly to: publiccomments@bis.doc.gov.* Include RIN 0694–AG89 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG89.

**FOR FURTHER INFORMATION CONTACT:** Thomas Andrukonis, Director, Export Management and Compliance Division, Office of Exporter Services, Bureau of Industry and Security, by telephone at (202) 482–8016 or by email at *Thomas.Andrukonis@bis.doc.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

In this rule, the Bureau of Industry and Security (BIS) proposes to continue to advance the President's directives in the Retrospective Regulatory Review Initiative to streamline regulations, reduce unnecessary regulatory burdens on the public and modernize export controls. (See ''Improving Regulatory Review'' (Executive Order 13563 of January 18, 2011). Consistent with these directives and objectives, in this rule, BIS proposes to remove the Special Iraq Reconstruction License (SIRL) from the Export Administration Regulations (EAR).

BIS established the SIRL in 2004 (69 FR 46070, July 30, 2004) to supplement options to facilitate exports and reexports to Iraq and transfers within Iraq of items in furtherance of civil reconstruction and other projects in Iraq funded by specified entities, including the United States government. At the time of its establishment, SIRL was intended to benefit the public by allowing for faster processing times as compared to individual license applications, and longer license validity periods, which would extend to the completion or discontinuation of the associated reconstruction project (in contrast, individual license applications generally only had a two-year validity period). However, exporters supplying items used in support of the civil reconstruction efforts in Iraq have not relied on the SIRL to advance those efforts, apparently because of its complexity and narrowness.

Since 2004, BIS has processed only three applications for the SIRL, and granted only one approval, as compared to over 400 approved individual license applications for items to Iraq between 2012 and 2015. A SIRL applicant must provide details regarding the items to be exported or reexported to or transferred within Iraq, a narrative statement to identify all parties to the transaction, and a description of the reconstruction project that formed the basis of the transaction. In addition, the applicant must provide separate written statements from all agencies providing funding, and certification that all parties to the transaction will obtain licenses prior to transferring the items on the license application within Iraq or reexporting the items to end users not authorized under the SIRL. SIRL holders must submit reports when the Iraq project is discontinued or is completed and must get approval from BIS to make specified changes to the respective SIRL. These requirements are numerous compared to the individual license application process or the use of other authorizations such as eligible license exceptions, resulting in exporters choosing to apply for or use individual licenses and other authorizations under the EAR to ship items to Iraq instead of the SIRL.

In addition, with the implementation of updates to the EAR, the relative advantages of the SIRL have been offset by changes to individual licenses and other types of authorizations offered by BIS that provide less complex alternatives to the SIRL. For example, in addition to streamlined procedures for submitting license applications and improved processing times, BIS now issues individual licenses with a four-year validity period, with agency consideration of requests to extend the validity period. Similarly, most individual licenses now do not include a requirement for reports on the authorized items exported or reexported. Additionally, license exceptions such as License Exception Temporary imports, exports, and reexports, and transfers (in-country) (TMP) (Section 740.9 of the EAR) have been expanded. (TMP now includes authorizations for temporary exports to a U.S. person's foreign subsidiary, affiliates, or facility abroad outside of Country Group B. Additionally, BIS will, upon request, authorize the retention of items abroad that were exported under License Exception TMP beyond one year and up to a total of four years.)

Thus, the SIRL has proven not to be useful. Its removal from the EAR is consistent with and would advance regulatory initiatives priorities. As part of the removal, this rule also would make conforming changes in the EAR.

## Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

## Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule amends collections previously approved by the Office of Management and Budget (OMB) under Control Numbers 0694–0088, ''Simplified Network Application Processing + System (SNAP+) and the Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and 0694–0137, ''License Exemptions and Exclusions.''

The total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and the aforementioned OMB Control Numbers would be expected to decrease as a result of this proposed removal of part 747 of the EAR and related provisions if the rule is eventually issued in final form, thereby reducing burden hours associated with approved collections related to the EAR.

Public comment is sought regarding: whether the collection of information, for the provisions BIS proposes to remove, is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce at the **ADDRESSES** above, and email to OMB at *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply

with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small entities.

Economic Impact. BIS believes this rule would have no economic impact, because, although this rule would eliminate the availability of the SIRL, entities are not using the SIRL. Moreover, they could still obtain individual validated licenses from BIS to export their product(s). The individual validated licenses that BIS issues are generally less burdensome and require fewer compliance/reporting measures than the measures required for a SIRL. For example, a SIRL applicant must provide a narrative statement to identify all parties to the transaction, and a description of the reconstruction project. In addition, the applicant must provide separate written statements for all participating agencies and certification that all parties to the transaction will obtain licenses prior to transferring items within Iraq or reexporting items outside of Iraq for end users not authorized under the SIRL. SIRL holders must submit reports when the Iraq project is discontinued or is completed and must get prior approval for any changes to their SIRL. Although these requirements may be included as conditions on an individual validated license, BIS's license applications review process for individual validated licenses includes other methods, less burdensome on the exporter, to vet the bona fides of parties to the proposed transaction and to verify compliance. Also, impacted entities would have the convenience of applying for a license via the Simplified Network Application Process-Redesign (SNAP–R) System, an updated system for electronically filing export and reexport license applications, which is not available for the submission of SIRL applications. Finally, the historical lack of usage of the SIRL does not warrant maintaining such a complex option.

Number of Small Entities. Since the SIRL's introduction in 2004, there have been only three applications for it, with only one application approved. Due to the nature of the SIRL and the complexity of its requirements, BIS expects that past applicants would be considered large entities under the Small Business Administration's size standards. However, BIS does not collect data on the size or annual revenue of these entities, and thus some of these entities may be considered small under the SBA size standards. Also, although small entities likely would not be the direct or the primary users of the SIRL, BIS acknowledges that small entities may have been parties to SIRL transactions. To assist in the evaluation of a significant economic impact of this rule on a substantial number of small entities, BIS welcomes comments to explain how and to what extent your business or organization could be affected, if your business or organization is a small entity and if adoption of any of the amendments discussed in this proposed rulemaking could have a significant financial impact on your operations.

**List of Subjects**

*15 CFR Part 730*

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

*15 CFR Part 747*

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 748*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 762*

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

Accordingly, parts 730, 747, 748 and 762 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

## PART 730—[AMENDED]

■ 1. The authority citation for part 730 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

### Supplement No. 1 to Part 730—[Amended]

■ 2. Supplement No. 1 to Part 730 is amended by revising the entry for Collection number ''0694–0129''. The revision reads as follows:

**SUPPLEMENT NO. 1 TO PART 730—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

* * * * *

| Collection No. | Title | Reference in the EAR |
|---|---|---|
| * | * | * |
| 0694–0129 | Export and Reexport Controls For Iraq | §§ 732.3, 738, 744.18, 746.3(b)(1), 750, 758, 762, 772, 774. |

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## PART 747—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 747.

## PART 748—[AMENDED]

■ 4. The authority citation for part 748 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

### § 748.1—[Amended]

■ 5. Section 748.1 is amended by removing the parenthetical phrase ''(other than Special Iraq Reconstruction License applications)'' from the first sentence of paragraph (d).

### § 748.7—[Amended]

■ 6. Section 748.7 is amended by removing the parenthetical phrase ''(other than Special Iraq Reconstruction Licenses)'' from paragraphs (a) and (d).

## PART 762—[AMENDED]

■ 7. The authority citation for part 762 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

### § 762.2—[Amended]

■ 8. Section 762.2 is amended by removing and reserving paragraph (b)(17).

Dated: June 1, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2016–13397 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–33–P

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## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Parts 1, 38, 40, and 170

**RIN 3038–AD52**

## Public Staff Roundtable on Elements of Regulation Automated Trading; Reopening of Comment Period

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of staff roundtable discussion; reopening of comment period.

**SUMMARY:** On June 10, 2016, staff of the Commodity Futures Trading Commission (CFTC or Commission) will hold a public roundtable meeting, at which invited participants will discuss specific elements of the Commission's notice of proposed rulemaking (NPRM) regarding Regulation Automated Trading (Regulation AT). The staff roundtable, which will be held at the Commission's Washington, DC, office, will commence at 9:00 a.m. and end at 4:00 p.m. Additional information, including the agenda, is available in the ''Press Room'' section of the Commission's Web site at *www.cftc.gov.* In conjunction with the staff roundtable on June 10, the Commission is reopening the comment period for specific elements of Regulation AT. This additional comment period is intended to accept public comments solely on the specific items in the agenda and that arise during the staff roundtable.

**DATES:** The staff roundtable will take place on Friday, June 10, 2016, commencing at 9:00 a.m. and ending at 4:00 p.m. The comment period will be reopened as of June 10, 2016, and will close on June 24, 2016.

**ADDRESSES:** *Roundtable:* The staff roundtable will take place in the Conference Center at the Commission's headquarters at Three Lafayette Centre, 1155 21st Street NW., Washington, DC.

*Comments:* Members of the public may submit comment letters, identified by RIN 3038–AD52, by any of the following methods:

- *CFTC Web site: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the Web site.
- *Mail:* Send to Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Regarding the staff roundtable, please contact the CFTC's Office of Public Affairs at (202) 418–5080. Regarding the proposed rules in Regulation AT, please contact Sebastian Pujol Schott, Associate Director, Division of Market Oversight (DMO), *sps@cftc.gov* or 202–418–5641; Marilee Dahlman, Special Counsel, DMO, *mdahlman@cftc.gov* or 202–418–5264; Mark Schlegel, Special Counsel, DMO, *mschlegel@cftc.gov* or 202–418–5055; Andrew Ridenour, Special Counsel, DMO, *aridenour@cftc.gov* or 202–418–5438; Joseph Otchin, Attorney Advisor, DMO, *jotchin@cftc.gov* or 202–418–5623; Michael Penick, Economist, Office of the Chief Economist (OCE), *mpenick@cftc.gov* or 202–418–5279; Richard Haynes, Supervisory Research Analyst, OCE, *rhaynes@cftc.gov* or 202–418–5063; Carlin Metzger, Trial Attorney, Division of Enforcement, *cmetzger@cftc.gov* or 312–596–0536; or John Dunfee, Assistant General Counsel, Office of General Counsel, *jdunfee@cftc.gov* or 202–418–5396.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Commission's NPRM for Regulation Automated Trading was published in the **Federal Register** on December 17, 2015 (80 FR 78824). The NPRM was open for a 90-day comment period, from December 17, 2015 through March 16, 2016. The comment file for Regulation AT is available at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1646.*

### II. Staff Roundtable Agenda

The staff roundtable [1] on June 10, 2016 will address the following items: (1) potential amendments to the proposed definition of ''Direct Electronic Access'' (DEA), consistent with and in furtherance of Regulation AT's proposed registration regime; (2) potential quantitative measures to establish the population of AT Persons; (3) a potential alternative to Regulation AT's requirements for AT Persons in proposed §§ 1.80, 1.81, and 1.83(a), which alternative could require that FCMs impose specific requirements on their customers and perform due diligence regarding customers' compliance; (4) AT Persons' compliance with Regulation AT's proposed requirements for Algorithmic Trading and Algorithmic Trading systems when using third-party algorithms or systems; and (5) source code access and retention.

The staff roundtable will be open to the public with seating on a first-come, first-served basis, and will take place in the Conference Center at the Commission's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC. Members of the public may also listen by telephone. Call-in participants should be prepared to provide their first name, last name, and affiliation. The information for the conference call may be found on the CFTC's Web site at *www.cftc.gov.*

[1] *See* ''CFTC Staff to Hold Roundtable on Certain Elements of Regulation AT,'' (May 27, 2016), available at: *http://www.cftc.gov/PressRoom/PressReleases/pr7377-16.*

## III. Reopening of Comment Period

In conjunction with the staff roundtable on June 10, the Commission is also reopening the comment period for specific elements of Regulation AT. The comment period will be reopened as of June 10, 2016, and will close on June 24, 2016. The additional comment period is intended for public comments solely on the specific items in the agenda for the staff roundtable and that arise during the roundtable. Members of the public may submit comment letters, identified by RIN 3038–AD52, by any of the methods indicated in the **ADDRESSES** section of this notice. Each section of a comment letter should indicate the roundtable agenda item that such section addresses.

Please submit comments by only one method. All comments should be submitted in English or accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act (FOIA), a petition for confidential treatment of the exempt information may be submitted according to the procedures established in 17 CFR 145.9. The Commission reserves the right, but shall have no obligation, to review, prescreen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under FOIA.

Issued in Washington, DC, on June 2, 2016, by the Commission.

**Christopher J. Kirkpatrick,**

*Secretary of the Commission.*

[FR Doc. 2016–13385 Filed 6–6–16; 8:45 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF JUSTICE

## Bureau of Prisons

## 28 CFR Part 571

**[BOP–1110–P]**

**RIN 1120–AB10**

## Compassionate Release

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Bureau of Prisons (Bureau) proposes changes to its regulations on compassionate release, including changing the title to ''Reduction in Sentence in Extraordinary and Compelling Circumstances''; deleting language which indicates that the Bureau will only allow reductions in sentence for circumstances ''which could not reasonably have been foreseen by the court at the time of sentencing''; and modifying and adding language to clarify the ineligibility of certain inmates for reductions in sentence and the eligibility of District of Columbia Code felony inmates (D.C. Code felony inmates) for medical and geriatric release.

**DATES:** Written comments must be submitted on or before August 8, 2016.

**ADDRESSES:** Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Rules Unit, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

**SUPPLEMENTARY INFORMATION:**

### Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

**SUPPLEMENTARY INFORMATION:** The Bureau published a proposed rule revising all of the regulations in 28 CFR Subpart G on December 21, 2006 (71 FR 76619). We also published an interim rule making a technical change to the regulations on February 28, 2013 (78 FR 13478). Subsequently, we published another interim rule on December 5, 2013 (78 FR 73083), which provides that the Bureau's General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced when considering an inmate for compassionate release. It also states that the final decision is subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

We now withdraw the proposed rule published in 2006 and instead propose the following changes to the regulations on compassionate release: (1) Changing the title to ''Reduction in Sentence in Extraordinary and Compelling Circumstances''; (2) deleting language which indicates that the Bureau will only allow reductions in sentence for circumstances ''which could not reasonably have been foreseen by the court at the time of sentencing''; and (3) modifying and adding language to clarify the ineligibility of certain inmates for reductions in sentence and the eligibility of District of Columbia Code felony inmates (D.C. Code felony inmates) for medical and geriatric release.

**Changing the Title to ''Reduction in Sentence in Extraordinary and Compelling Circumstances.''**

28 CFR part 571, subpart G, is currently entitled ''Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g)).'' 28 CFR part 572, subpart E, is likewise entitled ''Compassionate Release (Procedures for the Implementation of 4205(g)).'' Title 18 of the United States Code, section 3582(c)(1)(A)(i), which authorizes these regulations, does not use the term ''compassionate release.'' Instead, the statute states that ''the court, upon motion of the Director of the Bureau of Prisons, may *reduce* the term of imprisonment . . . if it finds that—(i) extraordinary and compelling reasons warrant such a reduction . . . .'' [Emphasis added.]

Likewise, 18 U.S.C. 4205(g) also does not use the term ''compassionate release,'' instead stating that ''upon motion of the Bureau of Prisons, the court may *reduce* any minimum term to the time the defendant has served.'' [Emphasis added.] We are therefore proposing to change the title of subpart G to read ''Reduction in Sentence in Extraordinary and Compelling Circumstances'' to more accurately conform to the language of the statutes. We also propose to replace the phrase ''compassionate release'' with ''reduction in sentence'' where it appears in § 572.40.

**Deleting Language Indicating That the Bureau Will Only Allow Reductions in Sentence for Circumstances ''Which Could Not Reasonably Have Been Foreseen by the Court at the Time of Sentencing''**

Section 571.60 is a statement of purpose and scope of the subpart. It describes that, ''[u]nder 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served.'' This regulation also states that ''[u]nder 18 U.S.C. 3582(c)(1)(A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984.''

Currently, the regulation indicates that the Bureau uses these statutes ''in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing.'' However, neither the language regarding whether the court could reasonably foresee circumstances nor a reference to such a requirement is present in either statute. The Bureau has found it problematic and untenable to attempt to determine what the court could reasonably have foreseen at the time of sentencing and to apply this restriction in deciding whether to seek a reduction in sentence under this subpart. For that reason, we propose to delete the phrase ''which could not reasonably have been foreseen by the court at the time of sentencing'' throughout the subpart.

**Clarifying Ineligibility of Certain Inmates for Reductions in Sentence and Eligibility of District of Columbia Code Felony Inmates for Medical and Geriatric Release**

Under section 11201 of the National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. 105–33, 111 Stat. 71 (codified at D.C. Code § 24–101(a),(b)), the Bureau has custodial responsibility for felons sentenced pursuant to the District of Columbia Code. The Bureau also houses certain military prisoners and state prisoners in its facilities. The D.C. Code contains specific provisions that govern parole or suspension of a sentence on the basis of medical or geriatric conditions. *See* D.C. Code §§ 24–461 to 468. We now propose to make the following changes to clarify for inmates and the public the availability or unavailability of reductions in sentence and other forms of release to the different types of inmates in the Bureau's facilities: (1) Revising § 571.64 to include military prisoners in that section's list of inmates ineligible for reductions in sentence under the U.S. Code; and (2) adding a new paragraph (b) to § 571.60 stating that the Bureau may seek or support medical or geriatric parole or suspension of sentence for D.C. Code inmates in its custody and making it clear that the Bureau will not seek reductions in sentence for D.C. Code inmates under the U.S. Code.

Currently, § 571.64 reads as follows: ''The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of state prisoners housed in Bureau of Prisons facilities or D.C. Code offenders confined in federal institutions. The Bureau of Prisons cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable sentences.'' The current language does not mention military prisoners, who are also ineligible under these provisions. We propose to revise the language of § 571.64 to add military prisoners to its list of inmates for whom the Bureau will not seek reductions in sentence. The proposed language in § 571.64 would no longer refer to D.C. Code offenders, because we propose to add a new paragraph (b) to § 571.60 that explains separately what forms of early release the Bureau will or will not seek on behalf of D.C. Code inmates.

By adding a new paragraph (b) to § 571.60, the Bureau would make it clear that D.C. Code inmates who committed their offense on or after August 5, 2000, may be eligible for medical or geriatric suspension of sentence as described in sections 24–467 and 24–468 of the D.C. Code. A D.C. Code inmate in Bureau custody who meets the eligibility criteria of the D.C. Code may request that the Bureau seek such a suspension of sentence for the inmate consistent with sections 24–467 and 24–468 of the D.C. Code. The procedures set out in sections 571.61 through 571.63 will apply to the submission of such requests by inmates, and to their consideration and decision by the Bureau, consistent with the provisions of the D.C. Code.

Section 571.60(b) also would make it clear that D.C. Code inmates who committed their offense before August 5, 2000, may be eligible for medical or geriatric parole as described in sections 24–461 through 24–465 and 24–467 of the D.C. Code. A D.C. Code inmate in Bureau custody who meets the eligibility criteria of the D.C. Code for such parole may request that the Bureau forward an application and documentation to the United States Parole Commission consistent with sections 24–464 and 24–465 of the D.C. Code.

Section 571.60(b) would also make it clear that the Bureau will not seek reductions in sentence under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of D.C. Code inmates. The Bureau will consider requests from such inmates only under the conditions described in the D.C. Code for medical or geriatric parole or suspension of sentence.

**Other Minor Changes**

In section 571.62, Approval of request, we indicate that the ''Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by'' the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons. We also indicate that after obtaining the opinion of either the Medical Director (or Acting Medical Director) or the Assistant Director (or Acting Assistant Director),

Correctional Programs Division, the Office of General Counsel will determine if the request warrants approval.

We propose a minor change in this section and in section 571.63 to indicate that when we refer to the General Counsel, we refer to the Office of General Counsel, in order to indicate that multiple staff will be assigned review of the requests. We also make minor changes to indicate that either the Medical Director or the Acting Medical Director and either the Assistant Director, Correctional Programs Division, or the Acting Assistant Director, Correctional Programs Division, may act under this regulation. This will expedite processing of the requests in the event of possible absences of the Medical Director or Assistant Director.

We also propose to make another minor change to the phrase ''particularly extraordinary or compelling'' throughout the regulations. Under 18 U.S.C. 3582(c)(1)(A)(i), the court may, upon motion of the Director, grant a reduction in sentence if it finds that ''extraordinary and compelling reasons warrant such a reduction . . . .'' We therefore propose to change our phrase in these regulations to ''extraordinary and compelling'' instead of ''particularly extraordinary or compelling'' to conform to the language of the statute.

**Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this regulation is a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this regulation has been reviewed by the Office of Management and Budget.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of inmates committed to the custody of the Attorney General or the Director of the Bureau of Prisons. Its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects**

*28 CFR Part 571*

Prisoners.

*28 CFR Part 572*

Prisoners, probation and parole.

**Kathleen M. Kenney,**

*Assistant Director/General Counsel, Federal Bureau of Prisons.*

Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR parts 571 and 572, as follows.

## SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

## PART 571—RELEASE FROM CUSTODY

■ 1. The authority citation for 28 CFR part 571 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 3565; 3568 and 3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5031–5042; 28 U.S.C. 509 and 510; U.S. Const., Art. II, Sec. 2; 28 CFR 1.1–1.10; D.C. Official Code 24–101, 24–461 through 24–468.

### Subpart G—Reduction in Sentence in Extraordinary and Compelling Circumstances

■ 2. Revise the heading of subpart G to read as set forth above.

■ 3. In § 571.60, remove the phrase ''particularly extraordinary or compelling'' in the last sentence and add in its place the phrase ''extraordinary and compelling'', remove the phrase ''which could not reasonably have been foreseen by the court at the time of sentencing'', redesignate the text as paragraph (a), and add a new paragraph (b), to read as follows:

**§ 571.60 Purpose and scope.**

* * * * *

(b) The Bureau may request the sentencing court to suspend a sentence on the basis of medical or geriatric conditions on behalf of offenders in its custody who were sentenced pursuant to the D.C. Code and who are eligible under D.C. Code §§ 24–467 and 24–468. The Bureau may submit an application and accompanying documentation to the United States Parole Commission for medical or geriatric parole on behalf of offenders in its custody who were sentenced pursuant to the D.C. Code and who are eligible under D.C. Code §§ 24–461 to 24–465 and 24–467. The Bureau will not entertain requests from offenders sentenced pursuant to the D.C. Code that the Bureau file motions under 18 U.S.C. 4205(g) or 3582(c)(1)(A).

■ 4. In § 571.61, revise the heading, revise the third sentence of paragraph (a), and remove the phrase ''extraordinary or compelling'' in paragraph (a)(1) and add in its place ''extraordinary and compelling'', and revise the second sentence of paragraph (b). The revisions read as follows:

**§ 571.61 Initiation of request—extraordinary and compelling circumstances.**

(a) * * * An inmate may initiate a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only when there are extraordinary and compelling circumstances. * * *

* * * * *

(b) * * * Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the

Institution where the inmate is confined.

■ 5. In § 571.62, revise paragraph (a), paragraph (a)(2), and the second sentence of paragraph (b), to read as follows:

**§ 571.62 Approval of request.**

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the Office of General Counsel, and either the Medical Director (or Acting Medical Director) for medical referrals or the Assistant Director (or Acting Assistant Director), Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

* * * * *

(2) After obtaining the opinion of either the Medical Director (or Acting Medical Director) or the Assistant Director (or Acting Assistant Director), Correctional Programs Division, the Office of General Counsel will determine if the request warrants approval. The Office of General Counsel will solicit the opinion of the United States Attorney in the district in which the inmate was sentenced. With these opinions, the Office of General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision, subject to the general supervision and direction of the Attorney General and Deputy Attorney General.

* * * * *

(b) * * * Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate either forthwith or as soon as his medical condition permits and transportation can be arranged.

* * * * *

■ 6. Revise § 571.63(b) and (d), to read as follows:

**§ 571.63 Denial of request.**

* * * * *

(b) When an inmate's request is denied by the Office of General Counsel or the Director, the inmate will receive a written notice and a statement of reasons for the denial. This denial constitutes a final administrative decision.

* * * * *

(d) Because a denial by the Office of General Counsel or Director, Bureau of Prisons, constitutes a final administrative decision, an inmate may not appeal the denial through the Administrative Remedy Procedure.

■ 7. Revise § 571.64, to read as follows:

**§ 571.64 Ineligible offenders.**

The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of—

(a) A state prisoner housed in a Bureau facility;

(b) A federal offender, serving a non-parolable sentence, who committed his or her offense before November 1, 1987; or

(c) A military prisoner housed in a Bureau facility.

## PART 572—PAROLE

■ 8. The authority citation for part 572 continues to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4205, 5015 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

## Subpart E—Reduction In Sentence (Procedures for the Implementation of 18 U.S.C. 4205(g))

■ 9. Revise the heading of Subpart E to read as set forth above.

■ 10. Revise § 572.40 to read as follows:

**§ 572.40 Reduction in sentence under 18 U.S.C. 4205(g).**

18 U.S.C. 4205(g) was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. 3582(c)(1)(A). Procedures for reduction of sentence of an inmate under either provision are contained in 28 CFR part 571, subpart G.

[FR Doc. 2016–13294 Filed 6–6–16; 8:45 am]

BILLING CODE P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR part 165

**[Docket Number USCG–2016–0347]**

**RIN 1625–AA00**

## Safety Zone; Fourth of July Fireworks Murrells Inlet, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Murrells Inlet, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 22, 2016.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0347 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On April 22, 2016, The Marsh Walk Group notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. to 9:50 p.m. on July 4, 2016. The fireworks are to be launched from the end of the Veterans Fishing Pier in Murrells Inlet, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the pier.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

## III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:15 p.m. to 10 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the Veterans pier located on the Atlantic Ocean. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 9:50 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the Veterans Pier. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### *G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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.

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).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be 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 or a final rule is published.

### List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0347 under the undesignated center heading Seventh Coast Guard District to read as follows:

### § 165.T07–0347 Safety Zone; Fourth of July Fireworks Murrells Inlet, SC.

(a) This rule establishes a safety zone on all Atlantic Ocean waters within a 500 yard radius of Veterans Pier, from which fireworks will be launched.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Period.* This rule will be enforced on July 4, 2016 from 9:15 p.m. until 10 p.m.

Dated: May 31, 2016.

**G.L. Tomasulo,**

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

[FR Doc. 2016–13323 Filed 6–6–16; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2016–0346]**

**RIN 1625–AA00**

## Safety Zone; Fourth of July Fireworks North Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Charleston, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 22, 2016.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0346 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

### II. Background, Purpose, and Legal Basis

On April 18, 2016, the City of North Charleston notified the Coast Guard that it will be conducting a fireworks display from 9 p.m. to 10 p.m. on July 4, 2016. The fireworks are to be launched from a barge along the bank of the Cooper River at River Front Park in North Charleston, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

## III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 8:45 p.m. to 10:15 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the barge located at River Front Park on the Cooper River. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9 p.m. to 10 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Cooper River for 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 1 hour that would prohibit entry within 500 yards of the fireworks barge. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### *G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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.

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).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be 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 or a final rule is published.

## List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0346 under the undesignated center heading Seventh Coast Guard District to read as follows:

### § 165.T07–0346 Safety Zone; Fourth of July Fireworks North Charleston, SC.

(a) This rule establishes a safety zone on all Cooper River waters within a 500 yard radius of barge, from which fireworks will be launched.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 8:45 p.m. until 10:15 p.m.

Dated: May 31, 2016.

**G.L. Tomasulo,**

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

[FR Doc. 2016–13322 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2016–0320]**

**RIN 1625–AA00**

## Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Myrtle Beach, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 22, 2016.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0320 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

## II. Background, Purpose, and Legal Basis

On April 14, 2016, the North Myrtle Beach Chamber of Commerce notified the Coast Guard that it will be conducting a fireworks display from 9:30 to 9:55 p.m. on July 4, 2016. The fireworks are to be launched from the end of the Cherry Grove Fishing Pier in Myrtle Beach, SC. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 500-yard radius of the pier.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event.

The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

## III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:15 p.m. to 10 p.m. on July 4, 2016. The safety zone would cover all navigable waters within 500 yards of the Cherry Grove pier located on the Atlantic Ocean. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 to 9:55 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the Cherry Grove Pier. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### *G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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.

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).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be 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 or a final rule is published.

## List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0320 under the undesignated center heading Seventh Coast Guard District to read as follows:

### § 165.T07–0320 Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC.

(a) This rule establishes a safety zone on all Atlantic Ocean waters within a 500 yard radius of Cherry Grove Pier, from which fireworks will be launched.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 9:15 p.m. until 10 p.m.

Dated: May 25, 2016.

**G.L. Tomasulo,**

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

[FR Doc. 2016–13326 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2016–0241]**

**RIN 1625–AA00**

## Safety Zone, Swim Around Charleston; Charleston, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina scheduled for September 25, 2016. The temporary moving safety zone is necessary to protect swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels would be prohibited from entering the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 7, 2016.

**ADDRESSES:** You may submit comments identified by docket number USCG–2016–0241 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
E.O. Executive Order
FR Federal Register
NPRM Notice of Proposed Rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code
COTP Captain of the Port

## II. Background, Purpose, and Legal Basis

On March 17, 2016, Kathleen Wilson notified the Coast Guard that she will be sponsoring the Swim Around Charleston from 9 a.m. to 3:30 p.m. on September 25, 2016. The legal basis for the proposed rule is the Coast Guard's Authority to establish a safety zone: 33 U.S.C. 1231. The purpose of the proposed rule is to ensure safety of life on the navigable water of the United States during Swim Around Charleston.

## III. Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on the waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in

Charleston, South Carolina during Swim Around Charleston on September 25, 2016. Approximately 120 swimmers are anticipated to participate in the race. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

## IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for only seven hours; (2) the safety zone would move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone would no longer be enforced in that portion of the waterway; (3) although persons and vessels would not be able to enter or transit through the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter or transit through the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

### *B. Impact on Small Entities*

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

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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

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

### *C. Collection of Information*

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

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

### *E. Unfunded Mandates Reform Act*

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

### *F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 7 hours that would prohibit entry within the safety zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant

environmental impact from this proposed rule.

*G. Protest Activities*

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

## V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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.

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).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be 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 or a final rule is published.

## List of Subjects in 33 CFR Part 165

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0241 under the undesignated center heading Seventh Coast Guard District to read as follows:

### § 100.T07–0241 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) *Regulated area.* The following regulated area is a moving safety zone: All waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley's Point on the Wando River in approximate position 32°48′49″ N., 79°54′27″ W., crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I–526 bridge and boat landing on the Ashley River in approximate position 32°50′14″ N., 80°01′23″ W. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in the Swim Around Charleston, or serving as safety vessels.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843)740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on September 25, 2016 from 8:45 a.m. until 3:45 p.m.

Dated: May 31, 2016.

**G.L. Tomasulo,**

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

[FR Doc. 2016–13325 Filed 6–6–16; 8:45 am]

BILLING CODE 9110–04–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R06–OAR–2013–0464; FRL–9947–36–Region 6]**

## Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Interstate Transport of Air Pollution for the 2008 Ozone National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to disapprove the portion of a Louisiana State Implementation Plan (SIP) submittal pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone National Ambient Air Quality Standards (NAAQS) in other states. Disapproval will establish a 2-year deadline for the EPA to promulgate a Federal Implementation Plan (FIP) for Louisiana to address the Clean Air Act (CAA) interstate transport requirements pertaining to significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states, unless we approve a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for Louisiana.

**DATES:** Comments must be received on or before July 7, 2016.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA–R06–OAR–2013–0464, at *http://www.regulations.gov* or via email to *fuerst.sherry@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public

docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst 214–665–6454, *fuerst.sherry@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

*Docket:* The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

**FOR FURTHER INFORMATION CONTACT:** Sherry Fuerst 214–665–6454, *fuerst.sherry@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Mr. Bill Deese at 214–665–7253.

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

## I. Background

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone NAAQS from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable ''infrastructure'' elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain ''good neighbor'' provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements within CAA section 110(a)(2)(D)(i). This action reviews how the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I) were addressed in an infrastructure SIP submission from Louisiana for the 2008 ozone NAAQS. These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any emissions activity within the State from emitting air pollutants that will ''contribute significantly to nonattainment'' or ''interfere with maintenance'' of the applicable air quality standard in any other state.

Ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen ($NO_X$) and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from electric utilities and industrial facilities, motor vehicles, gasoline vapors, and chemical solvents are some of the major sources of $NO_X$ and VOCs. Because ground-level ozone formation increases with temperature and sunlight, ozone levels are generally higher during the summer. Increased temperature also increases emissions of VOCs and can indirectly increase $NO_X$ emissions.[1]

We have addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) with respect to ozone in several past regulatory actions. The $NO_X$ SIP Call, promulgated in 1998, addressed the good neighbor provision for the 1979 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS.[2] The rule required 22 states and the District of Columbia to amend their SIPs and limit $NO_X$ emissions that contribute to ozone nonattainment. The Clean Air Interstate Rule (CAIR), promulgated in 2005, addressed both the 1997 fine particulate matter ($PM_{2.5}$) and ozone standards under the good neighbor provision and required SIP revisions in 28 states and the District of Columbia to limit $NO_X$ and $SO_2$ emissions that contribute to nonattainment of those standards.[3] CAIR was remanded to us by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *modified on reh'g,* 550 F.3d 1176. In response to the remand of CAIR, we promulgated the Cross State Air Pollution Rule (CSAPR) on July 6, 2011, to address CAA section 110(a)(2)(D)(i)(I) in the eastern[4] portion of the United States.[5] With respect to ozone, CSAPR limited ozone season $NO_X$ emissions from electric generating units (EGUs). CSAPR addressed interstate transport as to the 1997 8-hour ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, but did not address the 2008 8-hour ozone standard.

## II. Louisiana SIP Revision Addressing Interstate Transport of Air Pollution for the 2008 Ozone NAAQS

On June 4, 2013, Louisiana provided us with a SIP submittal addressing CAA section 110(a)(2) ''infrastructure'' requirements for the 2008 ozone NAAQS. This action concerns the portion of the SIP submittal pertaining to the CAA section 110(a)(2)(D)(i)(I) requirement to address the interstate transport of air pollution which will significantly contribute to nonattainment or interference with maintenance of the 2008 ozone NAAQS in other states. We proposed approval on other portions of the State's submittal relating to CAA section 110(a)(2) elements A, B, C, D(i)(II), D(ii), E, F, G, H, J, K, L, and M in a separate action signed on May 18, 2016.

In its SIP submittal, Louisiana provided an ''Infrastructure Checklist'' for the 2008 ozone NAAQS and stated that the submittal substantiates that the State has adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. The checklist states that the Louisiana Department of Environmental Quality (LDEQ) submitted and we approved CAIR SIPs for both sulfur dioxide and $NO_X$ emissions, citing 72 FR 39741 (July 20, 2007) and 72 FR 55064 (September 28, 2007).[6] The checklist also notes that the controls installed to comply with CAIR are required by State law at Louisiana Administrative Code (LAC) 33:III.905 to be ''used and diligently maintained.'' The checklist also provided narrative on the D.C. Circuit's 2012 decision in *EME Homer City Generation, L.P.* v. *EPA* which vacated CSAPR and the November 19, 2012, memorandum explaining the continued implementation of CAIR until a replacement rule could be implemented.

Louisiana's SIP submittal included a response to comments document which, among other things, summarized and responded to February 15, 2013, comments from us on what was then the State's proposed SIP revision. In our comments on the proposed SIP revision, we noted that the information LDEQ

[1] Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS, 80 FR 75706, 75711 (December 3, 2015).

[2] $NO_X$ SIP Call, 63 FR 57371 (October 27, 1998).

[3] Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005).

[4] When we discuss the eastern United States we mean the contiguous U.S. states excluding the 11 western states of Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, and Wyoming.

[5] Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

[6] CAIR found that sulfur dioxide and $NO_X$ emission limits were needed in Louisiana to address interstate transport of air pollution for the 1997 $PM_{2.5}$ and 1997 ozone NAAQS (70 FR 25162, May 12, 2005).

provided was based upon the old 1997 8-hour ozone NAAQS requirements and was therefore not sufficient to support a conclusion that the State's ozone emissions do not contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS. In its response, Louisiana disagreed, and accordingly chose not to revise its proposed SIP revision or provide any additional support for its conclusions. Instead, Louisiana contended in its response to comments that, ''the information based on the 1997 8-hour ozone NAAQS requirements is relevant . . . through the CAIR $NO_X$ program in that it demonstrates the state's most recent efforts in maintaining the 8-hour ozone NAAQS and to alleviate transport pollutants.'' A copy of the Louisiana SIP submittal, which includes our February 15, 2013, comment letter and the State's response to comments, may be accessed online at *http://www.regulations.gov,* Docket No. EPA–R06–OAR–2013–0464.

**III. The EPA's Evaluation**

As noted above, we informed Louisiana in our February 15, 2013, comment letter that the information provided in the SIP submittal would not itself be sufficient to conclude that the State has adequate provisions to prohibit air pollutant emissions from within the State that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states. However, the SIP submittal provided by Louisiana cited the State's approved CAIR SIP as support for its conclusion that the State satisfied its section 110(a)(2)(D)(i)(I) obligation with respect to the 2008 ozone NAAQS.

First, CAIR was invalidated by the D.C. Circuit in *North Carolina* v. *EPA,* 531 F.3d 896 (2008). The D.C. Circuit held, among other things, that the CAIR rule did not ''achieve[] something measureable toward the goal of prohibiting sources within the State from contributing to nonattainment or interfering with maintenance in any other State.'' *Id.* at 908; *see also, e.g., id.* at 916 (EPA is not exercising its authority to make measureable progress towards the goals of section 110(a)(2)(D)(i)(I) because the emission budgets were insufficiently related to the statutory mandate). In promulgating CSAPR, we corrected our prior approvals of states' CAIR SIPs, including Louisiana's approved CAIR SIPs, ''to rescind any statements that the SIP submissions either satisfy or relieve the state of the obligation to submit a SIP to satisfy the requirements of section 110(a)(2)(D)(i)(I) with respect to the 1997 ozone and/or 1997 $PM_{2.5}$ NAAQS or any statements that EPA's approval of the SIP submissions either relieve EPA of the obligation to promulgate a FIP or remove EPA's authority to promulgate a FIP.'' 76 FR 48208, 48220. In reviewing CSAPR, the D.C. Circuit concluded that our correction of the prior CAIR approvals was appropriate, explaining ''when our decision in *North Carolina* deemed CAIR to be an invalid effort to implement the requirements of the good neighbor provision, that ruling meant that the initial approval of the CAIR SIPs was in error at the time it was done.'' *EME Homer City Generation, L.P* v. *EPA,* 795 F.3d 118, 133 (D.C. Cir. 2015). Therefore, the D.C. Circuit has clearly concluded that states cannot rely on CAIR or previously approved CAIR SIPs to satisfy the requirements of section 110(a)(2)(D)(i)(I).

Even if Louisiana could rely on its CAIR SIPs, as we stated in our comment letter, the modeling and rulemaking conducted for both CAIR and CSAPR addressed the *1997 ozone NAAQS,* not the more stringent 2008 ozone NAAQS at issue in this action. EPA-approved rules implementing a prior, less stringent NAAQS are not adequate on their own to support a demonstration regarding the impacts of in-state emissions on air quality in other states with respect to the 2008 ozone NAAQS.[7] Additionally, although we approved the Louisiana abbreviated SIP implementing the CAIR $NO_X$ trading program, neither the states nor the EPA are currently implementing the ozone-season $NO_X$ trading program promulgated in CAIR, as it has been replaced by CSAPR. Moreover, although the State cites to a State regulation requiring that already-installed controls be ''used'' and ''maintained,'' the State does not provide any explanation as to whether the sources are subject to specific emissions limitations or how the use of the controls will impact downwind air quality.

Finally, it is no longer appropriate for Louisiana to rely on the D.C. Circuit decision vacating CSAPR as a basis for concluding that its SIP is adequate. Although the D.C. Circuit initially held that states did not have an obligation to make a SIP submission addressing section 110(a)(2)(D)(i)(I) until we first quantified a state's emission reduction obligation, *see EME Homer City,* 696 F.3d 7, on April 29, 2014, the Supreme Court reversed this decision and remanded the case to the D.C. Circuit for further proceedings. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). The Supreme Court explained that ''nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations.'' *Id.* at 1601.

Because the Louisiana submittal addressed by this action concerns states' interstate transport obligations for a different and more stringent standard (the 2008 ozone NAAQS), it is not sufficient to merely cite as evidence of compliance that these older programs have been implemented by the states or the EPA.[8] The submittal lacks any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS. As such, the submittal does not provide us with a basis to agree with the conclusion that the State already has adequate provisions in the SIP to address CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS. Thus, we propose to find that the Louisiana submittal is not adequate as it did not evaluate whether emissions from the State significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

Although the Louisiana submittal contains no data or analysis to support their conclusion with respect to section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone standard, we recently shared new technical information with states to facilitate efforts to address interstate transport requirements for the 2008 ozone NAAQS. Such technical information provides further support to our determination that Louisiana is projected to significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states. We developed this technical information following the same approach used to evaluate interstate transport in CSAPR in order to support the recently proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, (80 FR 75706, December 3, 2015) (''CSAPR Update Rule'').

In CSAPR, we used detailed air quality analyses to determine whether an eastern state's contribution to

[7] Louisiana's citation to our July 20, 2007 action approving Louisiana's CAIR sulfur dioxide SIP revision is particularly inapplicable. 72 FR 39741. Sulfur dioxide is not a precursor or pollutant that contributes to ozone formation, and therefore, the implementation of any control requirements to address sulfur dioxide emissions is irrelevant to our analysis of the State's control requirements to address the 2008 ozone NAAQS.

[8] This is particularly true where, as here, Louisiana has failed to include any analysis of the downwind impacts of emissions originating within their borders. *See, e.g., Westar Energy Inc.* v. *EPA,* 608 Fed. Appx. 1, 3–4 (D.C. Cir. 2015).

downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was, therefore, not considered to significantly contribute to nonattainment or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, we proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate. We evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, we compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. Our analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded. In addition, we determined that it was important to use a relatively lower one percent threshold because there are adverse health impacts associated with ambient ozone even at low levels. We also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. We determined that a ''0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.''

In the final CSAPR, we determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the previous use of a one percent threshold in CAIR. We used a single ''bright line'' air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm. The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm. We have subsequently proposed to use the same threshold for purposes of evaluating interstate transport with respect to the 2008 ozone standard in the CSAPR Update Rule.

In 2015 we (1) provided notice of data availability (NODA) for the updated ozone transport modeling for the 2008 ozone NAAQS for public review and comment (80 FR 46271, August 4, 2015), and (2) proposed the CSAPR Update Rule to address interstate transport with respect to the 2008 ozone NAAQS (80 FR 75706, December 3, 2015). The proposed CSAPR Update Rule would further restrict ozone season $NO_X$ emissions from EGUs in 23 states, including Louisiana, beginning in the 2017 ozone season.

The modeling data released in this NODA was also used to support the proposed CSAPR Update Rule. The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, we proposed that 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. We used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. We used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case $NO_X$ and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical support documents have been included in the docket for this SIP action.

The modeling data released in the NODA and the CSAPR Update Rule are the most up-to-date information we have developed to inform our analysis of upwind state linkages to downwind air quality problems. As discussed in the CSAPR Update Rule proposal, the air quality modeling (1) identified locations in the U.S. where we expect nonattainment or maintenance problems in 2017 for the 2008 ozone NAAQS (*i.e.,* nonattainment or maintenance receptors), and (2) quantified the projected contributions of emissions from upwind states to downwind ozone concentrations at those receptors in 2017 (80 FR 75706, 75720–30, December 3, 2015). Consistent with CSAPR, we proposed to use a threshold of one percent of the 2008 ozone NAAQS (0.75 parts per billion) to identify linkages between upwind states and downwind nonattainment or maintenance receptors. We proposed that eastern states with contributions to a specific receptor that meet or exceed this screening threshold are considered ''linked'' to that receptor and were analyzed further to quantify available emissions reductions necessary to address interstate transport to these receptors.

Table 1 is a summary of the air quality modeling results for Louisiana from Tables V.D–1, V.D–2 and V.D–3 of the proposed CSAPR Update Rule.[9] As the State's downwind contribution to proposed nonattainment and maintenance receptors exceeded the threshold, the analysis for the proposal concluded that Louisiana's emissions significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS

[9] 80 FR 75706, 75727–28.

in other states. Louisiana's emissions were linked (1) to eastern nonattainment receptors in Sheboygan, Wisconsin, and the Dallas/Fort Worth and Houston areas of Texas, and (2) to eastern maintenance receptors in the Dallas/Fort Worth and Houston areas.

TABLE 1—LOUISIANA'S LARGEST CONTRIBUTION TO DOWNWIND NONATTAINMENT AND MAINTENANCE AREAS

[Proposed CSAPR Update Rule]

| 2008 Ozone NAAQS | Air quality threshold | Largest downwind contribution to nonattainment | Largest downwind contribution to maintenance | Downwind nonattainment receptors located in states | Downwind maintenance receptors located in states |
|---|---|---|---|---|---|
| 0.075 ppm (75 parts per billion or ppb). | 0.75 ppb ..... | 3.09 ppb ..... | 4.23 ppb ..... | Wisconsin, Texas ..... | Texas |

Accordingly, the most recent technical analysis available to us contradicts Louisiana's conclusion that the SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard.

We are thus proposing to disapprove the portion of the Louisiana SIP submittal pertaining to interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states—*i.e.,* element (D)(i)(I). As explained above, the Louisiana submittal did not provide an adequate technical analysis demonstrating that the SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state. Moreover, our most recent modeling indicates that emissions from Louisiana are in fact projected to significantly contribute to nonattainment and interfere with maintenance of the 2008 ozone NAAQS in other states.

## IV. Proposed Action

We propose to disapprove the portion of a June 4, 2013 Louisiana SIP submittal pertaining to CAA section 110(a)(2)(D)(i)(I), the interstate transport of air pollution which will significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states.

Pursuant to CAA section 110(c)(1), disapproval will establish a 2-year deadline for the EPA to promulgate a FIP for Louisiana to address the requirements of CAA section 110(a)(2)(D)(i) with respect to the 2008 ozone NAAQS unless Louisiana submits and we approve a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for Louisiana pursuant to CAA section 179 because this action does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

## V. Statutory and Executive Order Reviews

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

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget for review.

### *B. Paperwork Reduction Act (PRA)*

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

### *C. Regulatory Flexibility Act (RFA)*

I certify that this proposed action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

### *D. Unfunded Mandates Reform Act (UMRA)*

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

We interpret Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that we have 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 merely proposes to disapprove a SIP submission as not meeting the CAA.

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

This proposed 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 proposed rulemaking does not involve technical standards.

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

We believe 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 merely proposes to disapprove a SIP submission as not meeting the CAA.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Nitrogen dioxide, Volatile organic compounds.

Dated: May 26, 2016.

**Ron Curry,**

*Regional Administrator, Region 6.*

[FR Doc. 2016–13493 Filed 6–6–16; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 15

**[ET Docket No. 13–49; FCC 16–68]**

## Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document invites interested parties to update and refresh the record on the status of potential sharing solutions between proposed Unlicensed National Information Infrastructure (U–NII) devices and Dedicated Short Range Communications (DSRC) operations in the 5.850–5.925 GHz (U–NII–4) band. The Commission also solicits the submittal of prototype unlicensed interference-avoiding devices for testing, and seeks comment on a proposed FCC test plan to evaluate electromagnetic compatibility of unlicensed devices and DSRC. The collection of relevant empirical data will assist the FCC, the Department of Transportation, and the National Telecommunications and Information Administration in their ongoing collaboration to analyze and quantify the interference potential introduced to DSRC receivers from unlicensed transmitters operating simultaneously in the 5.850–5.925 GHz band.

**DATES:** Comments are due on or before July 7, 2016, and reply comments are due on or before July 22, 2016.

**FOR FURTHER INFORMATION CONTACT:** Howard Griboff, Office of Engineering and Technology, (202) 418–0657, email: *Howard.Griboff@fcc.gov,* or Aole Wilkins, Office of Engineering and Technology, (202) 418–2406, email: *Aole.Wilkins@fcc.gov;* TTY (202) 418–2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of a document in, ET Docket No. 13–49, FCC 16–68, adopted May 25, 2016, and released June 1, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

### Synopsis

The non-Federal Mobile Service operating on a primary basis in the 5.850–5.925 GHz band is limited to DSRC systems, a component of the Intelligent Transportation System (ITS) radio service.

In a *Notice of Proposed Rulemaking* in February 2013, the Commission explored the potential for future unlicensed operations in the 5.850–5.925 GHz band, and sought comment on technical requirements and sharing technologies and techniques that could be used by unlicensed users to protect incumbent operations, and specifically DSRC. *See Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U–NII) Devices in the 5 GHz Band, ET Docket No. 13–49, Notice of Proposed Rulemaking,* 28 FCC Rcd 1769 (2013) (*NPRM*); 78 FR 21320, April 10, 2013.

In comments on the Commission's proposal, the automobile industry and the National Telecommunications and Information Administration (NTIA) on behalf the Department of Transportation (DoT) raised potential interference concerns with respect to protecting DSRC from unlicensed users. Subsequently, in August 2013, the Regulatory Standing Committee of IEEE 802.11 formed ''the DSRC Coexistence Tiger Team'' to investigate potential mitigation techniques that might enable sharing between the proposed unlicensed devices and DSRC equipment. The IEEE Tiger Team completed its work in March 2015, stating that it was unable to reach a consensus, but instead submitted that further analyses and testing could follow.

The IEEE Tiger Team examined two proposed sharing techniques. The ''detect and avoid'' approach involves detecting the presence of DSRC signals, and avoiding using the spectrum in this band when DSRC signals are present. Under this sharing proposal, unlicensed devices would monitor the existing 10 megahertz-wide DSRC channels. If an unlicensed device detects any transmitted DSRC signal, it would avoid using the entire DSRC band to assure no interference occurs to DSRC communications. After waiting a certain amount of time the unlicensed device would again sense the DSRC spectrum to determine if any DSRC channels are in use or whether it could safely transmit.

The ''re-channelization'' approach involves splitting the DSRC spectrum into two contiguous blocks: The upper part of the band exclusively for safety-related communications, and permitting unlicensed devices to share the lower part of the band with non-safety DSRC communications. This would be accomplished by moving the control channel and the two public safety channels to the top portion of the band, and reconfiguring the remaining four DSRC service channels in the lower end of the band as two 20 megahertz channels rather than maintaining four 10 megahertz channels. Under this approach, sharing between unlicensed devices and non-safety DSRC would occur according to the sharing protocols used by standard 802.11 devices, *i.e.,* the device would listen for an ''open'' channel in the 5.850–5.895 GHz band and transmit if available. Otherwise the device would wait a very short period of time, and then try again.

The Commission now seeks comment on the merits of these two approaches. What are the benefits and drawbacks of each approach? Would one approach be better than the other (*e.g.,* minimize the risks of interference to DSRC more effectively while providing a comparable degree of meaningful access to spectrum for unlicensed devices)? For either approach, is it necessary for the Commission to specify all the details of the interference avoidance mechanism in the FCC rules or can this be addressed by relying primarily on industry standards bodies to develop the specific sharing methods? If the former, what specific technical details need to be specified in the FCC rules (*e.g.,* out of bound emissions, noise tolerance, detection threshold, channel vacate time, etc.)? Has industry agreed upon performance indicators for DSRC, and if so, what are these metrics and is there a process to hold products to these performance levels?

The Commission also seeks comment on how the choice of avoidance protocol affects the deployment and performance of DSRC. Would ''re-channelization'' require any change in the design of the DSRC electronic components contained in DSRC prototypes or just require a change in the processing of the data? The Commission seeks comment on

whether changing the channel plan would require re-testing of DSRC and, if so, precisely what would need to be done, why, and in what timeframe? Commenters responding to this question should provide specific information about why the completed tests are not applicable to re-channelization, how any new tests will differ from those already performed, and the relevant timeframes for completing these specific tasks.

Further, any testing, studies or analyses that have been performed regarding DSRC capabilities, Wi-Fi performance, interference studies or the potential benefits or drawbacks of sharing, which are relied upon by stakeholders in this proceeding, either in the past or going forward, need to be filed in the record to be considered. Additionally, has any testing been done regarding DSRC self-interference or potential harmful interference with satellite and government co-channel or adjacent users? Any such information filed should include the test plans, results, and underlying data needed to fully evaluate the submission. If there are data or reports that are not public, parties should describe the data and reports and explain why it is necessary to submit this information confidentially.

The Commission also seeks comment on what DSRC-related use cases should be expected and permitted in this band. Commenters should provide specific information regarding what DSRC applications are anticipated, what are the projected spectrum needs for each application, and how would the commenter classify each (*i.e.,* safety, non-safety, time critical or not)? Should the DSRC offerings provided on a priority or exclusive basis be restricted to safety-of-life or crash avoidance purposes? What are the technical or policy reasons for differentiating between safety-of-life and non-safety-of-life applications? Are there meaningful distinctions between DSRC applications that are safety-related and those that are not, such as applications that are time critical? For parties that advocate for re-channelization, is there a natural bifurcation point if the Commission decides to separate safety-related and non-safety-related DSRC? For instance, while entertainment, social media, maps, and parking applications are not safety-related, what is a good definition for a feature or service to be considered truly a safety-of-life use? How does our current band plan and these sharing approaches match up with international efforts for safety-related DSRC systems?

To fully evaluate the potential effects of re-channelization, the Commission requests information on the projected timeframe for introduction of DSRC deployments under the current channel plan. What market penetration (*e.g.,* percentage of cars on the road) is needed for DSRC to reliably provide safety-of-life functions or prevent vehicle-to-vehicle collisions? What are the projected timeframes for achieving the penetration levels needed for each safety-of-life or crash avoidance function to be effective? Will these penetration levels be met by equipment that is native to the automobile or through standalone or retrofit devices? Would these timeframes change if re-channelization occurs and by how much? In the meantime, what other spectrum bands, driver-assist technologies, and commercial offerings are providing similar services to those envisioned using DSRC? Is it possible that autonomous car and other technologies could bypass DSRC safety-of-life capabilities prior to reaching a sufficient technology penetration to make this service effective?

Does the 5.850–5.895 MHz portion of the band potentially offer the most value for unlicensed operations? What are the advantages and disadvantages of combining the non-safety-related channels into larger channels? How should portions of the band not required for safety-of-life applications be shared among DSRC and unlicensed operations? For instance, should non-safety of life DSRC applications share the lower re-channelized band on an equal basis with unlicensed operators or have some priority? If commercial or other non-safety DSRC applications have priority access to the band, is a detect-and-vacate protocol necessary or does the IEEE 802.11 standard or other protocols allow for prioritization of DSRC traffic without the need to vacate non-safety channels for a pre-determined time period?

In addition, the Commission invites interested parties to suggest other approaches that would facilitate unlicensed use of the 5.850–5.925 GHz band without causing harmful interference to DSRC operations. Would a hybrid approach taking elements from both the ''detect and avoid'' and the ''re-channelization'' proposals create benefits for both DSRC and U–NII users? Are there advantages to an approach where unlicensed operators would use technologies such as the standard Wi-Fi protocol to share access to the non-safety-of-life DSRC operations in the lower 45 megahertz of spectrum, while unlicensed devices would use a ''detect and avoid'' approach to avoid, and thus protect, co-channel safety-of-life DSRC operations in the upper 30 megahertz of spectrum? Is it feasible to develop a ''hybrid chip'' that would implement a DSRC standard receiver for detection purposes to allow unlicensed use, if the spectrum is clear? Would it be viable to employ an approach based on use of a database to control access to the spectrum similar to that used for the Citizens Broadband Band Radio Service at 3.5 GHz or for White Space devices in the TV and 600 MHz Service bands? The Commission asks parties to propose mitigation techniques with adequate specificity and detail so that the Commission can compare and contrast them with the proposals already being considered. In that regard, the Commission seeks comment on the viability of any new proposal, and benefits and costs of the suggested technique, and on any trade-offs related to the proposal.

The Commission invites comment on the ramifications of any of the sharing techniques relative to indoor as well as outdoor use. For instance, is re-channelization, detect and avoid, or a hybrid approach more or less likely to allow for unlicensed indoor and outdoor deployments? Do certain sharing techniques permit more or less indoor or outdoor unlicensed use in certain geographic areas? Are there technical parameters that could be put into place to obviate interference concerns and facilitate deployment of unlicensed networks in either indoor or outdoor environments? For example, would it be feasible to tie the use of lower power levels for indoor-only devices to a less rigorous DSRC detection method in those devices, leaving the more sensitive DSRC detection methods to higher power outdoor-only units? Is it reasonable to assume that indoor-only devices are less likely to cause interference to DSRC outdoors, thus allowing for less aggressive detection sensitivity? If so, what technical characteristics would be required? The Commission seeks a full record on this technique and its specification to assess whether it is possible to share the DSRC band in this manner.

The Commission invites parties to submit 5.9 GHz prototype unlicensed, interference-avoiding devices to the Commission for testing. The Commission also request that parties provide 5.9 GHz DSRC equipment, against which to test the prototype unlicensed, interference avoiding devices. In addition, the Commission requests comment on what date is reasonable for prototype submission, and what constitutes an acceptable prototype (*e.g.,* does the device need to be able to communicate with another device, or is it sufficient for the device

to only demonstrate the sharing technique?). The deadline for submission of prototypes shall be July 30, 2016; however, the Office of Engineering and Technology (OET) is delegated the authority to establish the submission requirements and grant waivers or extensions of the submission deadline or requirements, as necessary. Given the importance of this item, parties should explain in detail in any waiver or extension request why such request should be granted. Parties that would like to submit devices for testing should advise OET as soon as possible and should deliver their device at their earliest opportunity. To arrange delivery of a device, please contact Reza Biazaran at (301) 362–3052 or *reza.biazaran@fcc.gov.*

The Commission, in coordination with the DoT and NTIA, will test the prototype equipment as follows:

Phase I: Testing at the FCC Laboratory in Columbia, Maryland to determine the prototypes' technical characteristics and how they are designed to avoid causing harmful interference to DSRC.

Phase II: Basic field tests with a few vehicles at a DoT facility. The Phase II tests will determine whether the techniques to avoid interference that were evaluated in Phase I's lab tests are effective in the field.

Phase III: Tests in ''real-world'' scenarios, with many vehicles, more test devices, and at a suitable facility.

The Commission seeks comment on the proposed Phase I test plan as set forth below. The Phase I test plan describes an approach and methodology to empirically determine interference tolerance and thresholds associated with the DSRC receive components of the Vehicle-to-Vehicle (V2V) and Vehicle-to-Infrastructure (V2I) communication links relative to the introduction of U–NII emissions into the 5.850–5.925 GHz band, and to evaluate the effectiveness and reliability of any U–NII device interference mitigation capabilities. Since U–NII represents an unlicensed application for which any interference received from the operation of an authorized radio service must be accepted, the test plan does not assess the interference potential from DSRC transmissions to projected U–NII receivers.

The data resulting from the Commission's tests are intended to inform the Phase II and Phase III analyses in which other relevant factors can be given further consideration, and the analytical results can be validated through limited field tests.

The three phases of the test plan are interdependent. The Commission anticipates that all three phases of the test plan will be completed before reaching any conclusions as to how unlicensed devices can safely operate in the 5.850–5.925 GHz band. The Commission, however, expects that testing will be concluded and submitted into the record no later than January 15, 2017. Given the importance of this item, parties should explain in detail why any additional time should be allocated. Engineers from the FCC will carefully examine the options and mechanisms for sharing in the 5.850–5.925 GHz band and closely scrutinize the myriad interference prevention approaches.

The following section describes the Phase I technical characterization effort for evaluating the potential for electromagnetic compatibility (EMC) between U–NII Devices and DSRC operations associated with the ITS under the proposal to share the 5.850–5.925 GHz band.

**Proposed Phase I Test Plan**

*1.0 Introduction*

1.1 Objective

The objective of this test effort is to collect the data necessary to establish interference thresholds associated with key performance parameters that can then be used in subsequent scenario-based analyses to better assess the interference potential to DSRC operations that might be introduced from sharing the frequency band with unlicensed (U–NII) devices. In addition, any interference mitigation capabilities provided by the U–NII prototype test samples will be evaluated for viability, efficiency, and reliability.

1.2 Approach

It is recognized that the EMC concerns introduced by the proposal to share the DSRC frequency band with unlicensed operations are complex, primarily due to the dynamic variabilities associated with each system under consideration. For example, U–NII applications are predominately utilized to establish local area networks (LANs), typically in support of Wi-Fi access and usage, although fixed point-to-point communication links for supporting Internet backhaul applications are also likely. While the access points associated with LAN applications are typically relatively fixed in terms of location, the client devices that communicate with them can be quite mobile. Similarly, the DSRC roadside units (RSUs) are typically sited at fixed locations along roadways, but the on-board units (OBU's) that communicate with the RSU's and with other OBU's are vehicle-mounted and thus can involve high-velocity dynamic mobility. As such, it will be impractical to examine each and every potential interaction involving U–NII transmissions relative to DSRC receivers in either an empirical or analytical effort. Therefore, the approach proposed in this test plan represents an attempt to contain the myriad of variable conditions within a space bounded between ''best case'' (no interference) and ''worst case'' (maximum interference) conditions. Subsequent analytical efforts can then introduce appropriate scenario-based considerations, and examine associated subtleties such as the probability of occurrence and the maximum duration of potential interference interactions.

In an effort to deal with these complexities, the examination of compatibility between proposed U–NII transmitters and DSRC receivers sharing the same frequency band will employ a phased approach, with the various interested agencies (*i.e.,* FCC, NTIA, and DoT) collaborating in each distinct test phase. Each successive phase of the study will progressively consider additional interference interaction variabilities. The first phase of this effort will be performed at the FCC Laboratory in Columbia, Maryland and will involve bench tests in a laboratory environment assuming static conditions (*i.e.,* vehicle dynamics not considered). It is envisioned that the Phase II effort will utilize the Phase I data to support analytical efforts to assess compatibility under scenario-specific conditions and will also include some result verification through limited scenario-based field tests. The final phase (Phase III) of the study is envisioned to utilize the Phase II results, adjusted accordingly based on the verification test observations, to expand the field testing under ''real world'' conditions such as those proposed in Section 6.0 of the DoT Test Plan.

This test plan primarily describes the proposed Phase I effort of this study, to be performed by FCC engineers at its laboratory facility in Columbia, MD, with the support of DoT engineers.

*2.0 Phase I Test Proposals*

2.1 Potential Interference Mechanisms

It is anticipated that the likely interference mechanisms associated with sharing the DSRC frequency band are: (1) A potential for degrading the DSRC receiver noise floor, and thus, the link signal-to-noise ratio (SNR) due to additive noise-like interference introduced by proposed U–NII devices; (2) a potential for corruption of received data packets due to introduced interference, resulting in an increased

packet error rate (PER) and/or reduced data throughput; (3) a potential for channel access contention, resulting in an increase in the time required for DSRC channel access; and (4) a potential for receiver saturation or overload due to short-range, co-tuned interactions. These represent the potential interference mechanisms and associated metrics that will be examined as a part of this proposed Phase I test effort.

2.2 Potential Interference Mitigation Techniques

Several possible techniques and strategies have been proposed for mitigating interference interactions between projected U–NII transmitters and DSRC receivers. The IEEE Tiger Team explored two possible options: (1) The use of the existing DSRC channel plan with a clear channel assessment (CCA) capability specified for U–NII transmissions in the 10–MHz DSRC channels, and (2) the adoption of a modified DSRC channel plan (*i.e.,* bi-furcation of the DSRC frequency band) with a CCA capability specified in 20–MHz channels. The NTIA 5 GHz Report proposed more general mitigation strategies, such as several possible detection methodologies for use in implementing a CCA capability (*e.g.,* energy, matched filter, and signal detection), and a geo-location/database mitigation approach. The NTIA 5 GHz Report also identifies some of the potential inadequacies associated with each of these potential interference mitigation approaches.

The 802.11 standard under which U–NII operates currently provides for two methods of implementing a CCA capability. The first method, known as Carrier Sensing (CS), involves a determination of channel availability through the detection (reception) and decoding of the preamble of a data packet transmitted by the current channel occupant. Most 802.11 U–NII devices utilize the same basic CS technique, known as Carrier Sense Multiple Access with Collision Avoidance (CSMA/CA). The FCC does not specify nor regulate CS requirements for U–NII devices. The second CCA method specified in the 802.11 standard is known as Dynamic Frequency Selection (DFS) where a U–NII device must identify an occupied channel through the detection of the channel occupants radio-frequency (RF) energy levels relative to an established threshold value (*i.e.,* Energy Detection (ED)), without regard to signal structure specifics. This technique is required for U–NII devices that share other portions of the 5 GHz spectrum in order to preclude interference to critical Government Radar operations. DFS requirements and compliance tests were developed cooperatively between FCC, NTIA and DoD, and are enforced by the FCC.

Since U–NII device access to the spectrum is on a non-interference basis (NIB), DSRC must be accorded primacy in any channel access protocol. Such access prioritization will also likely be required for all of the seven 10–MHz channels that are assigned to DSRC. Thus, to ensure DSRC preferential access, a U–NII device must be capable of detecting an access-contending DSRC signal at energy levels that are equal to, or below, the DSRC receiver sensitivity level on each of the seven DSRC channels.

As a primary element of this Phase I effort, the FCC will perform benchtop measurements of those prototype U–NII devices submitted for testing that implement these, or other not yet proposed, interference mitigation capabilities. The actual tests to be performed will be tailored to the particular mitigation strategy employed, and will be designed to ensure the effectiveness and reliability associated with the detection and recognition of DSRC-occupied channels.

2.3 General Test Approach

It is not possible to design a detailed comprehensive plan for testing all of the components identified for examination in the Phase I test program until we have access to U–NII devices designed for operation in the 5.9 GHz frequency band and DSRC RSU and OBU equipment to test against. Therefore, what is proposed below represents a general plan for achieving the identified objectives. This plan will be adapted as necessary once more details of the devices to be tested are made available.

The first step in the Phase I effort is to solicit the devices necessary to implement the test plan, as the Commission does in this *document.* The FCC requests that industry provide prototype U–NII devices projected for operation in the 5.9 GHz frequency band, to include interference mitigation capabilities, for test and evaluation. The FCC, working cooperatively with NTIA and DoT, also request that the DSRC equipment necessary to exercise this test plan be provided. In addition, technical support must be made available to assist in configuring the devices for testing and in accessing the requisite device control and resulting data. All of the devices will be required to have appropriate software controls to perform the tests under a controlled environment.

As devices are submitted to the FCC laboratory as test samples, they will first be technically characterized through the measurement of standard RF parameters such as the occupied bandwidth (OBW), fundamental power, and unwanted emission levels associated with the transmitted signals, and the sensitivity and noise floor levels associated with the receivers. The measured parameters will be compared with appropriate specifications (*e.g.,* IEEE 802.11ac, IEEE 802.11p, ASTM E2213, FCC regulations, and other applicable rules and standards).

Once the characterization measurements are complete, DSRC links will be established to simulate simple RSU-to-OBU and OBU-to-OBU two-way wireless communication. Upon successful establishment of such communication links, and before any interference signals are introduced, measurements will be performed to establish base-line values for parameters such as SNR (signal-to-noise ratio), PER (packet error rate), network delay and the variance in network delay (also known as jitter).

After the completion of baseline testing, a single U–NII signal, or simulation thereof (*e.g.,* band-limited additive white Gaussian noise (AWGN)), will be introduced on a co-tuned basis (*i.e.,* with coincident center frequencies) initially at a very low power level. The U–NII power level will then be incremented (1–3 dB steps) while the designated performance parameters are monitored and recorded. The results of this test will provide the data necessary to determine the DSRC tolerance to U–NII interference in a ''worst-case'' interference interaction (*i.e.,* co-tuned operation). It is recognized that U–NII transmitters, particularly those used to provide Wi-Fi services, can utilize variable OBW's (occupied bandwidths) and are capable of implementing several combinations of data modulation and coding rate (Modulation-Coding Scheme or MCS) on a variable basis, depending on the transmission channel conditions. FCC experience gained from developing and instituting compliance measurement of U–NII transmissions suggest that there are only subtle differences in the relevant signal parameters among these combinations; however, measurements will be performed using different combinations of these variable parameters in an effort to identify a ''worst-case'' mode and to quantify the differential magnitude of the effect on a DSRC receiver.

The procedure described above will then be repeated with the U–NII transmit signal re-tuned to the center frequency of each of the two adjacent

DSRC channels relative to the DSRC-occupied channel (*i.e.,* upper and lower first adjacent channels). This measurement will produce data that can be used to determine the adjacent-channel rejection capability of a DSRC receiver which in turn can be used to inform an assessment of EMC assuming adjacent-channel operation. Dependent upon the results of this test and time constraints, this process may be repeated with the U–NII device tuned to DSRC channels further removed (in frequency) from the DSRC-occupied channel (*i.e.,* second adjacent channel interaction).

Once these tests are complete, the potential effects of network loading (LAN and DSRC) and interference aggregation will be examined by the addition of supplementary DSCR links and U–NII devices to the test configuration as the availability of devices permit.

Similar procedures, with modifications based on the protocols implemented by the prototype U–NII sample devices, will be used to evaluate the effectiveness and reliability of any interference mitigation capabilities (*e.g.,* DSRC signal detection methods, Clear Channel Assessment capability of U–NII devices, and other mitigation methods not yet defined).

*3.0 Summary*

The plan presented herein represents a ''high-level'' approach to the Phase I testing intended to acquire the empirical data necessary to further an examination of the potential for achieving EMC between U–NII devices and DSRC operations under the FCC proposal to share the 5.9 GHz frequency band. The proposed test procedures and methodologies will be further refined as more information becomes available with respect to the U–NII and DSRC devices anticipated to share this spectrum. The FCC requests relevant technical input in the form of comments from other concerned parties in the interest of enhancing and/or improving this test plan proposal.

**Conclusion**

The FCC, in consultation with the DoT and NTIA, will continue to collaborate, as well as engage with other stakeholders, and may make adjustments to the plan as it evolves. Our goal is to collect the relevant empirical data for use in analyzing and quantifying the interference potential introduced to DSRC receivers from unlicensed transmitters operating simultaneously in the 5.850–5.925 GHz band. The Commission anticipates that the tests conducted to date, combined with the results of the three-phase test plan described above, will provide reliable, real-world data on the performance of unlicensed devices designed to avoid interfering with DSRC operations in the 5.850–5.925 GHz band.

**Procedural Matters**

*Ex Parte Rules*

This proceeding has been designated 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.

*Filing Requirements*

Comments are due on or before July 7, 2016, and reply comments are due on or before July 22, 2016. All filings must refer to ET Docket No. 13–49.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

*Initial Regulatory Flexibility Analysis*

The *NPRM* included an Initial Regulatory Flexibility Analysis (IRFA). That IRFA invited comment ''on making available an additional 195 megahertz of spectrum in the 5.35–5.47 GHz and 5.85–5.925 GHz bands for U–NII use.'' This *document* seeks further comment on some of the proposals initially raised

in the *NPRM* and alternative proposals submitted into the record of this proceeding. We request supplemental comments on the IRFA in light of the details and issues raised in this *document.* These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *document* as set forth on the first page of this document and have a separate and distinct heading designating them as responses to the IRFA.

*Paperwork Reduction Act Analysis*

The *NPRM* included a separate request for comment from the general public and the Office of Management and Budget on the information collection requirements contained therein, as required by the Paperwork Reduction Act of 1995, Public Law 104–13, and the Small Business Paperwork Relief Act of 2002, Public Law 107–198. As noted above, this *document* seeks further comment on some proposals and alternatives initially raised in the *NPRM.* We invite supplemental comment on these requirements in light of the details and issues raised in this document.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison Officer, Office of the Secretary.*

[FR Doc. 2016–13510 Filed 6–6–16; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 202, 205, 212, 237, and 252

**[Docket DARS–2015–0055]**

**RIN 0750–AI78**

### Defense Federal Acquisition Regulation Supplement: Food Services for Dining Facilities on Military Installations (DFARS Case 2015–D012)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense.

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide policy and procedures for soliciting offers, evaluating proposals, and awarding contracts for the operation of a military dining facility pursuant to the Randolph-Sheppard Act; the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; the Joint Report and Policy Statement issued pursuant to the NDAA for FY 2006; and the Committee for Purchase from People Who Are Blind or Severely Disabled statute.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 8, 2016, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS case 2015–D012 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2015–D012'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2015–D012.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2015–D012'' on your attached document.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, telephone 571–372–6106.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In order to clarify the application of the Randolph-Shepard Act (R–S Act) (20 U.S.C. 107, *et seq.*) and the Committee for Purchase from People Who Are Blind or Severely Disabled (CFP) statute (41 U.S.C. 8501, *et seq.*) formerly known as the Javits-Wagner-O'Day (JWOD) Act, to the operation and management of military dining facilities, DoD is proposing to amend the DFARS to implement the provisions of the Joint Report and Policy Statement (Joint Policy Statement) issued by DoD, the Department of Education (DoED), and the CFP pursuant to section 848 of the NDAA for FY 2006.

The Joint Explanatory Statement to Accompany the NDAA for FY 2015 requested that DoD prescribe implementing regulations for the application of the R–S Act and the CFP statute to contracts awarded for the operation of military dining facilities, and that the regulations address DoD contracts not covered by section 856 of the NDAA for FY 2007.

Pursuant to the Joint Policy Statement, the R–S Act applies to contracts for the operation of a military dining facility, also known as full food services, while the CFP statute applies to contracts and subcontracts for dining support services (including mess attendant services).

The CFP statute, implemented in FAR subpart 8.7, requires Federal agencies to acquire from participating nonprofit agencies all supplies or services on the Procurement List established by the CFP. The purpose of the CFP statute is to provide employment opportunities for people who are blind or have other severe disabilities. If a product or service is on the Procurement List, 41 U.S.C. 8504(a)requires the procuring agency to procure that product or service either from a qualified nonprofit agency for the blind or a qualified nonprofit agency for the severely disabled in accordance with CFP regulations. However, 41 U.S.C. 8504(b) provides an exception to section 8504(a) for a product that is available from an industry established under 18 U.S.C. 307 (Federal Prison Industries) and shall be procured from that industry pursuant to 18 U.S.C. 4124.

Section 107(b) of the R–S Act establishes a priority authorizing blind persons, licensed by a State licensing agency (SLA) to operate one or more vending facilities, wherever feasible, on Federal properties. Section 107d–3(e) of the R–S Act requires the Secretary of Education (the Secretary) to promulgate regulations (see 34 CFR 395.33) establishing a priority for the operation of cafeterias when the Secretary determines on an individual basis and after consultation with the head of the appropriate installation, that such operation can be provided at a reasonable cost with food of high quality comparable to that currently provided employees.

Pursuant to 34 CFR 395.33(a), the priority is afforded to the SLA when the Secretary determines, in consultation with the contracting officer, that the operation can be provided at a reasonable cost, with food of a high quality that is comparable to the food currently provided to employees. 34 CFR 395.33(b) requires Federal contracting officers to consult with the Secretary (see 395.33(a)) when the contracting officer has determined that an SLA's response to a solicitation for

the operation of a cafeteria is within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award. The evaluation criteria established in a solicitation may include sanitation practices, personnel, staffing, menu pricing, and portion sizes, menu variety, budget, and accounting practices.

During the 1990s, confusion arose as to whether contracts for food services at military dining facilities should be subject to the CFP statute or the R–S Act. There was also confusion as to whether the SLA must be awarded a contract if its proposal is within the competitive range. In order for an SLA's proposal to be selected, the proposal must not only be in the competitive range, but also be ranked among those proposals which have a reasonable chance of being selected for final award. Placement in the competitive range alone does not mean an offer has been found competitive, comparable, acceptable, or reasonable for final award.

In order to resolve the confusion, section 848 of the NDAA for FY 2006 required DoD, DoED, and the CFP to issue the Joint Policy Statement, discussed below in section II.A. Since issuance of the Joint Policy Statement in 2006, the definition of ''operation of a military dining facility'' has been interpreted inconsistently. This rule proposes to implement the Joint Policy Statement which defines ''operation of a military dining facility'' to mean ''the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.'' We invite comments on the interpretation of this definition.

## II. Discussion and Analysis

The rule proposes to locate the DFARS guidance for food services in DFARS part 237, Service Contracting, along with the current guidance for contracting for various types of services such as educational services, laundry and dry cleaning, and mortuary services. Because the food services policy emphasizes the R–S Act requirement for competition and potentially affects more than one category of contract source, the new guidance is more appropriately placed in the section on services. The proposed rule amends the DFARS to clarify the application of the R–S Act and the CFP statute to contracts for the operation and management of military dining facilities.

### *A. Joint Policy Statement*

Paragraph 1 of the Joint Policy Statement provides that defense appropriations shall be used to accomplish the defense mission. This mission shall be carried out by providing value and accountability to the taxpayers as well as supporting socioeconomic programs to the maximum extent practicable under the law. DoD has a military mission to maintain some level of in-house food service and military dining facility managerial capabilities to enable forward deployment operations, training, rotation, and career progression for military members. Contract services must enable DoD to feed the troops high quality food at a cost effective price.

Paragraph 2 states that ''the Secretaries of the Military Departments concerned, as defined in 10 U.S.C. 101(a)(9), shall have the discretion to define requirements (*e.g.,* contract statements of work, assignment of tasks and functions among workers in a facility) and make procurement decisions concerning contracting for military dining support services and the operation of a military dining facility and shall ensure that procurement decisions support the readiness of the Armed Forces.''

Paragraph 3 recommends the enactment of legislation to create a ''no-poaching'' provision that would maintain contract opportunities current at that time. Section 856 of the NDAA for FY 2007 established the recommended ''no-poaching'' rule for contracts in effect at the date of enactment of section 856 (October 16, 2006).

Paragraph 4 establishes rules for new contract awards that were not covered by the ''no-poaching'' rule. Pursuant to subparagraph 4.a., new contracts will be competed under the R–S Act when ''the [DoD] solicits a contractor to exercise management responsibility and day-to-day decision making for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.''

Subparagraph 4.b. provides that ''[i]n all other cases, the contracts will be set aside for JWOD performance (or small businesses if there is no JWOD nonprofit agency capable or interested) when [DoD] needs dining support services (*e.g.,* food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess attendants, or other services that support the operation of a dining facility) where [DoD] food service specialists exercise management responsibility over and above those contract administration functions described in FAR part 42.''

Subparagraph 4.c. provides that ''[t]he presence of military personnel performing dining facility functions does not necessarily establish the inference that the Government is exercising management responsibility over that particular dining facility.''

Paragraph 5 provides that ''[i]n accordance with FAR part 8, if dining support services are on or will be placed on the Procurement List, any State licensing agency that is awarded a contract for operation of that military dining facility under the [R–S Act] shall award a subcontract for those services.'' DoD has implemented this requirement consistent with FAR clause 52.208–9, Contractor Use of Mandatory Sources of Supply or Services.

Paragraph 6 provides that ''[i]n order to promote economic opportunities for blind vendors and to increase the number of blind persons who are self-supporting, the [R–S Act] requires that State licensing agencies provide blind persons with education, training, equipment and initial inventory suitable for carrying out their licenses to operate vending facilities in Federal buildings. Accordingly, through its rule-making procedures, [DoED] will encourage State licensing agencies who assert the [R–S Act] 'priority' for a multi-facility contract for operation of military dining facilities to assign at least one blind person per military dining facility in a management role.''

Paragraph 7 provides that ''[t]he DOD shall continue to be able to use the 'Marine Corps model' for regional contracts for operation of military dining facilities at several installations or across State lines. In this model, the DoD may designate individual dining facilities for subcontract opportunities under the Small Business Act, the CFP statute, or other preferential procurement programs, and may designate some facilities in which military food service specialists may train or perform cooking or other dining support services in conjunction with contractor functions. State licensing agencies are eligible under the [R–S Act] to bid on contracts based upon this model.''

Paragraph 8 provides guidance for affording the R–S Act priority. DoD contracts for operation of a military dining facility shall be awarded as the result of full and open competition,

unless there is a basis for a non-competitive award to a single source and resulting direct negotiations with that source. When competing such contracts, DoD contracting officers shall give SLAs priority when: (1) The SLA has demonstrated it can provide such operation with food of high quality and at a fair and reasonable price and with food of high quality comparable to that available from other providers of cafeteria services and comparable to the quality and price of food currently provided to military service members; and (2) the SLAs final proposal revision, or initial proposal if award is made without discussions, is among the highly ranked final proposal revisions with a reasonable chance of being selected for award.

Paragraph 8 also provides that ''[t]he term 'fair and reasonable price' means that the State licensing agency's final proposal revision does not exceed the offer that represents the best value (as determined by the contracting officer after applying the evaluation criteria set forth in the solicitation) by more than five percent of that offer, or one million dollars, whichever is less, over all of the performance periods required by the solicitation.'' For the reasons explained in section II.B. below, this dollar limitation is not included in the DFARS.

Paragraph 9 provides that ''[t]he contracting officer may award to other than the State licensing agency when the head of the contracting activity determines that award to the State licensing agency would adversely affect the interests of the United States, and the Secretary of Education approves the determination in accordance with the [R–S Act].'' DoED has implemented this policy in its regulations (see 34 CFR 395.30).

Paragraph 10 committed the signatory parties to implementing the Joint Policy Statement in complementary regulations.

*B. Proposed Changes to DFARS.*

The proposed rule proposes to amend DFARS 205.207(a) to require that the advertisement of a solicitation for the operation of a military dining facility in the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands shall state that the solicitation is subject to the R–S Act.

The rule proposes to amend DFARS 212.301 to add a new paragraph (c)(ii) to state that when issuing a solicitation for the operation of a military dining facility, as defined in 202.101, include in the evaluation criteria, factors or subfactors for determining if the SLA proposal is comparable to the quality and price available from other providers.

The proposed rule adds a new DFARS subpart 237.7X to address contracts for services that support military dining facility operation and contracts for the operation of military dining facilities. The ''scope'' statement in DFARS 237.7X00 explains that subpart 237.7X provides policy and procedures for soliciting and awarding contracts consistent with the R–S Act, the CFP statute, section 856 of the NDAA for FY 2007, and the Joint Policy Statement.

The definitions in DFARS 202.101 implement the Joint Policy Statement paragraphs 4.a. and 4.b., which identified when a contract is for the operation of a military dining facility as distinguished from ''dining support services.'' ''Mess attendant services'' (also known as ''dining facility attendant services'') are a subset of ''dining support services.'' Specifically, the definition of ''military dining facility'' that was enacted in section 856 of the NDAA for FY 2007 and the definition of ''State licensing agency'' described in the R–S Act regulations at 34 CFR 395.1(v) are incorporated in the DFARS at 202.101 and 237.7X01, respectively. The proposed rule also defines ''operation of a military dining facility,'' which is added to DFARS 202.101.

DFARS 237.7X02(a) implements paragraph 4.a. of the Joint Policy Statement by stating that all contracts for the operation of a military dining facility in the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands are subject to the R–S Act. By use of the word ''all,'' DFARS 237.7X02(a) means these contracts are subject to the R–S Act even if the State licensing agency does not submit a proposal. DFARS 237.7X02(a) also implements paragraph 8 of the Joint Policy Statement and states the contracts for operation of a military dining facility shall be awarded using full and open competition (see 10 U.S.C. 2305). DFARS 237.7X02(b) states that contracts for dining support services are subject to the CFP statute, which is exempt from the Competition in Contracting Act (CICA), and provides a cross reference to the implementing procedures at FAR subpart 8.7.

DFARS 237.7X03 provides guidelines for developing evaluation criteria for determining if the State licensing agency proposal is comparable to the quality and price available from other providers.

DFARS 237.7X04 adds a prescription for the proposed solicitation provision at DFARS 252.237–70XX, Operation of a Military Dining Facility. The prescription states that the provision will apply to solicitations, including solicitations using FAR part 12 procedures, for the acquisition of commercial items for operation of a military dining facility within the 50 states, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

The solicitation provision at DFARS 252.237–70XX, Operation of a Military Dining Facility, notifies offerors when a solicitation is subject to the R–S Act. The solicitation provision defines ''operation of a military dining facility'' and other terms necessary for notifying offerors about the applicability of the R–S Act to the solicitation. A State licensing agency will be given priority for award of the contract if it submits an offer that: (1) Demonstrates it can provide the operation with food of high quality and at a fair and reasonable price comparable to that available from other providers, and (2) has been judged to have a reasonable chance of being selected for award pursuant to the evaluation criteria in the solicitation.

In order for a SLA to receive the priority for operation of a cafeteria, 34 CFR 395.33(b) requires that: (1) The SLA's proposal must be within the ''competitive range,'' and (2) must be ranked among those proposals that have a reasonable chance of being selected for final award.

Under FAR 15.306(c), the ''competitive range'' is established for the purpose of identifying those offerors with whom the procuring agency will open discussions. If discussions are to be conducted, CICA (see 10 U.S.C. 2305) requires that the procuring agency shall conduct discussions with all responsible offerors who submitted proposals determined to be in the competitive range, but as previously stated, inclusion in the competitive range is not sufficient to trigger the R–S Act priority for an SLA proposal. The SLA's proposal must also have a reasonable chance of selection for final award.

As a result, and as required by CICA and 34 CFR 395.33, each DoD solicitation for operation of a military dining facility must state its own evaluation criteria and basis for award independently derived for that individual location and acquisition. The solicitation will specify the means by which the statutory priority will be afforded to the SLA's proposal, if it

satisfies the evaluation criteria, the statement of work, and the requirements of the solicitation. Because each solicitation must be developed independently, the DFARS will not arbitrarily establish a price limitation that would apply to all solicitations.

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule proposes to create a new provision, DFARS 252.237–70XX, Operation of a Military Dining Facility, to notify offerors when a solicitation is subject to the R–S Act. The R–S Act is not a covered law under 41 U.S.C. 1905–1907, because it was enacted prior to October 13, 1994. Therefore, 41 U.S.C. 1905–1907 do not exempt solicitations and contracts at or below the simplified acquisition threshold and for the acquisition of commercial items from the provisions of the R–S Act.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**V. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The proposed rule will provide policy and procedures for soliciting and awarding contracts for the operation of a dining facility on a military installation pursuant to: (1) The Randolph-Sheppard Act (R–S Act); (2) the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2007; (3) the Joint Report and Policy Statement issued pursuant to the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2006; and (4) the Committee for Purchase from People Who Are Blind or Severely Disabled (CFP) statute (41 U.S.C. 8501, *et seq.*).

The objective of the proposed rule is to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the application of the R–S Act and the CFP statute, formerly known as the Javits-Wagner-O'Day (JWOD) Act, to the operation and management of military dining facilities.

The R–S Act and the CFP statute have priority over the Small Business Act; therefore, the proposed rule has the potential to impact small businesses that provide these services. A review of contract awards and purchase orders in the Federal Procurement Data System for the period fiscal year 2011 through June 1, 2015, revealed that DoD made five new awards, including one purchase order, for dining services to five unique vendors. Of those awards, one award was made to a small business concern. Therefore, this proposed rule is not anticipated to impact a significant number of small entities.

The proposed rule does not impose any new reporting, recordkeeping, or other information collection requirements. The proposed rule is consistent with the DoED regulations that implement the R–S Act (see 34 CFR 395.1, *et seq.*).

Concerning dining support services (including mess attendant services), contracting officers shall follow the standard Federal Acquisition Regulation (FAR) subpart 8.7 and DFARS subpart 208.7 procedures for procuring dining support services pursuant to the CFP statute and, if applicable, the FAR part 19 and DFARS part 219 rules for small business set-asides.

Concerning the R–S Act priority for operation of a military dining facility, the proposed rule requires full and open competition. Competition is the best alternative for minimizing the impact on small entities.

DoD will consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D012), in correspondence.

**VI. Paperwork Reduction Act**

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subjects in 48 CFR Parts 202, 205, 212, 237, and 252**

Government procurement.

**Jennifer L. Hawes,**
*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 202, 205, 212, 237, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 202, 205, 212, 237, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 202—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 202.101 by adding, in alphabetical order, the definitions of ''Military dining facility'' and ''Operation of a military dining facility'' to read as follows:

**202.101 Definitions.**

* * * * *

*Military dining facility* means a facility owned, operated, leased, or wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or similar dining facility operated with appropriated funds for the purpose of providing meals to members of the Armed Forces.

* * * * *

*Operation of a military dining facility* means the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.

* * * * *

## PART 205—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 205.207 by adding paragraph (a)(ii) to read as follows:

**205.207 Preparation and transmittal of synopses.**

(a) * * *

(ii) When advertising for the operation of a military dining facility, as defined in 202.101, within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands, the synopsis shall state that the solicitation is subject to

the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*) (see 237.7X03).

* * * * *

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by—

■ a. Redesignating paragraph (c) as paragraph (c)(i);

■ b. Adding paragraph (c)(ii);

■ c. Adding paragraph (f)(xv)(C).

The additions read as follows:

### 212.301 Solicitation provisions and contract clauses for acquisition of commercial items.

(c)(i) * * *

(ii) When issuing a solicitation for the operation of a military dining facility, as defined in 202.101, include in the evaluation criteria factors or subfactors for determining if the State licensing agency proposal is comparable to the quality and price available from other providers (see 237.7X03).

* * * * *

(f) * * *

(xv) * * *

(C) Use the provision at 252.237–70XX, Operation of a Military Dining Facility, as prescribed in 237.7X04.

* * * * *

## PART 237—SERVICE CONTRACTING

■ 5. Add subpart 237.7X to read as follows:

### Subpart 237.7X—Services for Military Dining Facilities

Sec.
237.7X00 Scope.
237.7X01 Definitions.
237.7X02 Policy.
237.7X03 Procedures for Randolph-Sheppard Act contracts.
237.7X04 Solicitation provision.

## Subpart 237.7X—Services for Military Dining Facilities

### 237.7X00 Scope.

This subpart provides policy and procedures for soliciting and awarding contracts pursuant to—

(a) The Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*);

(b) The Committee for Purchase from People Who are Blind or Severely Disabled statute (41 U.S.C. 8501, *et seq.*);

(c) Section 856 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364); and

(d) The Joint Report and Policy Statement to Congress issued pursuant to section 848 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163).

### 237.7X01 Definitions.

As used in this subpart—

*Dining support services* means food preparation services, food serving, ordering and inventory of food, meal planning, cashiers, mess attendant services, or any and all other services that are encompassed by, are included in, or otherwise support the operation of a military dining facility, other than the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility.

*Mess attendant services* (or ''dining facility attendant services'') means those activities required to perform food line support such as setting up the serving lines, serving food and tearing down the serving line, preserving food for subsequent meals, and performing janitorial and custodial duties within dining facilities, including sweeping, mopping, scrubbing, trash removal, pot and pan cleaning, dishwashing, waxing, stripping, buffing, window washing, and other sanitation-related functions.

*State licensing agency* means the State agency designated by the Secretary of Education under 34 CFR part 395 to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

### 237.7X02 Policy.

(a) *Randolph-Sheppard Act (20 U.S.C. 107 et seq.).* (1) All contracts for the ''operation of military dining facilities'' (as defined at 202.101) within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands are subject to the Randolph-Sheppard Act. Except as provided in paragraph (a)(2) of this section, follow the procedures at 237.7X03.

(2) The procedures at 237.7X03 do not apply to any food services or related services that are identified on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

(b) *Committee for Purchase from People Who Are Blind or Severely Disabled statute (41 U.S.C. 8501 et seq.).* Contracts for dining support services (including mess attendant services) in a military dining facility where DoD food services specialists exercise management responsibility over and above those contract administration functions described in FAR part 42 are subject to the Committee for Purchase from People Who Are Blind or Severely Disabled statute. See FAR subpart 8.7.

### 237.7X03 Procedures for Randolph-Sheppard Act contracts.

(a) When issuing a solicitation for the operation of a military dining facility, include in the evaluation criteria factors or subfactors for determining if the State licensing agency proposal is comparable to the quality and price available from other providers.

(b) A State licensing agency shall be afforded priority for award of the contract if the State licensing agency has submitted a proposal that—

(1) Demonstrates that the operation of the military dining facility can be provided with food of a high quality and at a fair and reasonable price comparable to that available from other providers; and

(2) Has a reasonable chance of being selected for award as determined by the contracting officer after applying the evaluation criteria contained in the solicitation.

### 237.7X04 Solicitation provision.

(a) Except as provided in paragraph (b) of this section, use the provision at 252.237–70XX, Operation of a Military Dining Facility, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that are for operation of a military dining facility within the 50 States, the District of Columbia, Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) Do not use the provision at 252.237–70XX in solicitations for any food services or related services that are identified on the Procurement List maintained by the Committee for Purchase from People Who Are Blind or Severely Disabled.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Add section 252.237–70XX to read as follows:

### 252.237–70XX Operation of a Military Dining Facility.

As prescribed in 237.7X04, use the following provision:

**OPERATION OF A MILITARY DINING FACILITY (DATE)**

This solicitation is for the operation of a military dining facility.

(a) *Definitions.* As used in this provision—

*Military dining facility* means a facility owned, operated, leased, or wholly controlled by DoD and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or similar dining facility operated with appropriated

funds for the purpose of providing meals to members of the Armed Forces.

*Operation of a military dining facility* means the exercise of management responsibility and day-to-day decision-making authority by a contractor for the overall functioning of a military dining facility, including responsibility for its staff and subcontractors, where the DoD role is generally limited to contract administration functions described in FAR part 42.

*State licensing agency* means the State agency designated by the Secretary of Education under 34 CFR part 395 to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(b) A State licensing agency will be afforded priority for award of the contract if the State licensing agency has submitted a proposal that—

(1) Demonstrates the operation of the military dining facility can be provided with food of a high quality and at a fair and reasonable price comparable to that available from other providers; and

(2) Is judged to have a reasonable chance of being selected for award as determined by the contracting officer after applying the evaluation criteria contained in the solicitation.

(End of provision)

[FR Doc. 2016–13257 Filed 6–6–16; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 160412328–6446–01]**

**RIN 0648–BF97**

## Atlantic Highly Migratory Species; North and South Atlantic 2016 Commercial Swordfish Quotas

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** In this rule, NMFS proposes to adjust the 2016 fishing season quotas for North and South Atlantic swordfish based upon 2015 commercial quota underharvests and international quota transfers consistent with the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendations 13–02 and 13–03. The rule also discusses our intent to simplify the annual North and South Atlantic quota adjustment process when the adjustment simply applies a previously-adopted formula or measure. Finally, the proposed rule would remove extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. This proposed rule could affect commercial and recreational fishing for swordfish in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action implements ICCAT recommendations, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Written comments must be received by July 7, 2016. An operator-assisted, public conference call and webinar will be held on June 29, 2016, from 2:00 p.m. to 4:00 p.m., EST.

**ADDRESSES:** The conference call information is phone number 1 (888) 469–1171; participant passcode 6508132. Participants are strongly encouraged to log/dial in fifteen minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar go to: *https://noaa-meets.webex.com/noaa-meets/j.php?MTID=mc0c72c596c13e8dde4e1d2edf8d8ebd2,* event password: swGMiC3d. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

You may submit comments on this document, identified by NOAA–NMFS–2016–0051, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0051,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Margo Schulze-Haugen, NMFS/SF1, 1315 East-West Highway, National Marine Fisheries Service, SSMC3, Silver Spring, MD 20910.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Presentation materials and copies of the supporting documents—including the 2012 Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) for North Atlantic swordfish; the 2007 EA, RIR, and FRFA for South Atlantic swordfish; and the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan and associated documents—are available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hms/* or by contacting Steve Durkee by phone at 202–670–6637.

**FOR FURTHER INFORMATION CONTACT:** Steve Durkee by phone at 202–670–6637 or Karyl Brewster-Geisz by phone at 301–427–8503.

**SUPPLEMENTARY INFORMATION:**

### Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.,* and ATCA, 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations.

#### *North Atlantic Swordfish Quota*

At the 2013 ICCAT annual meeting, Recommendation 13–02 was adopted, maintaining the North Atlantic swordfish total allowable catch (TAC) of 10,301 metric tons (mt) dressed weight (dw) (13,700 mt whole weight (ww)) through 2016. Of this TAC, the United States' baseline quota is 2,937.6 mt dw (3,907 mt ww) per year. ICCAT Recommendation 13–02 also includes an 18.8 mt dw (25 mt ww) annual quota transfer from the United States to Mauritania and limits underharvest carryover to 15 percent of a contracting party's baseline quota. Therefore, the United States may carry over a maximum of 440.6 mt dw (586.0 mt ww) of underharvest from 2015 to 2016. This proposed rule would establish the U.S. adjusted quota for the 2016 fishing year to account for the annual quota transfer to Mauritania and the 2015 underharvest.

The preliminary estimate of North Atlantic swordfish underharvest for 2015 was 2,181.6 mt dw as of December

31, 2015; therefore, NMFS is proposing to carry forward 440.6 mt dw, the maximum carryover allowed under Recommendation 13–02. The 2,937.6 mt dw baseline quota would be reduced by the 18.8 mt dw annual quota transfer to Mauritania and increased by the underharvest carryover of 440.6 mt dw, resulting in a proposed adjusted North Atlantic swordfish quota for the 2016 fishing year of 3,359.4 mt dw (2,937.6 − 18.8 + 440.6 = 3,359.4 mt dw). From that proposed adjusted quota, 50 mt dw would be allocated to the reserve category for inseason adjustments and research, and 300 mt dw would be allocated to the incidental category, which includes recreational landings and landings by incidental swordfish permit holders, in accordance with regulations at 50 CFR 635.27(c)(1)(i). This would result in an allocation of 3,009.4 mt dw (3,359.4 − 50 − 300 = 3,009.4 mt dw) for the directed category, which would be split equally between two seasons in 2016 (January through June, and July through December) (Table 1).

The preliminary landings used to calculate the proposed adjusted quota for North Atlantic swordfish are based on commercial dealer reports and reports by anglers in the HMS Non-Tournament Recreational Swordfish and Billfish Landings Database and the Recreational Billfish Survey received as of December 31, 2015, and do not include dead discards or late landings reports. The estimates are preliminary and have not yet undergone quality control and assurance procedures. NMFS will adjust the quotas in the final rule based on updated data, including dead discard data, if available. Note that the United States has carried over the full amount of underharvest allowed under ICCAT recommendations for the past several years and NMFS does not expect fishing activity to vary significantly from these past years. For the final adjusted quota to deviate from the proposed quota, the sum of updated landings data (from late reports) and dead discard estimates would need to reach or exceed 1,741.0 mt dw, which is the difference between the current estimate of the 2015 underharvest (2,181.6 mt dw) and the maximum carryover cap of 440.6 mt dw (2,181.6 − 440.6 = 1,741.0 mt dw). In 2013 (the most recent year of dead discard data), dead discards were estimated to equal 90.2 mt dw and late reports equaled 143.0 mt dw. Consequently, NMFS does not believe updated data and dead discard estimates would alter the proposed adjusted quota. Thus, while the 2016 proposed North Atlantic swordfish quota is subject to further adjustments and this rule notifies the public of that potential change, NMFS does not expect the final quota to change from the proposed quota on this basis.

For clarity, the proposed rule would remove extraneous regulatory text about the percentage of the annual baseline quota allocation that may be carried over in a given year. Under prior ICCAT recommendations, 25 percent of the unused annual baseline could be carried over to the subsequent year. ICCAT Recommendation 13–02 changed the allowable carryover to 15 percent from 2015 on. The proposed change would simplify the regulatory text by removing the reference to the 25 percent carryover allowance.

*South Atlantic Swordfish Quota*

In 2013, ICCAT Recommendation 13–03 established the South Atlantic swordfish TAC at 11,278.2 mt dw (15,000 mt ww) for 2014, 2015, and 2016. Of this, the United States receives 75.2 mt dw (100 mt ww). Recommendation 13–03 limits the amount of South Atlantic swordfish underharvest that can be carried forward, and the United States may carry forward up to 100 percent of its baseline quota (75.2 mt dw). Recommendation 13–03 also included a total of 75.2 mt dw (100 mt ww) of quota transfers from the United States to other countries. These transfers were 37.6 mt dw (50 mt ww) to Namibia, 18.8 mt dw (25 mt ww) to Côte d'Ivoire, and 18.8 mt dw (25 mt ww) to Belize.

In 2015, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2015. The adjusted 2015 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2016. NMFS is proposing to carry forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota would then be reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2016 fishing year.

As with the landings and proposed quota for North Atlantic swordfish, the South Atlantic swordfish landings and proposed quota are based on dealer reports received as of December 31, 2015, do not include dead discards or late landings reports, and are preliminary landings estimates that have not yet undergone quality control and assurance procedures. NMFS will adjust the quotas in the final rule based on any updated data, including dead discard data, if available. Thus, the 2016 proposed South Atlantic swordfish quota is subject to further adjustments. However, the United States has only landed South Atlantic swordfish twice in the past several years (0.2 mt dw in April 2010 and 0.1 mt dw in April 2013) and therefore does not anticipate additional landings or discard data that would change the final quota from the proposed quota.

TABLE 1—2016 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS

| | 2015 | 2016 |
|---|---|---|
| **North Atlantic Swordfish quota (mt dw)** | | |
| Baseline Quota | 2,937.6 | 2,937.6. |
| International Quota Transfer | (−)18.8 (to Mauritania) | (−)18.8 (to Mauritania). |
| Total Underharvest from Previous Year + | 1,337.4 | 2,181.6. |
| Underharvest Carryover from Previous Year + | (+) 440.6 | (+) 440.6. |
| Adjusted Quota | 3,359.4 | 3,359.4. |
| Quota Allocation | | |
| Directed Category | 3,009.4 | 3,009.4. |
| Incidental Category | 300 | 300. |
| Reserve Category | 50 | 50. |
| **South Atlantic Swordfish quota (mt dw)** | | |
| Baseline Quota | 75.2 | 75.2. |
| International Quota Transfers * | (−)75.2 | (−)75.2. |

TABLE 1—2016 NORTH AND SOUTH ATLANTIC SWORDFISH QUOTAS—Continued

| | 2015 | 2016 |
|---|---|---|
| Total Underharvest from Previous Year + | 75.1 | 75.1. |
| Underharvest Carryover from Previous Year + | 75.1 | 75.1. |
| Adjusted quota | 75.1 | 75.1. |

+ Allowable underharvest carryover is now capped at 15 percent of the baseline quota allocation for the North Atlantic and 75.2 dw (100 mt ww) for the South Atlantic. The available 2014 and 2015 underharvests are based on data current as of December 31, 2015; they do not include dead discards, late reports, or changes to the data as a result of quality control adjustments.

* Under Recommendation 13–03, the United States transfers 75.2 mt dw (100 mt ww) annually to Namibia (37.6 mt dw, 50 mt ww), Côte d'Ivoire (18.8 mt dw, 25 mt ww), and Belize (18.8 mt dw, 25 mt ww).

*Modification of the Annual Quota Adjustment Public Notification Process*

In the past, NMFS annually has published proposed swordfish quota specifications, allowed for a public comment period, and then issued a final rule. We have done this whether we are adopting new quotas/otherwise altering conservation and management measures pursuant to an ICCAT recommendation or simply adjusting the swordfish quotas based on formulas or measures codified in regulations adopted through notice-and-comment rulemaking (see, *e.g.,* regulatory text at 50 CFR 635.27(c)). Where NMFS is simply administering a pre-established formula that is already embodied in regulations, it has limited discretion over implementation. Inviting public notice and comment on these actions may have unnecessarily confused the regulated community, who has not understood the scope of these actions and our limited discretion to make changes to the quota in these situations. Thus, past public comments have included requests that go well beyond the scope of these actions, including suggestions to carry over underharvests in an amount exceeding the carryover limit, which would be inconsistent with ICCAT recommendations; requests not to carry over any underharvests, which would be inconsistent with the established regulatory formulas; and requests to shut down the commercial swordfish fishery.

To address public confusion and streamline the regulatory process, NMFS notifies the public that it intends to annually adjust the North and South Atlantic swordfish quotas through a final rule without an opportunity for public comment, as appropriate, when such adjustments simply apply a previously-adopted formula and are administrative in nature. NMFS would take such action consistent with requirements of the Administrative Procedure Act.

*Ecological and Socioeconomic Impacts*

The proposed North Atlantic swordfish quota adjustments would result in an adjusted quota for 2016 substantially similar to that analyzed in the 2012 EA, RIR, and FRFA and implemented in 2013 and 2014, and is the same as the adjusted quota implemented in 2015. The quota analyzed in the 2012 EA, RIR, and FRFA was 3,559.2 mt dw and the proposed 2016 adjusted quota is 3,359.4 mt dw; a decrease of 199.8 mt dw. The 2016 North Atlantic swordfish proposed quota is not expected to increase fishing effort, protected species interactions, or environmental effects in a manner not considered in the 2012 EA and would, in fact, cap the quota at a level slightly lower than that analyzed in the 2012 EA and thus likely have fewer environmental effects or protected species interactions.

The 2016 proposed quota differs slightly from that quota analyzed in the 2012 EA for two reasons. First, Recommendation 13–02 reduces the underharvest carryover limit beginning in 2015 from 25 percent of the base quota to 15 percent. In the 2012 EA, the analysis took into account North Atlantic Swordfish underharvest carryovers of up to 25 percent. Since the lower underharvest carryover limit is within this range (*i.e.,* it is less than 25 percent), the quota that would be implemented consistent with the reduced carryover provision has been previously analyzed. Furthermore, once effective, the reduced underharvest carryover limit would result in a lower overall North Atlantic swordfish adjusted quota.

The second reason the 2012 quota is different than the 2016 proposed adjusted quota is Recommendation 13–02's elimination of the 112.8 mt dw quota transfer to Morocco and the introduction of a lower 18.8 mt dw quota transfer to Mauritania. No additional NEPA analysis is needed for the change in international quota transfers because—in concert with the reduction in the underharvest carryover limit—these changes are not expected to increase fishing effort, affect protected species interactions, or environmental effects beyond those considered in the existing NEPA analyses. Thus, NMFS has determined that the North Atlantic swordfish quota portion of the specifications and impacts to the human environment as a result of the proposed quota adjustments do not require additional NEPA analysis beyond that discussed in the 2012 EA.

Similarly, NMFS analyzed—in the EA, RIR, and FRFA that were prepared for the 2007 Swordfish Quota Specification Final Rule (October 5, 2007; 72 FR 56929)—the impacts of harvesting the same amount of annual baseline quota being proposed here in the 2016 South Atlantic swordfish specifications. The proposed South Atlantic swordfish quota adjustments would not change overall quotas and are not expected to increase fishing effort, protected species interactions, or environmental effects beyond those analyzed in the 2007 EA. While ICCAT SCRS conducted a stock assessment for South Atlantic swordfish in 2013, that assessment did not alter the stock status or TAC from when 2007 EA analyses were conducted and no additional information about the environment has become available that would alter the analyses. Therefore, because there would be no changes to the South Atlantic swordfish management measures in this proposed rule, and no changes to the affected environment or any environmental effects that have not been previously analyzed, NMFS has determined that the South Atlantic swordfish quota portion of the specifications and impacts to the human environment as a result of the proposed quota adjustments do not require additional NEPA analysis beyond that analyzed in the 2007 EA.

**Request for Comments**

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. During the comment period, NMFS will hold one conference call and webinar for this proposed rule. The conference call and webinar will be held on June 29, 2016, from 2:00–4:00 p.m. EST. Please see the **DATES** and **ADDRESSES** headings for more information.

The public is reminded that NMFS expects participants on phone conferences to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (*e.g.,* all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; attendees may not interrupt one another; etc.). NMFS representative(s) will structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and those that do not may be removed from the conference call.

**Classification**

Pursuant to the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, the Atlantic Tuna Convention Act, and other applicable law, subject to further consideration after public comment.

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

Previously, NMFS determined that proposed rules to implement the North Atlantic swordfish quota framework (77 FR 25669, May 1, 2012) and South Atlantic swordfish quota framework (75 FR 35432, June 22, 2010) were consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of coastal states on the Atlantic, including the Gulf of Mexico and the Caribbean Sea. Pursuant to 15 CFR 930.41(a), NMFS provided the Coastal Zone Management Program of each coastal state a 60-day period to review the consistency determination and to advise the Agency of their concurrence. NMFS received concurrence with the consistency determinations from several states and inferred consistency from those states that did not respond within the 60-day time period. This proposed action to establish the 2016 North and South Atlantic swordfish quotas does not change the framework previously consulted upon; therefore, no additional consultation is required.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities because the proposed quota adjustments are largely the same as in previous years and the United States is not expected to catch its entire quota in 2016.

As described above, this proposed rule would adjust the 2016 baseline quota for North Atlantic swordfish (January 1, 2016, through December 31, 2016) to account for 2015 underharvests, as allowable, and international quota transfers per § 635.27(c)(1)(i) and (c)(3)(ii) based on ICCAT Recommendation 13–02. The United States can carry over 2015 underharvest at a level not to exceed 15 percent of its baseline quota. Additionally, ICCAT Recommendation 13–02 stipulates that the United States transfer 18.8 mt dw (25 mt ww) of quota to Mauritania.

In 2015, U.S. fishermen landed 1,177.8 mt dw of North Atlantic swordfish as of December 31, 2015, leaving 2,181.6 mt dw of quota underharvest. This underharvest amount exceeds the maximum underharvest carryover of 440.6 mt dw; therefore, only the maximum amount of 440.6 mt dw of 2015 underharvest would be carried over and added to the 2016 baseline quota. The quota transfer of 18.8 mt dw to Mauritania would be deducted, leaving a proposed 2016 North Atlantic swordfish adjusted quota of 3,359.4 mt dw (Table 1).

This proposed rule would also adjust the 2016 baseline quota for South Atlantic swordfish (January 1, 2016, through December 31, 2016) to account for 2015 underharvests and international quota transfers per § 635.27(c)(1)(ii) and (c)(3)(ii) based on ICCAT Recommendation 13–03. The United States can carry over 2015 underharvest at a level not to exceed 100 percent of the baseline quota. Additionally, ICCAT Recommendation 13–03 stipulates that the United States transfer the following quota amounts to other countries: 37.6 mt dw (50 mt ww) to Namibia; 18.8 mt dw (25 mt ww) to Côte d'Ivoire; and 18.8 mt dw (25 mt ww) to Belize.

In 2015, U.S. fishermen landed no South Atlantic swordfish according to data available as of December 31, 2015. The adjusted 2015 South Atlantic swordfish quota was 75.1 mt dw due to nominal landings in previous years. Therefore, 75.1 mt dw of underharvest is available to carry over to 2016. NMFS is proposing to carry forward 75.1 mt dw to be added to the 75.2 mt dw baseline quota. The quota would then be reduced by the 75.2 mt dw of annual international quota transfers outlined above, resulting in an adjusted South Atlantic swordfish quota of 75.1 mt dw for the 2016 fishing year. (Table 1).

The commercial swordfish fishery is comprised of fishermen who hold one of three swordfish limited access permits (LAPs) (*i.e.,* directed, incidental, or handgear), fishermen who hold a swordfish general commercial permit, fishermen who hold an HMS incidental squid trawl permit, fishermen who hold a commercial Caribbean small boat permit, and the related industries, including processors, bait houses, and equipment suppliers. As of October 2015, there were approximately 188 vessels with a directed swordfish LAP, 72 vessels with an incidental swordfish LAP, 83 vessels with a handgear LAP for swordfish, and 651 vessels that held a swordfish general commercial permit. Additionally, there were approximately 66 HMS incidental squid trawl permit holders, which allow vessels in the Illex squid fishery to retain up to 15 incidentally-caught swordfish while trawling for squid. A total of 20 Caribbean small boat permits were issued in 2015 as of October 2015; however, 14 of these were held by vessels in Florida where the permit is not valid. NMFS considers all participants in the commercial swordfish fishery to be small entities, based on the relevant North American Industry Classification System (NAICS) codes and size standards set by the Small Business Administration (SBA).

The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a ''small business'' if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts (revenue) not in excess of $20.5 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. NAICS is the North American Industry Classification System, a standard system used by business and government to classify business establishments into industries, according to their economic activity. The United States government developed NAICS to collect, analyze, and publish data about the economy. In addition, the Small Business Administration (SBA) has defined a small charter/party boat entity (NAICS code 487210, for-hire) as one with average annual receipts (revenue) of less than $7.5 million.

On December 29, 2015, NMFS published a final rule (80 FR 81194; December 29, 2015) to establish a single small business size standard for

commercial fishing businesses (NAICS 11411) of $11 million for RFA compliance purposes only. NMFS has chosen to delay the effective date of the rule to establish a small business size until July 1, 2016. Given the length of the regulatory development process, NMFS is considering this size standard for small entities for this proposed rule given that the final rule may occur after the July 1, 2016 effective date. The new size standards do not affect analyses prepared for this action.

This action is not expected to result in a significant economic impact on the small entities subject to the quota limits. Based on the 2015 average price for swordfish of $4.07/lb (based on 2015 electronic dealer data), the 2016 North and South Atlantic swordfish baseline quotas could result in gross revenues of $26,358,268 (2,937.6 mt dw (6,476,233 lbs dw) * $4.07/lb) and $674,749 (75.2 mt dw (165,786 lbs dw) * $4.07/lb), respectively, if the quotas were fully utilized. Under the adjusted quotas of 3,359.4 mt dw (7,406,133 lbs dw) for North Atlantic swordfish and 75.1 mt dw (165,565 lbs dw) for South Atlantic swordfish, the gross revenues could be $30,142,961 and $673,850, respectively, for fully utilized quotas.

Potential revenues per vessel resulting from full utilization of the adjusted quotas could be $27,910 for the North Atlantic swordfish fishery and $3,584 for the South Atlantic swordfish fishery, considering a total of 1,080 swordfish permit holders in the North Atlantic and 188 directed permit holders that can harvest South Atlantic swordfish (only limited access directed swordfish permit holders may retain South Atlantic swordfish). The North Atlantic estimate, however, represents an average across all permit types, despite permit differences in retention limits, target species, and geographical range. For North Atlantic swordfish, directed swordfish permit holders would likely experience higher than average per-vessel ex-vessel revenues due to the use of pelagic longline gear and the lack of a per-trip retention limit, although trip expenses are likely to be relatively high. HMS incidental squid trawl permit holders would likely experience per vessel ex-vessel revenues well below those received by pelagic longline vessels due to the low retention limit per trip (15 swordfish) and because these vessels do not target swordfish and only catch them incidentally. Swordfish general commercial permit holders would likely experience lower than average per-vessel ex-vessel revenues, despite higher ex-vessel prices and lower fishing expenses. Although the proposed 2016 North Atlantic swordfish adjusted quota is 199.8 mt dw lower than the quota analyzed in the 2012 EA, U.S. fishermen in recent years have not harvested the full North Atlantic swordfish quota. Thus, the 199.8 mt dw change in the total adjusted quota is unlikely to cause any economic impacts since that portion of the quota will likely be unutilized. In the future, if the North Atlantic swordfish fishery achieves full quota utilization, economic impacts will need to be reanalyzed. For South Atlantic swordfish, only directed swordfish permit holders can land these fish; therefore, potential revenue per vessel is higher than the average for these directed swordfish permit holders since the other permit types may not land swordfish. However, U.S. fishermen rarely catch South Atlantic swordfish. Over the past 6 years, 0.3 mt dw of South Atlantic swordfish catch has been reported. The proposed 2016 South Atlantic swordfish adjusted quota is unchanged from that analyzed in the 2007 EA, thus, no new economic impacts are expected.

Because the United States' commercial swordfish fishery is not expected to catch its entire quota in 2016, the adjustments to the quota and management measures proposed in this rule will not have a significant impact on a substantial number of small entities. As a result, no initial regulatory flexibility analysis is required, and none has been prepared.

### List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: May 27, 2016.

**Samuel D. Rauch III,**

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

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.27, revise paragraphs (c)(3) to read as follows:

**§ 635.27 Quotas.**

* * * * *

(c) * * *

(3) Annual adjustments. NMFS will file with the Office of the Federal Register for publication notice of the following adjustments to or apportionments of the annual quota:

(i) Adjustments to the quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan consistent with the quota provisions of paragraph (c)(1).

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year's quota for that area. As necessary to meet management objectives, such adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 15 percent of the annual baseline quota allocation. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw). Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons.

(iii) The dressed weight equivalent of the amount by which dead discards exceed the allowance specified at paragraph (c)(1)(i)(C) of this section will be subtracted from the landings quota in the following fishing year or from the reserve category.

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[FR Doc. 2016–13367 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 81, No. 109

Tuesday, June 7, 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

### Forest Service

### Eastern Washington Cascades Provincial Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Washington Cascades Provincial Advisory Committee (PAC) will meet in Wenatchee, Washington. The committee is authorized pursuant to the implementation of E–19 of the Record of Decision and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and make recommendations to promote a better integration of forest management activities between Federal and non-Federal entities to ensure that such activities are complementary. PAC information can be found at the following Web site: *http://www.fs.usda.gov/main/okawen/workingtogether/advisorycommittees.*

**DATES:** The meeting will be held from 9 a.m. to 3 p.m. on Wednesday, June 29, 2016.

All PAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the Okanogan-Wenatchee National Forest (NF) Headquarters Office, 215 Melody Lane, Wenatchee, Washington.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Okanogan-Wenatchee NF Headquarters Office. Please call ahead to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Robin DeMario, PAC Coordinator, by phone at 509–664–9292 or via email at *rdemario@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Provide updates to members on Travel Management Planning, and
2. Forest Plan monitoring interaction and advice from PAC members.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 22, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Robin DeMario, PAC Coordinator, 216 Melody Lane, Wenatchee, Washington 98801; by email to *rdemario@fs.fed.us,* or via facsimile to 509–664–9286.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 31, 2016.

**Jason Kuiken,**

*Deputy Forest Supervisor, Okanogan-Wenatchee National Forest.*

[FR Doc. 2016–13375 Filed 6–6–16; 8:45 am]

BILLING CODE 3411–15–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Black Hills National Forest, Custer, South Dakota—Rushmore Connector Trail Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The U.S. Forest Service (Forest Service), Black Hills National Forest, proposes to issue authorizations for the construction, operation and maintenance of a non-motorized trail connecting the existing George S. Mickelson (Mickelson) Trail near Hill City, South Dakota, to the Blackberry Trailhead at Mount Rushmore National Memorial (the Memorial). New trail construction would extend approximately 14 miles across National Forest System (NFS) land and approximately 1.4 miles across National Park Service (NPS) lands within the Memorial. The trail would be a combination of compacted tread and elevated walkway, with a trail tread of about eight feet and corridor of about twenty feet. The proposed Rushmore Connector Trail would be constructed, operated and maintained by the proponent, State of South Dakota Department of Game, Fish and Parks (SDGFP).

**DATES:** Comments concerning the scope of the analysis must be postmarked no later than 30 (thirty) days from date of publication of this notice in the **Federal Register**. The draft environmental impact statement is expected November 2017, and the final environmental impact statement is expected March 2018.

**ADDRESSES:** Send written comments to Forest Supervisor, Black Hills National Forest, ATTN: Rushmore Connector Trail, 1019 N. 5th Street, Custer, SD 57730. Comments may also be sent via email to *comments-rocky-mountain-black-hills@fs.fed.us,* with ''Rushmore Connector Trail'' in the subject line. Electronic comments must be submitted in Word (.doc), Rich Text (.rtf), or Adobe Acrobat (.pdf) format. Open-house-style public meetings are planned, one each in Hill City and Rapid City, South Dakota, on Tuesday, June 14, and Thursday, June 16. Times and exact locations of these meetings will be announced on the Black Hills National Forest project Web site, *http://www.fs.usda.gov/project/?project=44935.*

**FOR FURTHER INFORMATION CONTACT:** Anne Apodaca, Forest Recreation and Trails Program Manager, Black Hills National Forest Supervisor's Office,

1019 N. 5th Street, Custer, SD 57730, phone (605) 673–9200. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

## Purpose and Need for Action

The purpose of this proposal is to respond to the application submitted by the State of South Dakota. The need is to evaluate the State's application to construct, operate and maintain a non-motorized recreation trail and associated corridor across NFS lands managed by the Black Hills National Forest, in order to determine effects as well as consistency with law, regulation, policy and guidance in the 1997 Revised Forest Plan for the Black Hills National Forest, as Amended (Forest Plan). This proposal would respond to Forest Plan Goal 4 (Provide for scenic quality, recreational opportunities and protection of heritage resources); Goal 7 (Emphasize cooperation with individuals, organizations, and other agencies in coordinating planning and implementing projects); and Goal 8 (Promote rural development opportunities).

## Proposed Action

The proposed Rushmore Connector Trail, would be constructed, operated and maintained for non-motorized use. The proposal is based on the special use permit application and the *George S. Mickelson Trail to Mt. Rushmore National Memorial Trail Feasibility Study,* completed previously and provided by the SDGFP to the Forest Service. New trail construction would extend approximately 14 miles across NFS land and approximately 1.4 miles within the Memorial. The new trail is anticipated to be a combination of compacted tread and elevated walkway, with a trail tread width of approximately eight feet within a corridor approximately twenty feet wide. The trail would be designed to follow the Forest Service Trail Accessibility Guidelines and have grades no greater than 8–14 percent, depending on the resting interval. A right-of-way across private property would be required for a small segment of trail, approximately 0.1 mile. The proponent would secure this right-of-way at their expense, in the name of the U.S. Government.

The Rushmore Connector Trail would connect the existing Forest Service developed recreation facilities along the Peter Norbeck Scenic Byway (SD Highway 244), which it would cross at least three times. The Big Pine Trailhead would be relocated to the south side of the highway to improve trail user safety, and would provide the point for divergence of user groups. Equestrian users would be required to follow the existing Centennial National Recreation Trail (Trail 89) south for approximately 4.8 miles, of which 4.1 miles is located in the Black Elk Wilderness managed by the Forest Service. Existing management direction including party size limits would apply. Within the Memorial 0.72 miles of the existing Blackberry Trail would be utilized. Bicyclists would travel from Big Pine Trailhead on the proposed designated route, through the Horsethief Lake and Wrinkled Rock areas into the Memorial. Hikers could use either route. A Forest Plan amendment is proposed, to address several possible inconsistencies of the proposal with existing guidance regarding expansion of the recreational trail system and outfitter-guide permits in the Norbeck Wildlife Preserve, and party size limits in the Black Elk Wilderness.

If an action alternative were selected, the land beneath the trail would remain NFS land managed by the Black Hills National Forest. The trail facility itself would be constructed, operated and maintained by the State of South Dakota, under a special use permit issued by the Forest Service under authority of the Federal Land Policy and Management Act (FLPMA). The special use permit would allow the State to charge for use of the trail, as part of the general use fee for the Mickelson Trail. Any other fees proposed by the State to be implemented for portions of the proposed trail would require prior Forest Service approval with public involvement. Individual special events proposed on the trail would each require Forest Service approval with public involvement, and authorization under a special use permit.

## Lead and Cooperating Agencies

Under terms of the National Environmental Policy Act (NEPA), the Forest Service is the lead agency for analysis of this proposal. The National Park Service, Mount Rushmore National Memorial, is a cooperating agency on this project. The NPS has special expertise and jurisdiction by law and would make a decision on whether to implement that portion of the proposed trail route on NPS lands. The Federal Highway Administration (FHWA) is also a cooperating agency on this project. FHWA may have a decision to make regarding funding of project work.

## Responsible Officials

The Forest Service Responsible Official for this project is the Forest Supervisor, Black Hills National Forest, 1019 N. 5th Street, Custer, South Dakota 57730. Depending on the nature of the permit(s) that might be issued to implement an action alternative, the Regional Forester of the U.S. Forest Service, Rocky Mountain Region may also issue a decision on this project. The National Park Service Responsible Official for this project is the Superintendent of Mount Rushmore National Memorial. Some decisions may be required to be made by the NPS Regional Director, or through additional mandated rulemaking procedures.

## Nature of Decision To Be Made

Based on the environmental analysis the Forest Supervisor of the Black Hills National Forest will make the following decisions:

- Whether to authorize construction, operation and maintenance of approximately 14 miles of non-motorized trail connecting the George S. Mickelson Trail to Mount Rushmore National Memorial near Hill City, South Dakota, as proposed, in some other manner and/or along an alternate route, or not at all;
- What if any design criteria, mitigation measures, and monitoring requirements should be required;
- Whether to amend existing Black Hills National Forest Plan direction to allow implementation of the selected alternative;
- Whether to authorize construction of a new campground in Section 33 or thereabouts, of Township 1 South, Range 5 East, Black Hills Meridian, to accommodate trail users and other Forest visitors;
- Whether to authorize reconstruction of the Highway 244 underpass near Willow Creek Campground and Palmer Gulch Campground, to facilitate use of the Rushmore Connector Trail with the existing Black Elk Wilderness and Norbeck Wildlife Preserve trail system;
- Whether to authorize construction of additional trailhead facilities north and west of the Norbeck Wildlife Preserve to provide additional access points to the Rushmore Connector Trail;
- Whether to reconstruct portions of the Centennial Trail, including sections in the Black Elk Wilderness, to address and mitigate use impacts;
- Whether to approve, in principle only, future special events within the capacity analyzed;

- Whether use limits should be imposed on trail use for segments outside of the Black Elk Wilderness;
- Whether to authorize additional outfitter-guide permits;
- Whether to authorize the implementation of use fees;
- Whether to authorize phased construction of the Rushmore Connector Trail on NFS lands prior to potential final rulemaking procedures for actions within Mount Rushmore National Memorial.

Some of these decisions may be reserved to the Regional Forester of the Rocky Mountain Region of the Forest Service. The level of individual decisions will be determined by the actions outlined through the NEPA process. If any action alternative is selected, project implementation could begin in the year 2018. The initial focus would be to issue authorizations and engineering design and layout.

**Permits or Licenses Required**

A special use permit issued by the Forest Service under FLPMA would be required before any action alternative could be implemented.

**Scoping Process**

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments may not allow the Agency to provide the respondent with subsequent environmental documents.

Dated: May 25, 2016.

**Jim Zornes,**

*Acting Forest Supervisor.*

[FR Doc. 2016–13373 Filed 6–6–16; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

**AGENCY:** Economic Development Administration, Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a public meeting on Thursday, June 16, 2016, from 2:00–4:00 p.m. Eastern Time (ET) and Friday, June 17, 2016, from 8:30 a.m.–12:00 p.m. ET. During this time, members will continue to work on various Council initiatives which include innovation, entrepreneurship, and talent development.

**DATES:** The meeting will be held on Thursday, June 16, 2016, from 2:00–4:00 p.m. Eastern Time (ET) and on Friday, June 17, 2016, from 8:30 a.m.–12:00 p.m. ET. Pre-clearance is required to attend the Friday portion of the meeting in person. If you wish to attend this portion of the meeting, you must notify Julie Lenzer (see contact information below) no later than 11:59 p.m. ET on Monday, June 13, 2016.

**ADDRESSES:** The Thursday portion of the meeting will be held at the Herbert Clark Hoover Building, Room 1894, 1401 Constitution Avenue NW., Washington, DC 20230. The Friday portion of the meeting will be held at the Eisenhower Executive Office Building, Room 210/212, 1650 Pennsylvania Avenue NW., Washington, DC 20504.

**Teleconference**

June 16–17, 2016.
Dial-In: +1 877 950 4778 or +1 517 244 5888.
Passcode: 4423486.

**FOR FURTHER INFORMATION CONTACT:** Julie Lenzer, Office of Innovation and Entrepreneurship, Room 78018, 1401 Constitution Avenue NW., Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001; fax: +1 202 273 4781. Please reference ''NACIE June 2016 Meeting'' in the subject line of your correspondence.

**SUPPLEMENTARY INFORMATION:** The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters related to innovation and entrepreneurship in the United States. NACIE's overarching focus is recommending transformational policies to the Secretary that will help U.S. communities, businesses, and the workforce become more globally competitive. The Council operates as an independent entity within the Office of Innovation and Entrepreneurship (OIE), which is housed within the U.S. Commerce Department's Economic Development Administration. NACIE members are a diverse and dynamic group of successful entrepreneurs, innovators, and investors, as well as leaders from nonprofit organizations and academia.

The purpose of this meeting is to discuss the Council's planned work initiatives in three focus areas: Workforce/talent, entrepreneurship, and innovation. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/oie/nacie/* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning the Council's affairs at any time before or after the meeting. Comments may be submitted to the Office of Innovation and Entrepreneurship at the contact information below. Those unable to attend the meetings in person but wishing to listen to the proceedings can do so through a conference call line accessible via +1 877 950 4778 or +1 517 244 5888 with passcode 4423486. Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: June 2, 2016.

**Julie Lenzer,**

*Director, Office of Innovation and Entrepreneurship.*

[FR Doc. 2016–13412 Filed 6–6–16; 8:45 am]

**BILLING CODE 3510–WH–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 July 26, 2016, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 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 §§ 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 July 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 § 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 §§ 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: June 2, 2016.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2016–13402 Filed 6–6–16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on June 22, 2016, 9:15 a.m. (Pacific Daylight Time), at Dorsey & Whitney LLP, 701 Fifth Avenue, Suite 6100, Seattle, WA 98104. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

**Agenda**

*Open Session*

1. Opening remarks by the Chairman and Vice Chairman.
2. Presentation of papers or comments by the Public.
3. Export Control Reform Update via Video Teleconferencing.
4. Status of and Commentary on Proposed Rules via Video Teleconferencing.
5. Update on the Single Form via Video Teleconferencing.
6. Subcommittee Updates.

*Closed Session*

7. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 25 participants on a first come, first served basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than June 15, 2016.

A limited number of seats will be available for the public session. 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 the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 9, 2016, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the 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 §§ 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: June 1, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2016–13398 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–900]**

### Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination Under Section 129 of the Uruguay Round Agreements Act and Reinstatement of Order, in Part

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On May 11, 2016, the United States Court of International Trade (''the Court'') issued final judgment in *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Court No. 13–00168,[1] sustaining the Department of Commerce's (''the Department'') voluntary final remand results concerning the Implemented *PRC Section 129 Determination.*[2] In the Final Section 129 Remand, the Department determined that it was appropriate to reinstate the partially revoked antidumping duty order (''the order'') on diamond sawblades and parts thereof (''diamond sawblades'') from the People's Republic of China (''PRC'') with respect to Advanced Technology & Materials Co., Ltd. (''AT&M'')[3] where the basis for the Implemented *PRC Section 129 Determination* was no longer valid.[4]

Consistent with the decision of the United States Court of Appeals for the

[1] *See Diamond Sawblades Manufacturer's Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 16–48 (CIT May 11, 2016) (''*DSMC*'').

[2] *See* Final Results Of Redetermination Pursuant To *Diamond Sawblades Manufacturers' Coalition* v. *United States,* Consol. Court No. 13–00168, Slip Op. 15–92 (CIT August 20, 2015), dated December 1, 2015, (''Final Section 129 Remand'') available at *http://enforcement.trade.gov/remands/; Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958 (March 28, 2013) (''Implemented *PRC Section 129 Determination*'').

[3] Collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd., a single entity. *See* Implemented *PRC Section 129 Determination,* 78 FR 18958, 18959 at n. 10.

[4] *See* Final Section 129 Remand.

Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's implemented final determination in a proceeding conducted under section 129 of the Uruguay Round Agreements Act (Section 129). Furthermore, the Department is reinstating the order with respect to AT&M.[5]

**DATES:** *Effective Date:* May 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** Andrew Devine, AD/CVD Operations Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0238.

**SUPPLEMENTARY INFORMATION:**

## Background

In the less-than-fair-value (''LTFV'') investigation, the Department determined that mandatory respondent AT&M was eligible for a separate rate, and calculated a separate estimated weighted-average dumping margin for it.[6] Petitioner, the Diamond Sawblades Manufacturers' Coalition (''DSMC''), challenged the Department's separate-rate determination in court.[7] Concurrently, the PRC challenged the Department's use of its ''zeroing'' methodology in calculating dumping margins in certain LTFV investigations before the World Trade Organization's (''WTO'') Dispute Settlement Body.[8] Effective March 22, 2013, in response to the dispute settlement panel's findings and instructions by the United States Trade Representative (''USTR'') to implement the Department's determination under Section 129 of the URAA, the Department recalculated AT&M's weighted-average dumping margin from the LTFV investigation without the use of zeroing.[9] Removing the zeroing methodology resulted in AT&M receiving a calculated dumping margin of zero.[10] Consequently, the Department partially revoked the order with respect to AT&M. The DSMC challenged this determination before the Court. Additionally, in the ongoing litigation relating to the Department's separate-rate determination in the LTFV investigation, the Department reconsidered AT&M's separate rate eligibility and determined that AT&M had not rebutted the presumption of state control, and thus, was not eligible for a separate rate.[11] The rate applicable to the PRC-wide entity in the LTFV investigation was based on information in the petition and did not involve zeroing.[12] On October 11, 2013, the Court sustained the Department's redetermination that AT&M failed to rebut the presumption of state control, and therefore, was not eligible for a separate rate.[13] On October 24, 2014, the Court of Appeals for the Federal Circuit (''CAFC'') affirmed the Court's decision.[14]

In light of AT&M's ineligibility for a separate rate in the LTFV investigation, and the inapplicability of the separate-rate applied to AT&M in the LTFV investigation which served as the basis of the Department's Implemented *PRC Section 129 determination,* in the litigation concerning the Implemented *PRC Section 129 determination,* the United States moved for a voluntary remand to reconsider its partial revocation of the dumping order. The Court granted the United States' motion.[15]

On December 1, 2015, the Department issued the final results of redetermination in this section 129 remand and filed this remand with the Court.[16] On May 11, 2016, the Court entered judgment sustaining the remand results.[17]

## Timken Notice

In its decision in *Timken,* 893 F.2d at 341, as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's May 11, 2016, judgment sustaining the Final Section 129 Remand constitutes a final decision of the Court that is not in harmony with the Department's Implemented *PRC Section 129 Determination.*[18] This notice is published in fulfillment of the publication requirement of *Timken.*

## Reinstatement of the Order

In the Final Section 129 Remand, sustained by the Court,[19] the Department determined that reinstatement of the order with regard to AT&M was appropriate.[20] Accordingly, consistent with the Final Section 129 Remand and the decision by the Court sustaining that redetermination, the Department hereby reinstates the order as it applies to AT&M. Consistent with the Department's stated intention in the Final Section 129 Remand, this reinstatement of the order with regard to AT&M is effective as of March 22, 2013, which was the effective date of the partial revocation.[21]

## Cash Deposit Requirements

The Department will instruct U.S. Customs and Border Protection to require cash deposits at 82.05 percent, the current rate established for the PRC-wide entity.[22] Pursuant to the Court's finding that the Department should have issued those instructions upon filing the redetermination with the Court, those instructions will be effective as of December 1, 2015, the date the remand

[5] Who, was stated in the Implemented *PRC Section 129 Determination* was, collectively with Beijing Gang Yan Diamond Product Company and Yichang HXF Circular Saw Industrial Co., Ltd., a single entity.

[6] *See* Implemented *PRC Section 129 Determination* at 29306.

[7] *See Advanced Technology & Materials Co.* v. *United States,* 938 F. Supp. 2d 1342 (CIT 2013).

[8] *See* WTO Panel Report, United States—Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China, WT/DS422/R (June 8, 2012).

[9] *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958, 18960 (March 28, 2013).

[10] *Id.*

[11] *See* Final Results of Redetermination Pursuant to Remand Order Diamond Sawblades and Parts Thereof from the People's Republic of China, *Advanced Tech. & Material Co.* v. *United States,* CIT Ct. No. 09–511 (May 6, 2013) (''Advanced Tech. Remand'') available at *http://enforcement.trade.gov/remands/12-147.pdf.*

[12] *See Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 70 FR 77121, 77129 (December 29, 2005) unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303 (May 22, 2006).

[13] *See Advanced Technology & Materials Co.* v. *United States,* 938 F. Supp. 2d 1342 (CIT 2013).

[14] *See Advanced Technology & Materials Co.* v. *United States,* 581 Fed. Appx. 900 (CAFC 2014) (Rule 36).

[15] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* Court No. 13–00168, Slip op. 15–92 (August 20, 2015).

[16] *See* Final Section 129 Remand.

[17] *See* Final Sustained Remand.

[18] *See DSMC.*

[19] *See DSMC* at 5–6.

[20] *See* Final Section 129 Remand; *see also DSMC.*

[21] *See* Final Section 129 Remand, at 6.

[22] *See Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 32344, 32345 (June 8, 2015).

redetermination was filed with the Court.

**Notification to Interested Parties**

This notice is issued and published in accordance with sections 516A(e) and 777(i)(1) of the Act and section 129(c)(2)(A) of the Uruguay Round Agreements Act.

Dated: June 1, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–13534 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Rip Current Visualization Survey and Focus Groups

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 8, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Nicole Kurkowski, National Weather Service, ((301) 427–9104), *nicole.kurkowski@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

This is a request for a new collection of information. The objective of the survey and focus groups is to collect information on the current use and knowledge of NOAA's National Weather Service (NWS) products and perceptions of various rip current products. The focus groups will ask participants to explain their responses. This information will help create better rip current products used by the National Weather Service (NWS) to protect lives and prevent injury from rip currents.

**II. Method of Collection**

The primary data collection vehicles will be an internet-based, public survey and face to face focus groups. The focus groups will target lifeguards and decision makers. Telephone and personal interviews may be employed to supplement and verify survey responses.

**III. Data**

*OMB Control Number:* 0648–xxxx.

*Form Number(s):* None.

*Type of Review:* Regular submission (request for a new information collection).

*Affected Public:* Members of the public.

*Estimated Number of Respondents:* 500 for the survey and 80 for the focus groups.

*Estimated Time per Response:* 30 minutes for the survey and 1.5 hours for the focus groups.

*Estimated Total Annual Burden Hours:* 250 hours for the survey and 120 hours for the focus groups.

*Estimated Total Annual Cost to Public:* $0 in recordkeeping/reporting costs.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 2, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016–13368 Filed 6–6–16; 8:45 am]

BILLING CODE 3510–KE–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE663**

### Marine Mammals; File No. 18769

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Sea World, LLC., 9205 South Park Center Loop, Suite 400, Orlando, FL 32819 [Christopher Dold, D.V.M., Responsible Party], has applied in due form for a permit to continue enhancement activities on three currently held non-releasable Guadalupe fur seals (*Arctocephalus townsendi*) with the option of holding up to six non-releasable furs seals at any given time.

**DATES:** Written, telefaxed, or email comments must be received on or before July 7, 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. 18769 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. 18769 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:** Jennifer Skidmore and Amy Sloan, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended

(MMPA; 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 222–226).

The applicant requests authorization for the continued maintenance of three non-releasable Guadalupe fur seals at Sea World of California (and other Sea World facilities if relocation is necessary) for enhancement purposes. These animals were taken into captivity by the Marine Mammal Health and Stranding Network and were deemed non-releasable. Thus, release of these animals would not be in the best interest of their individual welfare and that of the wild population. These animals are currently held by Sea World of California under Permit No. 14186–01. Furthermore, the applicant has agreed to provide additional space for future non-releasable Guadalupe fur seals, if necessary (up to 6 total animals at any given time). These animals would be provided with daily husbandry care and treatment for current medical conditions, routine veterinary care, and would be made available for opportunistic research. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 1, 2016.

**Julia Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016–13351 Filed 6–6–16; 8:45 am]

**BILLING CODE 3510–22–P**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 16–C0004]**

## Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of the Consumer Product Safety Commission's regulations. Published below is a provisionally-accepted Settlement Agreement with Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions containing a civil penalty in the amount of four million, five hundred thousand dollars ($4,500,000) within thirty (30) days of service of the Commission's final Order accepting the Settlement Agreement.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 22, 2016.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 16–C0004, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** Alexander W. Dennis, Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7817.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order [1] appears below.

Dated: June 2, 2016.

**Todd A. Stevenson,**

*Secretary.*

Commissioner Mohorovic filed a statement regarding this matter. The statement is available at the Office of the Secretary or the CPSC Web site, *www.cpsc.gov.*

**United States of America Consumer Product Safety Commission**

*In the Matter of:*
Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions
CPSC Docket No.: 16–C0004

### SETTLEMENT AGREEMENT

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'') and 16 CFR 1118.20, Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions (''the Firm''), and the United States Consumer Product Safety Commission (''Commission''), through its staff, hereby enter into this Settlement Agreement (''Agreement''). The Agreement, and the incorporated attached Order, resolve staff's charges set forth below.

*THE PARTIES*

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for the enforcement of, the CPSA, 15 U.S.C. 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 CFR 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions is a Delaware corporation with its principal corporate offices in Boca Raton, FL.

*STAFF CHARGES*

4. From 2010 to 2012 the Firm manufactured, imported, distributed, and sold about 520,000 Mr. Coffee Single Cup Brewing System BVMC–KG1 series coffee makers (''Coffee Makers'' or ''Subject Products'').

5. The Coffee Makers are ''consumer products'' ''distributed in commerce,'' as those terms are defined or used in section 3(a)(5) and (8) of the CPSA, 15 U.S.C. 2052(a)(5) and (8). The Firm is a ''manufacturer'' of the Subject Products, as such term is defined in section 3(a)(11) of the CPSA, 15 U.S.C. 2052(a)(11).

6. The Firm had information reasonably supporting the conclusion that the Coffee Makers are defective or created an unreasonable risk of serious injury or death in that a build-up of steam pressure can force the brewing chamber open and expel hot water and hot coffee grounds towards consumers, creating a burn risk to consumers.

7. Between 2011 and 2012 the Firm received numerous complaints of the Subject Products' chamber opening and expelling hot water and hot coffee

[1] The Commission voted (3–2) to provisionally accept the Settlement Agreement and Order regarding Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions. Chairman Kaye, Commissioner Adler, Commissioner Robinson voted to provisionally accept the Settlement Agreement and Order. Commissioner Buerkle and Commissioner Mohorovic voted to reject the Settlement Agreement and Order.

grounds towards consumers. The complaints included reports of at least 32 consumers being burned by the Subject Products.

8. Despite having information reasonably supporting the conclusion that the Coffee Makers contain a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, the Firm did not immediately notify the Commission, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

9. In failing to inform the Commission immediately about the Coffee Makers, the Firm knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

10. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, the Firm is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

*RESPONSE OF SUNBEAM PRODUCTS, INC. D/B/A JARDEN CONSUMER SOLUTIONS*

11. The Firm's settlement of this matter does not constitute an admission that it had reportable information as set forth in paragraphs 4 through 10.

12. The Firm conducted an investigation about consumer complaints relating to the Subject Products' brewing chamber opening to try to determine the cause of these events. After an extensive investigation, the Firm eventually determined that these incidents were related to circumstances that it had not anticipated, *i.e.,* a buildup of steam within the Subject Products' hot water tank, which the Firm believes was caused by brewing a second cup of coffee with four ounces or less of water added to the hot water tank immediately after an initial eight ounce brew, without changing the coffee pod. The Subject Products' instructions provided that coffee be brewed by filling the brewing chamber to its fill line (*i.e.* eight ounces of water). When filled to the fill line, the Subject Products did not create steam and thus did not result in the chamber opening. After its investigation, the Firm voluntarily filed a report under Section 15(b) of the CPSA with the Commission. 15 U.S.C. 2064(b).

13. The Firm has agreed to pay this civil penalty because the CPSA defines a ''knowing'' violation of section 19(a)(4), 15 U.S.C. 2069(d), to include a party that is ''presumed [to] have[] knowledge deemed to be possessed by a reasonable man who acts in the circumstances . . .'' and has agreed to the terms in paragraphs 20 and 21 to enhance the Firm's continued and future compliance with the CPSA.

*AGREEMENT OF THE PARTIES*

14. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products described herein and over the Firm.

15. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by the Firm or a determination by the Commission that the Firm violated the CPSA's reporting requirements.

16. In settlement of staff's charges, and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings, the Firm shall pay a civil penalty in the amount of four million, five hundred thousand dollars ($4,500,000) within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.*

17. After staff receives this Agreement executed on behalf of the Firm, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date the Agreement is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 CFR 1118.20(h). Upon the later of: (i) The Commission's final acceptance of this Agreement and service of the accepted Agreement upon the Firm, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect and shall be binding upon the parties.

19. Effective upon the later of: (i) The Commission's final acceptance of the Agreement and service of the accepted Agreement upon the Firm, and (ii) and the date of issuance of the final Order, for good and valuable consideration, the Firm hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission of whether the Firm failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

20. The Firm shall maintain a compliance program designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by the Firm, and which shall contain the following elements:

(i) written standards, policies and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance (including information obtained by quality control personnel) is conveyed effectively to personnel responsible for CPSA compliance;

(ii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;

(iii) effective communication of company compliance-related policies and procedures regarding the CPSA to all applicable employees through training programs or otherwise;

(iv) the Firm's senior management responsibility for, and general board oversight of, CPSA compliance; and

(v) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to staff upon reasonable request.

21. The Firm has, and shall maintain and enforce, a system of internal controls and procedures designed to ensure that, with respect to all consumer products imported, manufactured, distributed or sold by the Firm: (i) Information required to be disclosed by the Firm to the Commission is recorded, processed and reported in accordance with applicable law; (ii) all reporting made to the Commission is timely, truthful, complete, accurate and in accordance with applicable law; and (iii) prompt disclosure is made to the Firm's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, the Firm's ability to record, process and

report to the Commission in accordance with applicable law.

22. Upon reasonable request of staff, the Firm shall provide written documentation of its internal controls and procedures, including, but not limited to, the effective dates of the procedures and improvements thereto. The Firm shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials, and personnel deemed necessary by staff to evaluate the Firm's compliance with the terms of the Agreement.

23. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

24. The Firm represents that the Agreement: (i) Is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever; (ii) has been duly authorized; and (iii) constitutes the valid and binding obligation of the Firm, enforceable against the Firm in accordance with its terms. The Firm will not directly or indirectly receive any reimbursement, indemnification, insurance-related payment, or other payment in connection with the civil penalty to be paid by the Firm pursuant to the Agreement and Order. The individuals signing the Agreement on behalf of the Firm represent and warrant that they are duly authorized by the Firm to execute the Agreement.

25. The Agreement is governed by the laws of the United States.

26. The Agreement and the Order shall apply to, and be binding upon, the Firm and each of its successors, transferees, and assigns, and a violation of the Agreement or Order may subject the Firm, and each of its successors, transferees and assigns, to appropriate legal action.

27. The Agreement and the Order constitute the complete agreement between the parties regarding the Firm's obligation to file a report about the Subject Products under sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4).

28. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

29. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 CFR 1118.20(h). The Agreement may be executed in counterparts.

30. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and the Firm agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

**SUNBEAM PRODUCTS, INC. D/B/A JARDEN CONSUMER SOLUTIONS**

By: _____
Date: May 25, 2016
Kyle E. Kaiser
Senior Vice President Operations
Sunbeam Products, Inc., d/b/a/ Jarden Consumer Solutions
2381 NW Executive Center Drive
Boca Raton, FL 33431

By: _____
Date: May 25, 2016
David P. Callet, Esq.
CalletLaw, LLC
5335 Wisconsin Ave. NW., Suite 440
Washington, DC 20015

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

By: _____
Mary T. Boyle
Acting General Counsel
Melissa V. Hampshire
Assistant General Counsel

By: _____
Date: May 25, 2016
Alexander W. Dennis
Attorney
Division of Enforcement and Information
Office of the General Counsel

**United States of America Consumer Product Safety Commission**

*In the Matter of:*
Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions
CPSC Docket No.: 16–C0004

**ORDER**

Upon consideration of the Settlement Agreement entered into between Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions (the ''Firm'') and the U.S. Consumer Product Safety Commission (''Commission''), and the Commission having jurisdiction over the subject matter and over the Firm, and it appearing that the Settlement Agreement and the Order are in the public interest, it is:

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions shall comply with the terms of the Settlement Agreement and shall pay a civil penalty in the amount of four million, five hundred thousand dollars ($4,500,000) within thirty (30) days after service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronic wire transfer to the Commission via: *http://www.pay.gov.* Upon the failure of the Firm to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by the Firm at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b). If the Firm fails to make such payment or to comply in full with any other provision of the Settlement Agreement, such conduct will be considered a violation of the Settlement Agreement and Order.

Provisionally accepted and provisional Order issued on the 2nd day of June, 2016.

BY ORDER OF THE COMMISSION:

_____
Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. 2016–13362 Filed 6–6–16; 8:45 am]
BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Advisory Committee on Arlington National Cemetery Honor and Remember Subcommittees Meeting Notice

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of open subcommittee meetings.

**SUMMARY:** The Department of the Army is publishing this notice to announce the following Federal advisory committee meetings of the Honor and Remember Subcommittees of the Advisory Committee on Arlington National Cemetery (ACANC). The meetings are open to the public. For more information about the Committee and the Subcommittees, please visit *http://www.arlingtoncemetery.mil/AboutUs/FocusAreas.aspx.*

**DATES:** The Subcommittees will meet on 6 July, 2016. The Remember Subcommittee will meet from 9:00 a.m. to 10:00 a.m. and the Honor

Subcommittee will meet from 1:30 p.m. to 3:00 p.m. on, 6 July, 2016.

**ADDRESSES:** Arlington National Cemetery Welcome Center, Conference Room, Arlington National Cemetery, Arlington, VA 22211.

**FOR FURTHER INFORMATION CONTACT:** Ms. Renea Yates; Designated Federal Officer for the Committee and the Subcommittees, in writing at Arlington National Cemetery, Arlington VA 22211, or by email at *renea.c.yates.civ@mail.mil,* or by phone at 1–877–907–8585.

**SUPPLEMENTARY INFORMATION:** These subcommittee meetings are being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3.150).

*Purpose of the Meeting:* The Advisory Committee on Arlington National Cemetery is an independent Federal advisory committee chartered to provide the Secretary of the Army independent advice and recommendations on Arlington National Cemetery, including, but not limited to, cemetery administration, the erection of memorials at the cemetery, and master planning for the cemetery. The Secretary of the Army may act on the committee's advice and recommendations. The Subcommittees are directed to provide independent recommendations of methods to address the long-term future of Arlington National Cemetery, including how best to extend the active burials and on what ANC should focus once all available space has been used, the placement of commemorative monuments and the manner in which to ensure the living history of the cemetery is preserved.

*Proposed Agenda:* The Subcommittees will discuss cemetery master planning, current eligibility and interment trends, the proposed placement of commemorative monuments and the World War I commemoration displays.

*Public's Accessibility to the Meeting:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. The Arlington National Cemetery conference room is fully handicapped accessible. For additional information about public access procedures, contact Ms. Renea Yates, the subcommittee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

*Written Comments and Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Ms. Renea Yates, the subcommittee's Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Officer at least seven business days prior to the meeting to be considered by the subcommittee. The Designated Federal Officer will review all timely submitted written comments or statements with the subcommittee Chairperson, and ensure the comments are provided to all members of the subcommittee before the meeting. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting. Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak; however, interested persons may submit a written statement or a request to speak for consideration by the subcommittee. After reviewing any written statements or requests submitted, the subcommittee Chairperson and the Designated Federal Officer may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer in consultation with the subcommittee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2016–13253 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–03–P

## DEPARTMENT OF DEFENSE

### Department of the Army

### Training Land Expansion at Fort Benning, Georgia and Alabama, Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of Intent; Withdrawal.

**SUMMARY:** The Department of the Army is announcing withdrawal of its Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for Fort Benning Training Land Expansion as well as the subsequent Draft EIS. The original NOI was published in the **Federal Register** on June 4, 2010 (75 FR 31770). The Notice of Availability for the Draft EIS was published in the **Federal Register** on May 13, 2011 (76 FR 28005). The Army has determined that the proposed land acquisition will no longer be pursued due to a reduction in requirements. This was the result of a combination of force structure realignment decisions affecting Fort Benning and actions taken to relocate maneuver training for Fort Benning's Army Reconnaissance Course (ARC). This ends the National Environmental Policy Act (NEPA) process for this action.

**FOR FURTHER INFORMATION CONTACT:** Ms. Monica Manganaro, Fort Benning Public Affairs Office: at (706) 545–3438, Monday through Friday, 8:00 a.m. to 5:00 p.m. E.S.T.; by email to *monica.l.manganaro.civ@mail.mil;* or postal service mail to PAO, Ste 141–W McGinnis-Wickam Hall, 1 Karker Street, Fort Benning, GA 31905.

**SUPPLEMENTARY INFORMATION:** Fort Benning, home to the Maneuver Center of Excellence (MCoE), is the Army's premier basic training installation, training Infantry, Armor, and Cavalry Soldiers in basic and advanced combat skills, as well as Airborne Soldiers and Rangers.

Training Land Expansion at Fort Benning met two requirements. The first was to secure additional maneuver area consistent with doctrinal training requirements. The second purpose was a time-sensitive 2009 Biological Opinion (BO) that required movement of ARC heavy maneuver training to an area outside the current Fort Benning without Red-Cockaded Woodpeckers (a listed species under the Endangered Species Act).

The Army published a Draft EIS on May 13, 2011 to study the potential environmental impacts of acquisition and use of up to approximately 82,800

acres of additional land. The study area for land acquisition consisted of areas neighboring Fort Benning capable of supporting military training. The Army held public meetings and received numerous comments on the Draft EIS.

In July, 2015, Fort Benning completed an Environmental Assessment (EA) for Enhanced Training, which considered converting the Armor Brigade Combat Team (BCT) to an Infantry BCT; and relocating the ARC heavy mechanized training to the Good Hope Maneuver Training Area (GHMTA), an area on the current Fort Benning without Red-Cockaded Woodpeckers. These changes would allow the Infantry BCT and the ARC to train without the need to acquire additional training land. In July 2015, the Army announced the decision to convert the Armor BCT to an Infantry Battalion Task Force (a smaller unit than a BCT). In October 2015, the Army signed a Finding of No Significant Impact based on the July EA, selecting the conversion and ARC relocation alternative. In December 2015, the U.S. Fish and Wildlife Service issued a BO finding that the relocation of the ARC heavy mechanized training to the GHMTA was the ''equivalent'' of moving the training off Fort Benning, as called for by the 2009 BO. Since an Infantry BCT (and the smaller task force) can train on the current Fort Benning, and there is no longer a need to find land off the installation to comply with the BO, the requirement for additional training land has been greatly reduced. Therefore Army is withdrawing the NOI and the Draft EIS for the proposed training land expansion. This ends the NEPA process for this action. The Army's most recent Fiscal Year 2017 budget submission and associated future years defense program for the next five fiscal years (thru Fiscal Year 2021) does not include any programmed funds to acquire land at Fort Benning. If land acquisition at Fort Benning were ever to be pursued in the future, a new NOI would be published.

**Brenda S. Bowen,**

*Army Federal Register Liaisons Officer.*

[FR Doc. 2016–13389 Filed 6–6–16; 8:45 am]

BILLING CODE 5001–03–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD–2016–OS–0068]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to add a new System of Records.

**SUMMARY:** The Office of the Secretary of Defense proposes to add a new system of records, DSCA 05, entitled ''Defense Institute of Security Assistance Management (DISAM) Information System Mission (DISM).'' The DISAM Information Mission System is a web based portal designed to hold several applications for the purposes of efficient administration of students, and the effective management of DISAM personnel and guest lecturers. The portal also provides DISAM personnel the ability to submit travel requests and travel arrangements. Finally, the web based portal uses a relational database to record, manage and report information about students, personnel, and travel, including reports of annual training. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

**DATES:** Comments will be accepted on or before July 7, 2016. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Luz D. Ortiz, Chief, Records, Privacy and Declassification Division (RPD2), 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0478.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at *http://dpcld.defense.gov/.* The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 18, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 2, 2016.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### DSCA 05

**SYSTEM NAME:**

Defense Institute of Security Assistance Management (DISAM) Information System Mission (DISM)

**SYSTEM LOCATION:**

Defense Institute of Security Assistance Management (DISAM), 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

DoD civilian, military, and contractor personnel, U.S. Federal agency employees, students, and guest speakers.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*DISAM Personnel data including:* Full name, DoD Identification Number (DoD ID) number, gender, date of birth, home address, personal cell phone and work numbers, work domain name, work email address, arrival and departure dates, duty hours, emergency name and contact information, position title, funding source, directorate and office names, employment status, academic rank and degree, salary, job series, civilian grade, military Joint Manpower Program rank and number, date of rank, service branch, occupational specialty code and description, military evaluation dates, tour completion date, recall order, DoD billet manning document number, height and weight, arrival date, security clearance type, issue and expiration dates, investigation type and date, IT level, supervisor name, list of DoD annual training requirements, training completion dates and year required, faculty member, function and program type.

*DISAM Personnel Travel data including:* Traveler's name, government point of contact information, request number, agency directorate, priority and requirement types, purpose of travel, group and class type, order and voucher numbers, voucher check and Military Interdepartmental Purchase Request (MIPR) dates, funding source, source organization, departure and arrival information, travel location cost information, DoD status of travel request, administrative notes and comments.

*Student data including:* Full name, student and DoD ID Number, gender, date of birth, nationality, organization and mailing addresses, work number, position title, hotel confirmation number, country name, combatant command, student type, area of expertise and duty type, civilian grade, service branch, military rank, diploma, test scores, supervisor name, email address, and work number, course type, registration date, level and status, certificates, student and registrar comments, administrative notes and emergency point of contact information.

*Guest Speaker data including:* Full name, position title, gender, social security number (SSN), DoD ID Number, home, cell phone, and work numbers, fax number, email and mailing address, employment status, security clearance type, military rank, civilian grade, course information, honorarium, DISAM host name, and funding information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 134, Under Secretary of Defense for Policy; DoD Directive 5105.65, Defense Security Cooperation Agency (DSCA); DSCA Security Assistance Management Manual, Chapter 10, International Training; DoD Directive 5132.03, DoD Policy and Responsibilities Relating to Security Cooperation; Army Regulation 12–15, SECNAVINST 4950.4B, AFI 16–105, Joint Security Cooperation Education and Training ; Public Law 97–195, Foreign Assistance and Arms Export Act of 1961, as amended; E.O. 9397, (SSN), as amended.

**PURPOSE(S):**

The DISAM Information Mission System is a web based portal designed to hold several applications for the purposes of efficient administration of students, and the effective management of DISAM personnel and guest lecturers. The portal also provides DISAM personnel the ability to submit travel requests and travel arrangements. Finally, the web based portal uses a relational database to record, manage and report information about students, personnel, and travel, including reports of annual training. Records are also used as a management tool for statistical analysis, tracking, reporting to Congress, evaluating program effectiveness, and conducting research.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records may specifically be disclosed outside the DoD as follows to:

Law Enforcement Routine Use: If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DoD Component may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Disclosures Required by International Agreements Routine Use:

A record from a system of records maintained by a DoD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

Disclosure to the Department of Justice for Litigation Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

Disclosure of Information to the National Archives and Records Administration Routine Use: A record from a system of records maintained by a DoD Component may be disclosed as a routine use to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Data Breach Remediation Purposes Routine Use: A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) The Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense/Joint Staff (OSD/JS) Privacy Office's compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx*.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic storage media.

**RETRIEVABILITY:**

By name of individual, DoD ID number, student ID, or SSN.

**SAFEGUARDS:**

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, and is accessible only to authorized personnel. Access to records is also limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to electronic data is restricted by centralized access control to include the use of Common Access Cards (CACs), passwords (which are changed

periodically), file permissions, and audit logs.

**RETENTION AND DISPOSAL:**

Records are cut off annually, destroy when 25 years old.

**SYSTEM MANAGER(S) AND ADDRESS:**

DISM System Administrator; Defense Institute of Security Assistance Management, 2475 K. Street, Bldg. 52, Wright-Patterson AFB, OH 45433–7641.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Defense Institute of Security Assistance Management, ATTN: Director of Academic Support, 2475 K Street, Wright-Patterson AFB, OH 45433–7641.

Signed, written requests should include the full name, SSN (last four digits) or DoD ID number, current address and telephone number, and the number of this system of records notice.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the full name, SSN (last four digits) or DoD ID number, current address and telephone number, and the number of the system of records notice.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2016–13379 Filed 6–6–16; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2016–ICCD–0038]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; William D. Ford Federal Direct Loan Program (DL) Regulations

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before July 7, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0038. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* William D. Ford Federal Direct Loan Program (DL) Regulations.

*OMB Control Number:* 1845–0021.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Individuals or Households; Private Sector.

*Total Estimated Number of Annual Responses:* 8,698,789.

*Total Estimated Number of Annual Burden Hours:* 709,521.

*Abstract:* The William D. Ford Direct Loan Program regulations cover areas of program administration. These regulations are in place to minimize administrative burden for program participants, to determine eligibility for and provide program benefits to borrower, and to prevent fraud and abuse of program funds to protect the taxpayers' interests. This request is for a revision of the current OMB approval of reporting and record-keeping related to the administrative requirements of the Direct Loan program.

Dated: June 2, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016–13399 Filed 6–6–16; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2016–ICCD–0037]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Health Education Assistance Loan (HEAL) Program Regs

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before July 7, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by

searching the Docket ID number ED–2016–ICCD–0037. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Health Education Assistance Loan (HEAL) Program Regs.

*OMB Control Number:* 1845–0125.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Individuals or Households; Private Sector.

*Total Estimated Number of Annual Responses:* 144,930.

*Total Estimated Number of Annual Burden Hours:* 26,409.

*Abstract:* The Health Education Assistance Loan (HEAL) Program regulatory requirements for reporting, record-keeping and notification are approved under OMB 1845–0125 after the transfer from the U.S. Department of Health and Human Services to the U.S. Department of Education in 2014. The HEAL program provided federally insured loans to students for certain health programs. No new loans have been made since 1998. However, loans are still outstanding and being collected, therefore the regulatory requirements for reporting, record-keeping and notification continue to be needed to administer the program. These regulations work to ensure that participants in the program follow sound management procedures in the administration of the federal loan program.

Dated: June 2, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016–13380 Filed 6–6–16; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2016–ICCD–0040]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NCES System Clearance for Cognitive, Pilot, and Field Test Studies

**AGENCY:** National Center for Education Statistics (NCES), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before July 7, 2016.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–103, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* NCES System Clearance for Cognitive, Pilot, and Field Test Studies.

*OMB Control Number:* 1850–0803.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Individuals or Households; Private Sector.

*Total Estimated Number of Annual Responses:* 600,000.

*Total Estimated Number of Annual Burden Hours:* 240,000.

*Abstract:* This is a request for a 3-year renewal of the generic clearance to

allow the National Center for Education Statistics (NCES) to continue to develop, test, and improve its survey and assessment instruments and methodologies. The procedures utilized to this effect include but are not limited to experiments with levels of incentives for various types of survey operations, focus groups, cognitive laboratory activities, pilot testing, exploratory interviews, experiments with questionnaire design, and usability testing of electronic data collection instruments.

Dated: June 1, 2016.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.*

[FR Doc. 2016–13291 Filed 6–6–16; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CD16–12–000]**

### Alta Ski Area; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On May 16, 2016, as supplemented on May 20, 2016, Alta Ski Area filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Alta Micro-Hydro Project would have an installed capacity of 75 kilowatts (kW), and would be located along an existing pipeline adjacent to the existing Wildcat Pump House. The project would be located in Alta, Salt Lake County, Utah.

*Applicant Contact:* Lindsay George, P.O. Box 1144, Salida, CO 81201, Phone No. (970) 456–2414.

*FERC Contact:* Christopher Chaney, Phone No. (202) 502–6778, email: *Christopher.Chaney@ferc.gov.*

*Qualifying Conduit Hydropower Facility Description:* The proposed project would consist of: (1) A new powerhouse, approximately 20 feet by 12 feet, along an existing 6-inch-diameter water supply pipeline; (2) one turbine/generating unit with an installed capacity of 75 kW; (3) a new approximately 20-foot-long, 6-inch-diameter intake pipe; (4) a new approximately 20-foot-long, 12-inch-diameter discharge pipe; and (5) appurtenant facilities.

The proposed project would have a total installed capacity of 75 kW.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

| Statutory provision | Description | Satisfies (Y/N) |
|---|---|---|
| FPA 30(a)(3)(A), as amended by HREA. | The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity. | Y |
| FPA 30(a)(3)(C)(i), as amended by HREA. | The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit. | Y |
| FPA 30(a)(3)(C)(ii), as amended by HREA. | The facility has an installed capacity that does not exceed 5 megawatts | Y |
| FPA 30(a)(3)(C)(iii), as amended by HREA. | On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA. | Y |

*Preliminary Determination:* The proposed addition of the hydroelectric project along the existing water supply pipeline will not alter its primary consumptive purpose. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

*Comments and Motions To Intervene:* Deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

*Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the ''COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY'' or ''MOTION TO INTERVENE,'' as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

*Locations of Notice of Intent:* Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the ''eLibrary'' link. Enter the docket number (*i.e.,* CD16–12) in the

[1] 18 CFR 385.2001–2005 (2015).

docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: May 26, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13422 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 184–252]**

### El Dorado Irrigation District; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend license to remove project facilities.

b. *Project No.:* 184–252.

c. *Date Filed:* April 15, 2016.

d. *Applicant:* El Dorado Irrigation District.

e. *Name of Project:* El Dorado Hydroelectric Project.

f. *Location:* The project is located on the South Fork American River and several tributaries in Alpine, Amador, and El Dorado counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brian Deason, Hydroelectric Compliance Analyst, 2890 Mosquito Road, Placerville, CA 95667, (530) 642–4064.

i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, or *steven.sachs@ferc.gov.*

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 30 days from the date of issuance of this notice. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–184–252) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The applicant requests that the Commission authorize the removal of the Carpenter Creek and Mill Creek diversion structures from the project. The applicant states that it has already physically removed the Carpenter Creek facilities and intends to demolish the Mill Creek diversion structure in 2017.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 26, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13423 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13563–003–Alaska]**

### Juneau Hydropower, Inc.; Notice of Availability of the Final Environmental Impact Statement for the Sweetheart Lake Hydroelectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for an original license for the Sweetheart Lake Hydroelectric Project (FERC No. 13563) and prepared a final environmental impact statement (EIS) for the project.

The proposed project would be located on Sweetheart Lake and Sweetheart Creek in the City and

Borough of Juneau, Alaska. The proposed project, if licensed, would occupy 2,058.24 acres of federal lands within the Tongass National Forest, administered by the U.S. Department of Agriculture, Forest Service.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for licensing the Sweetheart Lake Hydroelectric Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact John Matkowski at (202) 502–8576 or at *john.matkowski@ferc.gov.*

Dated: May 31, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13355 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

*Prohibited:*

| Docket No. | File date | Presenter or requester |
|---|---|---|
| 1. CP16–21–000 | 5–12–2016 | Diana Carroll. |
| 2. CP16–21–000 | 5–16–2016 | Mass Mailing.[1] |
| 3. OR13–25–001; OR13–26–001 | 5–17–2016 | FERC Staff.[2] |
| 4. CP16–21–000 | 5–18–2016 | Mass Mailing.[3] |
| 5. CP16–21–000 | 5–18–2016 | Mass Mailing.[4] |
| 6. CP16–21–000 | 5–18–2016 | Wildred Wollheim. |
| 7. CP16–21–000 | 5–20–2016 | Mary Tyler. |
| 8. CP15–554–000 | 5–23–2016 | Jessica E. Pitkin. |
| 9. CP15–500–000 | 5–23–2016 | Luc Novovitch. |
| 10. CP16–21–000 | 5–23–2016 | Maria Niswonler. |
| 11. CP16–21–000 | 5–23–2016 | John Puffer. |
| 12. CP16–21–000 | 5–18–2016 | Mass Mailing.[5] |

[1] Two letters have been sent to FERC Commissioners and staff under this docket number.

[2] Memorandum dated May 6, 2016 reporting communication with Richard Powers of Venable LLP, David Berg and Rob Myrben of Airlines of America, and Jeffrey Petrash of National Propane Gas Association.

[3] Two letters have been sent to FERC Commissioners and staff under this docket number.

[4] Two letters have been sent to FERC Commissioners and staff under this docket number.

[5] Four letters have been sent to FERC Commissioners and staff under this docket number.

*Exempt:*

| Docket No. | File date | Presenter or requester |
|---|---|---|
| 1. P–1256–000 | 5–13–2016 | FERC Staff.[6] |
| 2. CP16–21–000 | 5–13–2016 | Town of Knox, NY. |
| 3. CP13–483–000; CP13–492–000 | 5–13–2016 | U.S. House Representative Sam Graves. |
| 4. CP13–492–000; CP13–493–000 | 5–13–2016 | Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians. |
| 5. CP16–21–000 | 5–18–2016 | State of New Hampshire House Representative Jack Flanagan. |
| 6. P–2232–522 | 5–20–2016 | U.S. Congress.[7] |
| 7. CP16–21–000 | 5–20–2016 | Town of Fitzwilliam, New Hampshire Board of Selectmen. |
| 8. P–13015–001 | 5–20–2016 | U.S. House Representative William R. Keating. |
| 9. CP13–483–001; CP13–492–001 | 5–20–2016 | Jackson County, Oregon Board of Commissioners. |
| 10. ER15–2563–002; EL15–95–002 | 5–23–2016 | U.S. Congress.[8] |
| 11. CP14–96–000; PF16–1–000; PF15–12–000 | 5–23–2016 | Town of Freetown, Massachusetts Board of Selectmen. |
| 12. EL15–2563–002; EL15–95–002 | 5–24–2016 | State of Delaware Governor Jack A. Markell. |
| 13. CP14–517–000 | 5–24–2016 | FERC Staff.[9] |
| 14. CP13–483–000 | 5–27–2016 | FERC Staff.[10] |

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13409 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP16–463–000]**

### Northern Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on May 20, 2016 Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha, Nebraska 68124, filed a prior notice request pursuant to sections 157.205, 157.213(b) and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA). Northern Natural seeks authorization to convert an existing observation well to a withdrawal well. Northern Natural will also install related surface facilities within its existing Redfield Storage Field located in Dallas County, Iowa. Northern Natural proposes to perform these activities under its blanket certificate issued in Docket No. CP82–401–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Michael T. Loeffler, Senior Director, Certificate and External Affairs for Northern, 1111 South 103rd Street, Omaha, Nebraska 68124, at (402) 398–7103; FAX (402) 398–7592; email *mike.loeffler@nngco.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of

[6] Email dated April 15, 2016 with Neal Suess of Loup Power District.

[7] Senators Lindset Graham, Tim Scott, Richard Burr, and Thom Tillis. House Representatives James Clyburn, Joe Wilson, Patrick McHenry, Jeff Duncan, Trey Gowdy, Richard Hudson, Robert Pittenger, David Rouzer, Walter B. Jones, Virginia Foxx, Mick Mulvaney, Renee Ellmers, George Holding, Mark Meadows, Tom Rice, and Mark Walker.

[8] Senators Thomas R. Carper and Christopher Coons. House Representative John Carney.

[9] Meeting Summary from May 18, 2016 meeting with representatives for the Gold Pass LNG Export Project.

[10] Memo forwarding letter dated May 24, 2016 from U.S. Army Corps of Engineers (COE) to Jordan Cove and letter dated May 24, 2016 from COE to the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians.

environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13405 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc.

**The New York Independent System Operator, Inc. Joint Electric System Planning Working Group and Transmission Planning Advisory Subcommittee Meeting**

*June 7, 2016, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-06-07*.

**The New York Independent System Operator, Inc. Management Committee Meeting**

*June 14, 2016, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=mc&directory=2016-06-14*.

**The New York Independent System Operator, Inc. Business Issues Committee Meeting**

*June 15, 2016, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic&directory=2016-06-15*.

**The New York Independent System Operator, Inc. Operating Committee Meeting**

*June 16, 2016, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=oc&directory=2016-06-16*.

**The New York Independent System Operator, Inc. Joint Electric System Planning Working Group and Transmission Planning Advisory Subcommittee Meeting**

*June 22, 2016, 10:00 a.m.–4:00 p.m. (EST)*

The above-referenced meeting will be via web conference and teleconference.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.nyiso.com/public/committees/documents.jsp?com=bic_espwg&directory=2016-06-22*.

The discussions at the meetings described above may address matters at issue in the following proceedings:

*New York Independent System Operator, Inc.,* Docket No. ER13–102.

*New York Independent System Operator, Inc.,* Docket No. ER15–2059.

*New York Independent System Operator, Inc.,* Docket No. ER16–120.

*New York Independent System Operator, Inc.,* Docket No. ER13–1942.

*New York Transco, LLC,* Docket No. ER15–572.

*New York Independent System Operator, Inc.,* Docket No. ER16–966.

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov*.

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13411 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2203–015–AL]**

### Alabama Power Company; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) part 380, the Office of Energy Projects has reviewed Alabama Power Company's application for a new license for the 46.9-megawatt (MW) Holt Hydroelectric Project (FERC Project No. 2203). The project is located at the U.S. Army Corps of Engineers' (Corps) Holt Lock and Dam on the Black Warrior River near the City of Tuscaloosa, in Tuscaloosa County, Alabama. The project occupies 36.81 acres of federal land administered by the Corps.

Staff has prepared an environmental assessment (EA) that analyzes the potential environmental effects of continued project operation. Based on staff's analysis with appropriate environmental protective measures, relicensing the project would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed within 30 days from the date of this notice. The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/*

*efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include Holt Hydroelectric Project No. 2203–015.

For further information, contact Jeanne Edwards by telephone at 202–502–6181 or by email at *jeanne.edwards@ferc.gov.*

Dated: May 31, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13354 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Windham Solar LLC, Allco Finance Limited; Notice of Petition for Enforcement

| Docket Nos. | |
|---|---|
| EL16–69–000 | QF16–375–001 |
| QF16–362–001 | QF16–376–001 |
| QF16–363–001 | QF16–377–001 |
| QF16–364–001 | QF16–378–001 |
| QF16–365–001 | QF16–379–001 |
| QF16–366–001 | QF16–380–001 |
| QF16–367–001 | QF16–381–001 |
| QF16–368–001 | QF16–382–001 |
| QF16–369–001 | QF16–383–001 |
| QF16–370–001 | QF16–384–001 |
| QF16–371–001 | QF16–385–001 |
| QF16–372–001 | QF16–386–001 |
| QF16–373–001 | QF16–387–001 |
| QF16–374–001 | |

Take notice that on May 25, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), Windham Solar LLC and Allco Finance Limited filed amendment to its May 19, 2016 filing of Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Connecticut Public

Utilities Regulatory Authority to remedy its implementation of PURPA, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file

electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on June 15, 2016.

Dated: May 26, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13421 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

**PJM Planning Committee**

*June 9, 2016, 9:30 a.m.–12:00 p.m. (EST)*

**PJM Transmission Expansion Advisory Committee**

*June 9, 2016, 11:00 a.m.–3:00 p.m. (EST)*

The above-referenced meetings will be held at: PJM Conference and Training Center, PJM Interconnection 2750 Monroe Boulevard Audubon, PA 19403.

The above-referenced meetings are open to stakeholders. Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. ER16–453, *PJM Interconnection, L.L.C. and Northeast Transmission Development, LLC*
Docket No. ER16–736, *PJM Interconnection, L.L.C.*
Docket No. ER14–972, *PJM Interconnection, L.L.C.*
Docket No. ER14–1485, *PJM Interconnection, L.L.C.*
Docket Nos. ER13–1944, *et al., PJM Interconnection, L.L.C., et al.*
Docket No. ER15–1344, *PJM Interconnection, L.L.C.*
Docket No. ER15–1387, *PJM Interconnection, L.L.C. and Potomac Electric Power Company*
Docket No. ER15–2562, *PJM Interconnection, L.L.C.*
Docket No. ER15–2563, *PJM Interconnection, L.L.C.*
Docket No. EL15–18, *Consolidated Edison Company of New York, Inc.* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–41, *Essential Power Rock Springs, LLC, et. al.* v. *PJM Interconnection, L.L.C.*
Docket No. ER15–2114, *PJM Interconnection, L.L.C. and Transource West Virginia, LLC*
Docket No. EL15–79, *TransSource, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL15–95, *Delaware Public Service Commission, et. al.,* v. *PJM Interconnection, L.L.C., et. al.*
Docket No. EL15–67, *Linden VFT, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. ER13–198, *PJM Interconnection, L.L.C.*
Docket No. ER16–1335, *PJM Interconnection, L.L.C.*
Docket No. ER16–1232, *PJM Interconnection, L.L.C.*
Docket No. ER16–1499, *PJM Interconnection, L.L.C.*

For more information, contact the following: Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6604 *Jonathan.Fernandez@ferc.gov;* Alina Halay, Office of Energy Market Regulation, Federal Energy Regulatory Commission, (202) 502–6474, *Alina.Halay@ferc.gov.*

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13407 Filed 6–6–16; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL16–74–000; QF99–56–004]**

### North Hartland, LLC; Notice of Petition for Enforcement

Take notice that on May 31, 2016, pursuant to section 210(h)(2)(B) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 824a–3(h), North Hartland, LLC filed a Petition for Enforcement requesting the Federal Energy Regulatory Commission (Commission) exercise its authority and initiate enforcement action against the Vermont Public Service Board to remedy its implementation of PURPA, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 21, 2016.

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13406 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No 848–037]**

### Wells Rural Electric Company; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* P–848–037.

c. *Date filed:* May 18, 2016.

d. *Applicant:* Wells Rural Electric Company.

e. *Name of Project:* Trout Creek Hydroelectric Project.

f. *Location:* On Trout Creek, near the Town of Wells, Elko County, Nevada. The project's intake structure, pipeline, debris collection box, surge tank and approximately 1,500 feet of penstock are located on federal land managed by the United States Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lonnie Abbott, Manager of Loss Control and Risk Services, Wells Rural Electric Company, P.O. Box 365, Wells, Nevada 89835, (775) 752–1516 or *labbott@wrec.coop.*

*FERC Contact:* Joseph Hassell, 202–502–8079 or *joseph.hassell@ferc.gov.*

j. Cooperating agencies: Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: July 18, 2016.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–848–037.

m. The application is not ready for environmental analysis at this time.

n. The existing Trout Creek project consists of: (1) An intake structure on a spring feeding Trout Creek; (2) a 14-inch-diameter, 715-foot-long steel pipe; (3) a debris collection box; (4) a 15-inch-diameter, 1900-foot-long PVC pipe; (4) an 8-foot-diameter, 20-foot high surge tank; (5) a 16-inch-diameter, 2,125-foot-long penstock; (6) a powerhouse with a 125-kilowatt turbine-generator unit (7) a 5 to 7-foot-wide, 30-foot-long tailrace; (8) a 4,412-foot-long, 24.9-kV transmission line; and, (9) appurtenant facilities. The project is estimated to generate an average of 325,000 kilowatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. Procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

| | |
|---|---|
| Issue Notice of Acceptance | May 2016. |
| Issue Scoping Document 1 for comments | June 2016. |
| Comments on Scoping Document 1 | July 2016. |
| Issue Scoping Document 2 | October 2016. |
| Issue notice of ready for environmental analysis | October 2016. |
| Commission issues EA, draft EA, or draft EIS | April 2017. |
| Comments on EA or draft EA or draft EIS | May 2017. |
| Commission issues final EA of final EIS | July 2017. |

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: May 26, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13424 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP16–462–000]**

### Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on May 20, 2016 Columbia Gas Transmission, LLC (Columbia), 1300 Main Street, Houston, Texas 77002 filed a prior notice request pursuant to sections 157.205, 157.208(c), 157.213(b) and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA). Columbia seeks authorization to abandon and modify certain storage facilities in the Majorsville-Heard Storage Complex (Storage Complex) in Marshall County, West Virginia. The authorizations proposed in this proceeding do not relate to mining activities, thus as Columbia's blanket authorization issued in Docket No. CP95–61–000 is limited to those activities related to coal mining activities in the Storage Complex, Columbia is seeking abandonment authority under its blanket certificate issued in Docket No. CP83–76–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Matthew J. Agen, Senior Counsel, Columbia Gas Transmission, LLC, 5151 San Felipe Suite 2400, Houston, Texas 77056; telephone (713) 386–3619; or by email *magen@cpg.com* .

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13410 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 3127–023]**

### Ware River Power, Inc.; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to amend 5 MW exemption from licensing.

b. *Project No.:* 3127–023.

c. *Date Filed:* January 27, 2016.

d. *Applicant:* Ware River Power, Inc.

e. *Name of Project:* Ware River Project.

f. *Location:* The project is located on the Ware River in Hampshire County, Massachusetts.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Lucus Wright, Ware River Power, Inc., 48 Allen Drive, P.O. Box 512, Barre, MA 01005 (508) 355–4575.

i. *FERC Contact:* Mr. Mark Pawlowski, (202) 502–6052, or *Mark.Pawlowski@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is July 1, 2016. This notice extends the due date of the notice issued on May 24, 2016. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–3127–023) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The Ware River Project consists of an Upper and Lower development. The applicant proposes to replace the lower development's single 250-kilowatt (kW) turbine with a 280-kW turbine and install a new 110-kW minimum flow turbine. The lower development's installed capacity would increase by 140 kW and the hydraulic capacity would increase by 94 cubic feet per second. In addition, the applicant proposes replace the lower development's existing 30-foot-wide by 10-foot-deep trashrack structure with a new 50-foot-wide by 10-foot deep trashrack structure. The new trashrack would maintain the current 1.5-inch spacing between the trashrack bars. To facilitate the trashrack replacement the applicant proposes to draw down the 10-acre lower development's impoundment from May 2016 through September 2016.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: June 1, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–13408 Filed 6–6–16; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9944–30 OEI]**

## Cross-Media Electronic Reporting: Authorized Program Revision Approval, State of Arizona

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of the State of Arizona's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

**DATES:** EPA's approval is effective July 7, 2016 for the State of Arizona's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on June 7, 2016 for the State of Arizona's other authorized programs.

**FOR FURTHER INFORMATION CONTACT:** Karen Seeh, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 566–1175, *seeh.karen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those

programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On February 12, 2016, the Arizona Department of Environmental Quality (ADEQ) submitted an application titled myDEQ for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed ADEQ's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve Arizona's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR parts 50–52, 61–65, 70, 122, 124, 141, 240–259, 260–270, 272–279, 262, 280, 403–471, 501, and 503 is being published in the **Federal Register**:

Part 52—Approval and Promulgation of Implementation Plans;

Part 62—Approval and Promulgation of State Plans for Designated Facilities and Pollutants;

Part 63—National Emission Standards for Hazardous Air Pollutants for Source Categories;

Part 70—State Operating Permit Programs;

Part 123—EPA Administered Permit Programs: The National Pollutant Discharge Elimination System;

Part 142—National Primary Drinking Water Regulations Implementation;

Part 239—Requirements for State Permit Program Determination of Adequacy;

Part 271—Requirements for Authorization of State Hazardous Waste Programs;

Part 281—Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks;

Part 403—General Pretreatment Regulations for Existing and New Sources of Pollution Reporting; and

Part 501—State Sludge Management Program Regulations.

ADEQ was notified of EPA's determination to approve its application with respect to the authorized programs listed above.

Also, in today's notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Arizona's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of today's **Federal Register** notice. Such requests should include the following information: (1) The name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to consider when determining whether to grant the request; (3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming today's determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Arizona's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after today's notice is published, pursuant to CROMERR section 3.1000(f)(4).

**Matthew Leopard,**

*Director, Office of Information Collection.*

[FR Doc. 2016–13269 Filed 6–6–16; 8:45 am]

BILLING CODE 6560–50–P

## FARM CREDIT SYSTEM INSURANCE CORPORATION

### Farm Credit System Insurance Corporation Board; Regular Meeting

**AGENCY:** Farm Credit System Insurance Corporation.

**SUMMARY:** Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

**DATES:** *Date and Time:* The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 9, 2016, from 1:00 p.m. until such time as the Board concludes its business.

**ADDRESSES:** Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

**Closed Session**

- FCSIC Report on System Performance and Liquidity

**Open Session**

*A. Approval of Minutes*

- March 10, 2016—Regular Meeting

*B. Business Reports*

- FCSIC Financial Report
- Report on Insured Obligations
- Quarterly Report on Annual Performance Plan

*C. New Business*

- Mid-Year Review of Insurance Premium Rates

Dated: June 2, 2016.

**Dale L. Aultman,**

*Secretary, Farm Credit System Insurance Corporation Board.*

[FR Doc. 2016–13479 Filed 6–6–16; 8:45 am]

**BILLING CODE 6710–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Termination, 10227, Champion Bank, Creve Coeur, Missouri

The Federal Deposit Insurance Corporation (FDIC), as Receiver for 10227, Champion Bank, Creve Coeur, Missouri (Receiver) has been authorized to take all actions necessary to terminate the receivership estate of Champion Bank (Receivership Estate); the Receiver has made all dividend distributions required by law.

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary; including but not limited to releases, discharges, satisfactions, endorsements, assignments and deeds.

Effective June 1, 2016, the Receivership Estate has been terminated, the Receiver discharged, and the Receivership Estate has ceased to exist as a legal entity.

Dated: June 1, 2016.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–13297 Filed 6–6–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10118, Brickwell Community Bank, Woodbury, MN

*Notice is hereby given* that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Brickwell Community Bank, Woodbury, Minnesota (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Brickwell Community Bank on September 11, 2009. 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 34.6, 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: June 1, 2016.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2016–13296 Filed 6–6–16; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### FY 2015 Service Contract Inventory

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of release of the Federal Maritime Commission's FY 2015 Service Contract Inventory.

**SUMMARY:** Acting in compliance with Sec. 743 of Division C of the Consolidated Appropriations Act 2010 (Pub. L. 111–117), the Federal Maritime Commission (Commission) is publishing this notice to advise the public of the availability of its FY 2015 Service Contract Inventory. The FY 2015 Service Contract Inventory includes the Service Contract Inventory Analysis (Executive Summary) and the Service Contract Inventory (Inventory Detail, Inventory Summary, Special Interest Functions and Total Service Contract Obligations).

This inventory was developed in accordance with guidance issued on November 5, 2010, December 19, 2011, November 25, 2014, and September 8, 2015, by the Office of Management and Budget (OMB), Office of Procurement Policy (OFPP). The Federal Maritime Commission has posted its FY 2015 Service Contract Inventory and FY 2015 Service Contract Inventory Analysis at the following links: *http://www.fmc.gov/assets/1/Page/ServiceContractInventory2015FINAL.pdf* and *http://www.fmc.gov/assets/1/Page/ServiceContractInventorySummaryFY15.pdf.*

**DATES:** The inventory is available on the Commission's Web site as of May 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kristian Jovanovic, Director, Office of Management Services, 202–523–5900, *KJovanovic@fmc.gov.*

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2016–13337 Filed 6–6–16; 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 July 1, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Sequatchie Valley Bancshares, Inc.,* Dunlap, Tennessee; to acquire 100 percent of the outstanding shares of Franklin County United Bancshares, Inc., and thereby indirectly acquire Franklin County United Bank, both of Decherd, Tennessee.

Board of Governors of the Federal Reserve System, June 2, 2016.

**Michele Taylor Fennell,**

*Assistant Secretary of the Board.*

[FR Doc. 2016–13400 Filed 6–6–16; 8:45 am]

**BILLING CODE 6210–01–P**

## GENERAL SERVICES ADMINISTRATION

**[OMB Control No. 3090–XXXX; Docket 2016–0001; Sequence 9]**

### Information Collection; Nondiscrimination in Federal Financial Assistance Programs, GSA Form 3702

**AGENCY:** Office of Civil Rights, General Services Administration (GSA).

**ACTION:** Notice of request for comments regarding a new request for an OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding OMB Control No: 3090–XXXX; Nondiscrimination in Federal Financial Assistance Programs, GSA 3702. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

**DATES:** Submit comments on or before: August 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Britton, Director, External Programs Division, Office of Civil Rights, at telephone 202–603–1645 or via email to *evelyn.britton@gsa.gov.*

**ADDRESSES:** Submit comments identified by Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702'' on your attached document.
- *Mail*: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702.

*Instructions:* Please submit comments only and cite Information Collection 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

GSA has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal financial assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole, or in part, by GSA.

These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

**B. Annual Reporting Burden**

*Respondents:* 1200.
*Responses per Respondent:* 1.
*Total Responses:* 1200.
*Hours per Response:* 2.
*Total Burden Hours:* 2400.

**C. Public Comments**

Public comments are particularly invited on: Whether this collection of information will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–XXXX, Nondiscrimination in Federal Financial Assistance Programs, GSA 3702, in all correspondence.

Dated: May 31, 2016.

**David A. Shive,**

*Chief Information Officer.*

[FR Doc. 2016–13396 Filed 6–6–16; 8:45 am]

**BILLING CODE 6820–34–P**

## GULF COAST ECOSYSTEM RESTORATION COUNCIL

**[Docket No.: 106072016–1111–03]**

### Proposed Amendment to Initial Funded Priorities List

**AGENCY:** Gulf Coast Ecosystem Restoration Council.

**ACTION:** Proposed amendment to Initial Funded Priorities List.

**SUMMARY:** The Gulf Coast Ecosystem Restoration Council (Council) seeks public and Tribal comment on a proposal to amend its Initial Funded Priorities List (FPL) to approve implementation funding for the Apalachicola Bay Oyster Restoration project in Florida (Project). The Council is proposing to approve $3,978,000 in implementation funding for this Project. The Council is also proposing to reallocate $702,000 from project planning to project implementation, after any remaining planning expenses have been met. The total amount available for implementation of the Project would thus be $4,680,000. These funds would be used to restore approximately 251 acres of oyster beds,

which is an increase from the 219 acres originally proposed in the FPL.

To comply with the National Environmental Policy Act (NEPA) and other applicable laws, the Council is proposing to adopt an existing Environmental Assessment (EA) that addresses the activities in the Project. In so doing, the Council would expedite project implementation, reduce planning costs and increase the ecological benefits of this Project by using savings in planning funds to expand the Project by approximately 32 acres. The Council looks forward to public and Tribal comment on this proposal.

**DATES:** Comments on this proposed amendment are due July 7, 2016.

**ADDRESSES:** Comments on this proposed amendment may be submitted as follows:

*By Email:* Submit comments by email to *frcomments@restorethegulf.gov.* Email submission of comments ensures timely receipt and enables the Council to make them available to the public. In general, the Council will make such comments available for public inspection and copying on its Web site, *www.restorethegulf.gov,* without change, including any business or personal information provided, such as names, addresses, email addresses and telephone numbers. All comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

*By Mail:* Send comments to Gulf Coast Ecosystem Restoration Council, 500 Poydras Street, Suite 1117, New Orleans, LA 70130.

**FOR FURTHER INFORMATION CONTACT:** Please send questions by email to *frcomments@restorethegulf.gov* or contact Will Spoon at (504) 239–9814.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The *Deepwater Horizon* oil spill led to passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act), which dedicates 80 percent of all Clean Water Act administrative and civil penalties related to the oil spill to the Gulf Coast Restoration Trust Fund (Trust Fund). The RESTORE Act also created the Council, an independent Federal entity comprised of the five Gulf Coast states and six Federal agencies. Among other responsibilities, the Council administers a portion of the Trust Fund known as the Council-Selected Restoration Component in order to ''undertake projects and programs, using the best available science, which would restore and protect the natural resources, ecosystems, fisheries, marine and wildlife habitats, beaches, coastal wetlands, and economy of the Gulf Coast.'' Additional information on the Council can be found here: *https://www.restorethegulf.gov.*

On December 9, 2015, the Council published the FPL, which includes projects and programs approved for funding under the Council-Selected Restoration Component, along with activities that the Council identified as priorities for potential future funding. Activities approved for funding in the FPL are included in ''Category 1''; the priorities for potential future funding are in ''Category 2.'' In the FPL the Council approved approximately $156.6 million in Category 1 restoration and planning activities, and prioritized twelve Category 2 activities for possible funding in the future, subject to environmental compliance and further Council and public review. The Council included planning activities for the Project in Category 1 and implementation activities for the Project in Category 2 of the FPL.

The Council reserved approximately $26.6 million for implementing priority activities in the future. These reserved funds may be used to support some, all or none of the activities included in Category 2 of the FPL and/or to support other activities not currently under consideration by the Council. As appropriate, the Council intends to review each activity in Category 2 in order to determine whether to: (1) Move the activity to Category 1 and approve it for funding, (2) remove it from Category 2 and any further consideration, or (3) continue to include it in Category 2. A Council decision to amend the FPL to move an activity from Category 2 into Category 1 must be approved by a Council vote after consideration of public and Tribal comments.

## II. Environmental Compliance

Prior to approving an activity for funding in FPL Category 1, the Council must comply with NEPA and other Federal environmental laws. At the time of approval of the FPL, the Council had not complied with NEPA and other applicable laws with respect to implementation of the Project. The Council did, however, recognize the potential ecological value of the Project, based on review conducted as part of the FPL process. For this reason, the Council approved $702,000 in planning funds for this Project, a portion of which would be used to complete any needed environmental compliance activities. As noted above, the Council placed the implementation portion of this Project into FPL Category 2, pending the outcome of this environmental compliance work and further Council review. The estimated cost of the Project's implementation component was listed at $3,978,000, which would fund the restoration of approximately 219 acres of oyster beds in Apalachicola Bay. Inclusion of the Project's implementation activities into Category 2 did not in any way commit the Council to subsequently approve those implementation activities for funding.

Since approval of the FPL, Florida has collaborated with the U.S. Army Corps of Engineers (USACE) to identify an existing EA that could be used to support Council approval of implementation funding for this Project. This EA was prepared by USACE in association with a Clean Water Act Section 404 and Section 10 of the Rivers and Harbors Act of 1899 programmatic general permit (PGP) that authorizes the Florida Department of Agricultural and Consumer Services to conduct aquaculture of live rock and marine bivalves in navigable waters of the U.S. which are within the jurisdiction of the State of Florida, provided that such activities comply with the terms and conditions of the PGP.

The Council has reviewed this EA and associated documents, including an August 13, 2015, letter from the National Oceanic and Atmospheric Administration regarding compliance with the Endangered Species Act (ESA). In addition to ESA, the EA addresses compliance with other Federal environmental laws, including the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act and more. Based on this review, the Council is proposing to adopt this EA to support the proposed approval of implementation funds for the Project, provided that the Project is implemented in accordance with the terms and conditions of the PGP and the design criteria set forth in the associated ESA programmatic consultation. This EA and the associated ESA documentation can be found here: *https://www.restorethegulf.gov/funded-priorities-list.* (See *Apalachicola Bay Oyster Restoration Project—Implementation.*)

### *Apalachicola Bay Oyster Restoration Project*

If approved for implementation funding, this Project would include the

placement of approximately 50,258 cubic yards of suitable oyster reef substrate through the use of barges and high-pressure water. Areas to be restored would be marked with buoys or clearly marked stakes. Following the completion of the planting, oyster density sampling would be conducted and analyzed at a minimum of six months, one year and two years after clutching at each restoration site.

Ecological benefits associated with the Project would be realized through an array of ecological services in the form of increased fishery and wildlife habitat; increased biodiversity and trophic dynamics; increased filtering capacity to improve water quality and recycle nutrients; increased structural stability to reduce coastal erosion and to protect near shore resources; protection of water quality; and the protection of healthy, diverse and sustainable living coastal marine resources. Beyond the fact that oysters and oyster reef communities represent important food sources for many species of commercially important fish and invertebrates, functioning oyster reefs are also recognized as critical structural and community components which stabilize and sustain a broad array of ecological relationships. Additional outcomes include economic benefits through harvesting, processing, and marketing fishery products locally and regionally by all who enjoy high-quality seafood.

Additional information on this Project, including metrics of success, response to science reviews and more is available in an activity-specific appendix to the FPL, which can be found here: *https://www.restorethegulf.gov.* (Please see the table on page 24 of the FPL and click on *Apalachicola Bay Oyster Restoration,* Implementation.)

**Justin R. Ehrenwerth,**

*Executive Director, Gulf Coast Ecosystem Restoration Council.*

[FR Doc. 2016–13356 Filed 6–6–16; 8:45 am]

BILLING CODE 6560–58–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Request for Nominations of Candidates To Serve on the Clinical Laboratory Improvement Advisory Committee (CLIAC) and Request for Suggested Meeting Topics for CLIAC

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on CLIAC and soliciting suggestions for topics to be considered for future Committee deliberation. CLIAC provides scientific and technical advice and guidance to the Secretary, Department of Health and Human Services (HHS); the Assistant Secretary for Health, HHS; the Director, Centers for Disease Control and Prevention (CDC); the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare & Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine. In addition, the Committee provides advice and guidance on specific questions related to possible revision of the CLIA standards. Examples include providing guidance on studies designed to improve safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

CLIAC consists of 20 members including the Chair, and represents a diverse membership across laboratory specialties, professional roles (laboratory management, technical specialists, physicians, nurses) and practice settings (academic, clinical, public health), and includes a consumer representative. In addition, the Committee includes three ex officio members (or designees), including the Director, CDC; the Administrator, CMS; and the Commissioner, FDA. A nonvoting representative from the Advanced Medical Technology Association (AdvaMed) serves as the industry liaison. The Designated Federal Officer (DFO) or their designee and the Executive Secretary are present at all meetings to ensure meetings are within applicable statutory, regulatory and HHS General Administration manual directives.

*Request for Candidates:* Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to accomplishing CLIAC's objectives. Nominees will be selected by the HHS Secretary or designee from authorities knowledgeable across the fields of microbiology (including bacteriology, mycobacteriology, mycology, parasitology, and virology), immunology (including histocompatibility), chemistry, hematology, pathology (including histopathology and cytology), or genetic testing (including cytogenetics); representatives from the fields of medical technology, public health, and clinical practice; and consumer representatives. Members may be invited to serve for terms of up to four years.

The U.S. Department of Health and Human Services policy stipulates that Committee membership be balanced in terms of professional training and background, points of view represented, and the committee's function. Consideration is given on the basis of geographic, ethnic and gender representation. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for CLIAC membership each year, and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July, or as soon as the HHS selection process is completed. Note that the need for different expertise and individuals to maintain the appropriate demographic balance varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items to be considered for nomination. The deadline for receipt of materials for the 2017 term is August 1, 2016:

- Current *curriculum vitae,* including complete contact information (name, affiliation, mailing address, telephone number, email address).
- Letter(s) of recommendation from person(s) not employed by the U.S. Department of Health and Human Services.

*Request for Suggested Meeting Topics:* Consideration of topics for meeting agendas begins approximately four months prior to each meeting. The agendas are developed by CDC in collaboration with CMS, FDA, and the CLIAC Chair. Topics within the scope of

the Committee's charge are selected and questions for CLIAC deliberation are developed to align with the agenda. The agenda is published in the **Federal Register** not less than 15 days before the meeting date and is posted on the CLIAC Web site (*http://wwwn.cdc.gov/cliac/default.aspx*). Suggested meeting topics are invited at any time for consideration at future meetings.

*Submission of Candidate Information or Suggestions for Meeting Topics:* Candidate suggestions and potential meeting topics may be submitted by:

- Email in care of the CLIAC Secretariat at *CLIAC@cdc.gov.*
- U.S. Postal Service: Attention: CLIAC Secretariat, 1600 Clifton Road NE., Mailstop F–11, Atlanta, GA 30329.

*Contact Person for Additional Information:* Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Center for Surveillance, Epidemiology and Laboratory Services, Office of Public Health Scientific Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop F–11, Atlanta, Georgia 30329–4018; telephone (404) 498–2741; or via email at *NAnderson@cdc.gov.* The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13438 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention (CDC)

### Office for State, Tribal, Local and Territorial Support (OSTLTS)

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of November 5, 2009, and September 23, 2004, Consultation and Coordination with Indian Tribal Governments, CDC/Agency for Toxic Substances and Disease Registry (ATSDR), announces the following meeting and Tribal Consultation Session:

*Name:* Tribal Advisory Committee (TAC) Meeting and 15th Biannual Tribal Consultation Session.

*Times and Dates:*

8:00 a.m.–6:30 p.m., August 2, 2016, (TAC Meeting)

8:00 a.m.–12:00 p.m., PDT, August 3, 2016, PDT (TAC Meeting & 15th Biannual Tribal Consultation Session)

*Place:* The TAC Meeting and Tribal Consultation Session will be held at Rincon's Harrah, 77 Harrah's Rincon Way, Valley Center, California 92082, telephone (760) 362–8990.

*Status:* The meetings are being hosted by CDC/ATSDR in-person only and are open to the public. Attendees must pre-register for the event by Wednesday, July 13, 2016, at the following link: *http://www.cdc.gov/tribal/meetings.html.*

*Purpose:* The purpose of these recurring meetings is to advance CDC and ATSDR support for and collaboration with American Indian and Alaska Native (AI/AN) tribes, and to improve the health of AI/AN tribes by pursuing goals that include assisting in eliminating the health disparities faced by AI/AN tribes; ensuring that access to critical health and human services and public health services is maximized to advance or enhance the social, physical, and economic status of AI/ANs; and promoting health equity for all Indian people and communities. To advance these goals, CDC and ATSDR conducts government-to-government consultations with elected tribal officials or their authorized representatives. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension.

*Matters for Discussion:* The Summer 2016 TAC Meeting and Biannual Tribal Consultation Session will provide opportunities for tribal leaders to speak openly about the public health issues affecting their tribes. These meetings will include, but are not limited to, discussions about building tribal public health capacity, intimate partner violence, and reducing opioid dependence and overdose in Indian country.

Tribes will also have an opportunity to present testimony about tribal health issues. All Tribal leaders are encouraged to submit written testimony by 5:00 p.m., EDT, Wednesday, July 13, 2016, to LCDR Jessica Damon, Public Health Advisor for the Tribal Support Unit, OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341–3717 or email to *TribalSupport@cdc.gov.*

Based on the number of tribal leaders giving testimony and the time available, it may be necessary to limit the time for each presenter.

The agenda is subject to change as priorities dictate. Information about the TAC, CDC/ATSDR's Tribal Consultation Policy, and previous meetings can be found at *http://www.cdc.gov/tribal.*

*Contact person for more information:* LCDR Jessica Damon, Public Health Advisor, CDC/OSTLTS, 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341–3717; email: *TribalSupport@cdc.gov* or telephone (404) 498–0563.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13439 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–16–0770; Docket No. CDC–2016–0047]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on the National HIV Behavioral Surveillance (NHBS) system. CDC is requesting a 3-year approval for revision to the previously approved project to continue collecting standardized HIV-related behavioral data from persons at risk for HIV systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States.

**DATES:** Written comments must be received on or before August 8, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2016–0047 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

**Please note:** All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

**Proposed Project**

National HIV Behavioral Surveillance System (NHBS)—(0920–0770, Expiration 03/31/2017)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The purpose of this data collection is to monitor behaviors of persons at high risk for infection that are related to Human Immunodeficiency Virus (HIV) transmission and prevention in the United States. The primary objectives of the NHBS system are to obtain data from samples of persons at risk to: (a) Describe the prevalence and trends in risk behaviors; (b) describe the prevalence of and trends in HIV testing and HIV infection; (c) describe the prevalence of and trends in use of HIV prevention services; (d) identify met and unmet needs for HIV prevention services in order to inform health departments, community based organizations, community planning groups and other stakeholders.

By describing and monitoring the HIV risk behaviors, HIV seroprevalence and incidence, and HIV prevention experiences of persons at highest risk for HIV infection, NHBS provides an important data source for evaluating progress towards national public health goals, such as reducing new infections, increasing the use of condoms, and targeting high risk groups.

The Centers for Disease Control and Prevention requests approval for a 3-year extension of this information collection. Data are collected through anonymous, in-person interviews conducted with persons systematically selected from 25 Metropolitan Statistical Areas (MSAs) throughout the United States; these 25 MSAs were chosen based on having high HIV prevalence. Persons at risk for HIV infection to be interviewed for NHBS include men who have sex with men (MSM), injecting drug users (IDU), and heterosexuals at increased risk of HIV (HET). A brief screening interview will be used to determine eligibility for participation in the behavioral assessment.

The data from the behavioral assessment will provide estimates of (1) behavior related to the risk of HIV and other sexually transmitted diseases, (2) prior testing for HIV, (3) and use of HIV prevention services.

All persons interviewed will also be offered an HIV test, and will participate in a pre-test counseling session. No other federal agency systematically collects this type of information from persons at risk for HIV infection. These data have substantial impact on prevention program development and monitoring at the local, state, and national levels.

CDC estimates that NHBS will involve, per year in each of the 25 MSAs, eligibility screening for 50 to 200 persons and eligibility screening plus the behavioral assessment with 500 eligible respondents, resulting in a total of 37,500 eligible survey respondents and 7,500 ineligible screened persons during a 3-year period. Data collection will rotate such that interviews will be conducted among one group per year: MSM in year 1, IDU in year 2, and HET in year 3. The type of data collected for each group will vary slightly due to different sampling methods and risk characteristics of the group.

Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Persons Screened | Eligibility Screener | 15,000 | 1 | 5/60 | 1,250 |
| Eligible Participants | Behavioral Assessment MSM | 4,167 | 1 | 30/60 | 2,084 |
| Eligible Participants | Behavioral Assessment IDU | 4,167 | 1 | 54/60 | 3,750 |

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| Eligible Participant | Behavioral Assessment HET | 4,167 | 1 | 39/60 | 2,709 |
| Peer Recruiters | Recruiter Debriefing | 4,167 | 1 | 2/60 | 139 |
| Total Annualized Burden | | | | | 9,932 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13293 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), PAR 16–098 Cooperative Research Agreements to the World Trade Center Health Program (U01).

*Times and Dates:* 8:00 a.m.–5:00 p.m., EDT, June 28, 2016 (Closed); 8:00 a.m.–12:00 p.m., EDT, June 29, 2016 (Closed).

*Place:* Atlanta Marriott Century Center, 2000 Century Boulevard NE., Atlanta, Georgia 30345, Telephone: (404) 325–0000.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Cooperative Research Agreements to the World Trade Center Health Program (U01)'', PAR 16–098.

*Contact Person for More Information:* Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26505, Telephone: (304) 285–5975.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13442 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA–CE–16–005, Evaluating Practice-based Sexual Violence Primary Prevention Approaches from CDC's Rape Prevention and Education (RPE) Program.

*Times and Dates:* 08:00 a.m.–5:00 p.m., EDT, June 28–29, 2016 (Closed).

*Place:* The Georgian Terrace, 659 Peachtree St. NE., Atlanta, GA 30308.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Evaluating Practice-based Sexual Violence Primary Prevention Approaches from CDC's Rape Prevention and Education (RPE) Program'', RFA–CE–16–005.

*Contact Person for More Information:* M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13440 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, has been renewed for a 2-year period through May 21, 2018.

For information, contact William Cibulas, Ph.D., Designated Federal Officer, Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Department of Health and Human Services, 4770 Buford Highway, Mailstop F61,

Chamblee, Georgia 30341, telephone (770) 488–0662 or fax (770) 488–3385.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13436 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces a meeting for the initial review of applications in response to Funding Opportunity Announcement (FOA), RFA OH16–001, Extension of the World Trade Center Health Registry (U50).

*Time and Date:* 1:00 p.m.–2:30 p.m., EDT, June 29, 2016 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters for Discussion:* The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Extension of the World Trade Center Health Registry (U50) Request For Application'', RFA OH16–001.

*Contact Person for More Information:* Nina Turner, Ph.D., Scientific Review Officer, CDC/NIOSH, 1095 Willowdale Road, Mailstop G905, Morgantown, West Virginia 26505, Telephone: (304) 285–5975.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13441 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–16–16AMV; Docket No. CDC–2016–0048]**

### Proposed Data Collection Submitted for Public Comment and Recommendations

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project entitled ''Survey of Musculoskeletal Disorders Prevention Tools/Methods: 10-year Follow-Up''. The purpose of this study is to administer a survey of ergonomics practitioners (those holding professional certification) to gather information on the basic tools, direct and observational measurement techniques, and software used at work sites to assess risk factors for musculoskeletal disorders.

**DATES:** Written comments must be received on or before August 8, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2016–0048 by any of the following methods:

*Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.

*Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *Regulations.gov*, including any personal information provided. For access to the docket to read background documents or comments received, go to *Regulations.gov*.

**Please note:** All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and

maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

**Proposed Project**

Survey of Musculoskeletal Disorders Prevention Tools/Methods: 10-year Follow-Up—New—National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Under Public Law 91–596, sections 20 and 22 (Section 20–22, Occupational Safety and Health Act of 1970), NIOSH has the responsibility to conduct research to advance the health and safety of workers. In this capacity, NIOSH proposes to administer a survey of ergonomics professionals as a 10-year follow-up to a survey conducted of U.S. Certified Professional Ergonomists (CPEs) by Dempsey et al. and published in 2005 (A survey of tools and methods used by certified professional ergonomists. *Applied Ergonomics, 36,* 489–503). NIOSH is requesting a one year approval period for this data collection.

The project is planned to extend the original survey in two ways: (1) The sample will be broadened to include international ergonomics practitioners (in Canada, the United Kingdom, New Zealand, and Australia), and, (2) the queried tools and methods have been updated to reflect new and emerging technologies not included in the original survey. The purpose of the survey will be unchanged—to gather information on the types of basic tools, direct and observational measurement techniques, and software used in the field by ergonomics practitioners to assess workplace risk factors for musculoskeletal disorders and to evaluate workplace interventions.

The motivation for the original 2005 survey was to better understand the types of tools and methods practitioners use, their opinions of these tools, and to potentially gain an understanding of the constraints or preferences that influence this selection. At the time of the 2005 survey, there were many tools reported in the literature, but little information on the extent to which these different tools were used by practitioners. Similarly, there was little published information on users' experiences with these different tools. There has been considerable interest in the findings and the Dempsey et al (2005) publication has been widely cited. The program anticipates that a follow-up effort will result in even greater interest as changes in the practice of ergonomics and prevention of soft tissue MSDs can be inferred from comparisons between the two surveys time points.

Since publication of the initial survey findings there has been a proliferation of smart phone/smart device-embedded inertial and acceleration sensors and related ''apps'' for human motion and activity logging. Little is known about the extent to which ergonomics practitioners are using these newer technologies towards assessing workplace physical activity (and now, workplace inactivity and ''sedentarism'') and other job demands. Thus, the survey will provide a contemporary perspective on the scope of use of assessment tools and methods by these professionals. This project will involve the collection of non-sensitive data via web-based survey questionnaire methods. Survey data relate only to respondents' professional practice within the OS&H discipline of ergonomics and prevention of musculoskeletal disorders.

Only certified ergonomics professionals from five countries with specific certification credentials will be eligible and invited to participate. Their participation will be voluntary. The program has assumed an optimistic 80% response rate to estimate the number of respondents at 938 in the estimation of annualized burden hours.

In summary, this study will update information collected and published in 2005 on the methods and tools used by practicing ergonomists. NIOSH expects to complete data collection in 2017. The total estimated burden hours is 469. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | No. of respondents | No. of responses per respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|---|
| Certified Ergonomics professionals .. | Practicing Ergonomist Survey of Tools and Methods. | 938 | 1 | 30/60 | 469 |
| Total ..... | ..... | ..... | ..... | ..... | 469 |

**Leroy A. Richardson,**

*Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13292 Filed 6–6–16; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

*Times and Dates:* 8:30 a.m.–4:30 p.m., EDT, June 28, 2016; 8:30 a.m.–11:30 a.m., EDT, June 29, 2016.

*Place:* CDC, 4770 Buford Highway, Atlanta, Georgia 30341.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 60 people.

*Purpose:* The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are

authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

*Matters for Discussion:* The agenda items for the BSC Meeting will include NCEH/ATSDR Office of the Director updates; update on Climate and Health; NCEH/ATSDR Program Responses to BSC Guidance and Action Items; NCEH/ATSDR Support for the Public Health Emergency in Flint; Rethinking the Strategy for the NCEH Lead Surveillance Program; CDC's Blood Reference Value for Lead; NCEH/ATSDR's Strategy for PFCs in the Environment; NCEH/ATSDR's Safe Drinking Water Program: Developing a Public Health Strategy; updates from the National Institute of Environmental Health Sciences, the National Institute for Occupational Safety and Health, the US Department of Energy and the US Environmental Protection Agency.

Agenda items are subject to change as priorities dictate.

*Supplemental Information:* The public comment period is scheduled on Tuesday, June 28, 2016 from 3:15 p.m. until 3:30 p.m., and on Wednesday, June 29, 2016 from 10:30 a.m. until 10:45 a.m.

*Contact Person for More Information:* Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–45, Atlanta, Georgia 30341; Telephone 770/488–0575 or 770/488–0577, Fax: 770/488–3377; Email: *smalcom@cdc.gov.* The deadline for notification of attendance is June 21, 2016.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–13437 Filed 6–6–16; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[CFDA Number: 93.092]**

### Announcement of a Single-Source Award to Healthy Families San Angelo, San Angelo, TX

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice of award of a Single-Source Award under the Competitive Personal Responsibility Education Program (Competitive PREP) to Healthy Families of San Angelo (HFSA) in San Angelo, Texas to support continued participation in the federal PREP impact evaluation.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), announces a single-source award in the amount of $750,000 to HFSA in San Angelo, TX for the purpose of continued participation in the federal impact evaluation. The award allows sufficient time to complete evaluation related activities of the Steps to Success program. Steps to Success is a comprehensive, culturally appropriate intervention that seeks to postpone subsequent pregnancies and increase safe sex behaviors for high-risk pregnant and parenting teens.

**DATES:** The period of support under this single-source award is February 1, 2016, through June 30, 2017.

**FOR FURTHER INFORMATION CONTACT:** LeBretia White, Manager, Adolescent Pregnancy Prevention Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 330 C Street SW., Washington, DC 20024. Telephone: 202–205–9605; Email: *LeBretia.White@acf.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** HFSA was selected as a site for the PREP federal impact evaluation as a result of a strong program design. The impact evaluation addresses significant gaps in the teen pregnancy prevention evidence base. Currently, there is little rigorous evidence on strategies effective in reducing repeat pregnancies among adolescent mothers. HFSA's program will help fill that gap due to its focus on reducing subsequent pregnancies and long acting reversible contraception. If impacts are found, the HFSA program can be added to the U.S. Department of Health and Human Services teen pregnancy evidence review list. This award allows time for evaluation activities to be completed including the collection and analysis of data.

**Statutory Authority:** Section 2953 of the Patient Protection and Affordable Care Act of 2010, Pub. L. 111–148, added Section 513 to Title V of the Social Security Act, codified at 42 U.S.C. 713, authorizing the Personal Responsibility Education Program.

**Christopher Beach,**

*Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.*

[FR Doc. 2016–13415 Filed 6–6–16; 8:45 am]

**BILLING CODE 4184–37–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Refugee Microenterprise and Refugee Home-Based Child Care Microenterprise Development.

*OMB No.:* New.

*Description:* New data collection tool for refugee microenterprise and Refugee Home-Based Child Care Microenterprise Program.

*Respondents:* Refugee Microenterprise Development Grantees and Refugee Home-Based Child Care Microenterprise Development.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Refugee Microenterprise Development | 22 | 8 | 4 | 704 |
| Refugee Home-Based Child Care Microenterprise Development | 23 | 7 | 4 | 644 |
| Total Burden | | | | 1340 |

*Estimated Total Annual Burden Hours:* (1340 hours x $30 per hour) $40,440 per year.

**Explanation**

*The Refugee Microenterprise Development Program*

• Currently, there are twenty two grantees (respondents) in the program and the semi-annual progress, which includes the data and information required, is submitted twice per year.

• The request covers one form (Form I. attached) which includes eight data points. Based on experience (the information was provided by technical assistance service provider in the past), it takes about two hours per respondent per six months (*i.e.,* four hours per year per grantee (respondent) or 88 hours per year for all respondents) to complete the form.

• No survey will be undertaken since the collection of this data (information) is part of the implementation process of the project and its collection and reporting does not constitute a separate and additional cost to the grantees (respondents). The cost is covered by the grant the grantee receives. The grantees have Down Home database which captures and stores the data required for reporting. The grantee uploads the semi-annual report in Grant Solution where it is stored. ORR derives the data it requires for reporting and management decision from Grant Solution.

*The Refugee Home-Based Child Care Microenterprise Development Group*

• Currently, there are twenty three grantees (respondents) in the program and the semi-annual progress.

• The request covers one form (Form II. attached) which includes seven data points. It takes about two hours per respondent per six months (*i.e.,* four hours per year grantee (respondent) or 92 hours per year for all respondents) to complete the form.

• The collection of this data (information) is part of the process and its collection and reporting does not include separate and additional cost to the grantees (respondents). The cost is covered by the grant the grantee receives. The grantees have database which captures and stores the data required for reporting. The grantee uploads the data required in Grant Solution where it is stored. ORR derives the data it requires for reporting and management decision from Grant Solution.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2016–13401 Filed 6–6–16; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2013–N–0579]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing; Forms FDA 3486 and 3486A

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the reporting of biological product deviations in manufacturing and human cells, tissues, and cellular and tissue-based product (HCT/P) deviations, and Forms FDA 3486 and 3486A.

**DATES:** Submit electronic or written comments on the collection of information by August 8, 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–2013–N–0579 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Deviations in Manufacturing; Forms FDA 3486 and 3486A.'' 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:** FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Biological Products: Reporting of Biological Product Deviations and Human Cells, Tissues, and Cellular and Tissue-Based Product Deviations in Manufacturing; Forms FDA 3486 and 3486A**

*OMB Control Number 0910–0458—Extension*

Under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262), all biological products, including human blood and blood components, offered for sale in interstate commerce must be licensed and meet standards, including those prescribed in the FDA regulations, designed to ensure the continued safety, purity, and potency of such products. In addition under section 361 of the PHS Act (42 U.S.C. 264), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or possessions or from foreign countries into the States or possessions. Further, section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351) provides that drugs and devices (including human blood and blood components) are adulterated if they do not conform with current good manufacturing practice (CGMP) assuring that they meet the requirements of the FD&C Act. Establishments manufacturing biological products, including human blood and blood components, must comply with the applicable CGMP regulations (parts 211, 606, and 820 (21 CFR parts 211, 606, and 820)) and current good tissue practice (CGTP) regulations (part 1271 (21 CFR part 1271)) as appropriate. FDA regards biological product deviation (BPD) reporting and HCT/P deviation reporting to be an essential tool in its directive to protect public health by establishing and maintaining surveillance programs that provide timely and useful information.

Section 600.14 (21 CFR 600.14), in brief, requires the manufacturer who

holds the biological product license, for other than human blood and blood components, and who had control over a distributed product when the deviation occurred, to report to the Center for Biologics Evaluation and Research (CBER) or to the Center for Drugs Evaluation and Research (CDER) as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Section 606.171, in brief, requires licensed manufacturers of human blood and blood components, including Source Plasma, unlicensed registered blood establishments, and transfusion services, who had control over a distributed product when the deviation occurred, to report to CBER as soon as possible but at a date not to exceed 45 calendar days after acquiring information reasonably suggesting that a reportable event has occurred. Similarly, § 1271.350(b), in brief, requires HCT/P establishments that manufacture non-reproductive HCT/Ps described in § 1271.10 to investigate and report to CBER all HCT/P deviations relating to a distributed HCT/P that relates to the core CGTP requirements, if the deviation occurred in the establishment's facility or in a facility that performed a manufacturing step for the establishment under contract, agreement, or other arrangement. Form FDA 3486 is used to submit BPD reports and HCT/P deviation reports.

Respondents to this collection of information are: (1) Licensed manufacturers of biological products other than human blood and blood components, (2) licensed manufacturers of blood and blood components including Source Plasma, (3) unlicensed registered blood establishments, (4) transfusion services, and (5) establishments that manufacture non-reproductive HCT/Ps regulated solely under section 361 of the PHS Act as described in § 1271.10. The number of respondents and total annual responses are based on the BPD reports and HCT/P deviation reports FDA received in fiscal year 2015. The number of licensed manufacturers and total annual responses under § 600.14 include the estimates for BPD reports submitted to both CBER and CDER. Based on the information from industry, the estimated average time to complete a deviation report is 2 hours, which includes a minimal one-time burden to create a user account for those reports submitted electronically. The availability of the standardized report form, Form FDA 3486, and the ability to submit this report electronically to CBER (CDER does not currently accept electronic filings) further streamlines the report submission process.

CBER has developed a Web-based addendum to Form FDA 3486 (Form FDA 3486A) to provide additional information when a BPD report has been reviewed by FDA and evaluated as a possible recall. The additional information requested includes information not contained in the Form FDA 3486 such as: (1) Distribution pattern; (2) method of consignee notification; (3) consignee(s) of products for further manufacture; (4) additional product information; (5) updated product disposition; and (6) industry recall contacts. This information is requested by CBER through email notification to the submitter of the BPD report. This information is used by CBER for recall classification purposes. At this time, Form FDA 3486A is being used only for those BPD reports submitted under § 606.171. CBER estimates that 5 percent of the total BPD reports submitted to CBER under § 606.171 would need additional information submitted in Form FDA 3486A. CBER further estimates that it would take between 10 to 20 minutes to complete Form FDA 3486A. For calculation purposes, CBER is using 15 minutes.

Activities such as investigating, changing standard operating procedures or processes, and followup are currently required under parts 211 (approved under OMB control number 0910–0139), part 606 (approved under OMB control number 0910–0116), part 820 (approved under OMB control number 0910–0073), and part 1271 (approved under OMB control number 0910–0543) and, therefore, are not included in the burden calculation for the separate requirement of submitting a deviation report to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR section | FDA form No. | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|---|
| 600.14 | 3486 | 102 | 5.99 | 611 | 2 | 1,222 |
| 606.171 | 3486 | 1,738 | 26.34 | 45,774 | 2 | 91,548 |
| 1271.350(b) | 3486 | 97 | 2.64 | 256 | 2 | 512 |
| Web-based Addendum | [2] 3486A | 87 | 26.31 | 2,289 | .25 (15 minutes) | 572 |
| Total | | | | | | 93,854 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Five percent of the number of respondents (1,738 × 0.05 = 87) and total annual responses to CBER (45,774 × 0.05 = 2,289).

Dated: May 26, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–13366 Filed 6–6–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; 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 of Mental Health Special Emphasis Panel Pilot

Effectiveness Trials for Treatment, Preventive and Services Interventions (R34)

*Date:* June 24, 2016.

*Time:* 11:30 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:* Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Fellowship and Dissertation Grants Review Meeting.

*Date:* June 30, 2016.

*Time:* 12:00 p.m. to 5:00 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:* Marcy Ellen Burstein, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6143, MSC 9606, Bethesda, MD 20892–9606, 301–443–9699, *bursteinme@mail.nih.gov.*

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel, Mental Health Services Conflicts (Teleconference).

*Date:* June 30, 2016.

*Time:* 12:30 p.m. to 1:30 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:* Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: June 1, 2016.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–13310 Filed 6–6–16; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-day Comment Request, U.S. Nuclear Medicine Technologists Study (NCI)

**SUMMARY:** Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute, the National Institutes of Health, has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 28, 2016 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute, National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact*: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, 9609 Medical Center Drive, Room 7E566, Rockville, MD 20850, or call non-toll-free number 301–414–0308. Or Email your request, including your address to: *doodym@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

**Proposed Collection:** U.S. Nuclear Medicine Technologists Study, 0925–0656, Expiration Date 04/30/2015—REINSTATEMENT WITH CHANGE, National Cancer Institute (NCI), National Institutes of Health (NIH).

*Need and Use of Information Collection:* We propose to collect from U.S. nuclear medicine technologists (USNMT) certified after 1980 historical information about nuclear medicine procedures performed, radioisotopes used, related work and safety practices, and places of employment. The primary objectives of the current feasibility effort are: (a) To identify a cohort of nuclear medicine technologists certified after 1980 by the American Registry of Radiologic Technologists (ARRT) and/or the Nuclear Medicine Technologist Certification Board (NMTCB); and (b) to characterize individual organ-specific occupational radiation doses from radioisotope procedures. More recently certified technologists, who specialized in nuclear medicine, are expected to have greater exposures to radioisotopes than the general radiologic technologists in the U.S. Radiologic Technologist (USRT) cohort owing to performing such procedures with greater frequency. The proposed USNMT study would be a direct follow-on to the USRT Study to assess health risks associated with occupational exposure to these much higher-energy radiopharmaceuticals.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 125.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Instrument | Number of respondents | Frequency of response | Average time per response (hours) | Annual hour burden |
|---|---|---|---|---|---|
| Nuclear Medicine Technologists | Nuclear Medicine Questionnaire | 250 | 1 | 30/60 | 125 |
| Total | | 250 | 250 | | 125 |

Dated: May 31, 2016.

**Karla Bailey,**

*Project Clearance Liaison, National Cancer Institute, NIH.*

[FR Doc. 2016–13308 Filed 6–6–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, June 23, 2016, 08:00 a.m. to June 24, 2016, 06:00 p.m., Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on May 16, 2016, 81 FR 30318.

The meeting notice is amended to change the Committee name from National Cancer Institute, Special Emphasis Panel; NCI Omnibus R03 SEP–1 to National Cancer Institute, Special Emphasis Panel; NCI R03 SEP–2. The meeting is closed to the public.

Dated: June 1, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–13309 Filed 6–6–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council will meet on June 13, 2016, 1:30 p.m.–2:30 p.m., via teleconference.

The meeting will include the review, discussion, and evaluation of grant applications reviewed by the Initial Review Group, and involve an examination of confidential financial and business information as well as personal information concerning the applicants. Therefore, these meetings will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(4) and (c)(6); and 5 U.S.C. App. 2, Section 10(d).

*Committee Name:* Substance Abuse and Mental Health Services, Administration Center for Substance Abuse Prevention National Advisory Council.

*Date/Time/Type:* June 13, 2016, 1:30 p.m.–2:30 p.m. (CLOSED).

*Place:* SAMHSA Building, 5600 Fishers Lane, Rockville, MD 20857.

*Contact:* Matthew J. Aumen, Designated Federal Officer, SAMHSA/CSAP National Advisory Council, 5600 Fishers Lane, Rockville, MD 20857, Email: *Matthew.Aumen@samhsa.hhs.gov*.

**Summer King,**

*Statistician, SAMHSA.*

[FR Doc. 2016–13369 Filed 6–6–16; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

**Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension**

These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or significant (severe) emotional impairment (children/youth) as defined by 42 U.S.C. 10802(4) and 10804(d). Only entities designated by the governor of each State, including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Mayor of the District of Columbia, and the tribal councils for the American Indian Consortium (the Hopi and Navajo Nations in the Four Corners region of the Southwest), to protect and advocate the rights of persons with developmental disabilities are eligible to receive PAIMI Program grants [the Act at 42 U.S.C. at 10802(2)]. These grants are based on a formula prescribed by the Secretary [42 U.S.C. at 10822(a)(1)(A)].

On January 1, each eligible state protection and advocacy (P&A) system is required to prepare a report that describes its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI Program allotments during the most recently completed fiscal year. The PAIMI Act at 42 U.S.C. 10824(a) requires that each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA/CMHS) and to the State Mental Health Agency where the system is located. These annual PAIMI Program Performance Reports (PPR) to the Secretary must include the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;
- A description of the accomplishments resulting from such activities;
- A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI Program allotments;
- A description of activities conducted by States to protect and advocate such rights;
- A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,
- A description of the coordination among such systems, activities and mechanisms;
- Specification of the number of public and nonprofit P&A systems established with PAIMI Program allotments;
- Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the State P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

The PAIMI Rules [42 CFR part 51] mandate that each State P&A system may place restrictions on either its case or client acceptance criteria developed as part of its annual PAIMI priorities. Each P&A system is required to inform

prospective clients of any such restrictions when they request a service [42 CFR 51.32(b)].

The PAIMI PPR summary must include a separate section, prepared by the PAIMI Advisory Council (PAC), that describes the council's activities and its assessment of the State P&A system's operations [PAIMI Act at 42 U.S.C. 10805(7)].

The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

| 42 CFR citation | Number of respondents | Responses per respondent | Burden per response (hrs.) | Total annual burden |
|---|---|---|---|---|
| 51.8(a)(2) Program Performance Report | 57 | 1 | 26.0 | [1] 1,482 |
| 51.8(a)(8) Advisory Council Report | 57 | 1 | 10.0 | [1] 570 |
| 51.10 Remedial Actions: | | | | |
| Corrective Action Plans | 7 | 1 | 8.0 | 56 |
| Implementation Status Report | 7 | 3 | 2.0 | 42 |
| 51.23(c) Reports, materials and fiscal data provided to the PAC | 57 | 1 | 1.0 | 57 |
| 51.25(b)(2) Grievance Procedures | 57 | 1 | .5 | 29 |
| Total | 126 | 8 | 47.5 | 184 |

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Written comments and recommendations concerning the proposed information collection should be sent by July 7, 2016 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov*. Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

**Summer King,**

*Statistician.*

[FR Doc. 2016–13382 Filed 6–6–16; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

### Intent To Request Extension From OMB of One Current Public Collection of Information: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** 60-Day notice.

**SUMMARY:** The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0013, abstracted below that we will submit to OMB for an extension in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves surveying travelers to measure customer satisfaction of aviation security in an effort to manage airport performance more efficiently.

**DATES:** Send your comments by August 8, 2016.

**ADDRESSES:** Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

**FOR FURTHER INFORMATION CONTACT:** Christina A. Walsh at the above address, or by telephone (571) 227–2062.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

### Information Collection Requirement

*OMB Control Number 1652–0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.* TSA, with OMB's approval, has conducted surveys of passengers at airports nationwide and now seeks approval to continue this effort. The surveys are administered using an intercept methodology. The intercept methodology uses TSA personnel who are not in uniform to hand deliver business card style forms to passengers immediately following the passenger's experience with the TSA's checkpoint security functions. Passengers are invited, though not required, to complete and return the survey using either an online portal or by responding in writing to the survey questions on the customer satisfaction card and depositing the card in a drop-box at the airport or using U.S. mail; prior to each survey collection at an airport, TSA personnel select the method by which all passengers surveyed on that particular occasion will be asked to complete and return the survey. TSA uses the intercept methodology to randomly select passengers to complete the survey in an effort to gain survey data representative of all passenger demographics—including passengers who—

- Travel on weekdays or weekends;
- Travel in the morning, mid-day, or evening;

• Pass through each of the different security screening locations in the airport;

• Are subject to more intensive screening of their baggage or person; and

• Experience different volume conditions and wait times as they proceed through the security checkpoints.

Each survey includes 10 to 15 questions, and each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

TSA collects this information in order to continue to assess customer satisfaction in an effort to manage TSA employee performance more efficiently. OMB has previously approved 82 questions. TSA is requesting an extension of the approval for the information collection.

TSA personnel have the capability to conduct this survey at 25 airports each year. Based on prior survey data and research, TSA estimates 384 responses from the passengers at each airport. The average number of respondents is estimated to be 9,600 per year (384 passengers × 25 airports). TSA estimates that the time it takes to complete the survey either online or by writing on the form ranges from 3 to 7 minutes, an average of 5 minutes (0.083 hrs.) per respondent. Therefore, the annual burden is 800 hours (9,600 responses × 0.083 hours).

June 2, 2016.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer, Office of Information Technology.*

[FR Doc. 2016–13416 Filed 6–6–16; 8:45 am]

**BILLING CODE 9110–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control Number 1615–0013]**

### Agency Information Collection Activities: Application for Travel Document, Form I–131; Extension, Without Change, of a Currently Approved Collection

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 8, 2016.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615–0013 in the subject box, the agency name and Docket ID USCIS–2007–0045. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Online.* Submit comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0045;

(2) *Email.* Submit comments to *USCISFRComment@uscis.dhs.gov;*

(3) *Mail.* Submit written comments to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Acting Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, telephone number 202–272–8377 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY 800–767–1833).

**SUPPLEMENTARY INFORMATION:**

#### Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0045 in the search box. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

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

#### Overview of this Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Travel Document.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–131; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Certain aliens, principally permanent or conditional residents, refugees or asylees, applicants for adjustment of status, aliens in Temporary Protected Status (TPS) and aliens abroad seeking humanitarian parole, in need to apply for a travel document to lawfully enter or reenter the United States; eligible recipients of deferred action under childhood arrivals (DACA) may now request an advance

parole documents based on humanitarian, educational and employment reasons. Lawful permanent residents may now file requests for travel permits (transportation letter or boarding foil).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–131 is 519,090 and the estimated hour burden per response is 1.9 hours; 71,665 respondents providing biometrics at 1.17 hours; and 317,773 respondents providing passport-style photographs at .50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,228,986 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $155,789,790.

Dated: June 2, 2016.

**Samantha Deshommes,**

*Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2016–13386 Filed 6–6–16; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5936–N–01]**

## Notice of National Disaster Resilience Competition Grant Requirements

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This notice lists the awardees of Phase 2 of the National Disaster Resilience Competition (NDRC). The NDRC was conducted in accordance with Notice of Funding Availability (NOFA) FR–5800–N–29A2, published on grants.gov (Primary CFDA Number 14.272, last modified June 25, 2015). Awardees have been allocated $999,108,000 made available pursuant to the Disaster Relief Appropriations Act, 2013, Public Law 113–2 (Appropriations Act). This notice also updates and republishes Appendix A to the NOFA, which states the requirements applicable to NDRC grant recipients, including applicable waivers and alternative requirements. HUD is publishing the post-award requirements of Appendix A in the **Federal Register** because the Appropriations Act requires HUD to publish waivers and alternative requirements in the **Federal Register** no later than 5 days before their effective date. The requirements of Appendix A will also be incorporated into the grant agreement between the Grantees and HUD. The updates to Appendix A included in this notice reflect necessary revisions to citations and requirements that have changed since the NOFA's publication, as a result of the Department's implementation of the Office of Management and Budget's (OMB) final guidance, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,* through amendments to 24 CFR parts 84, 85, and 570.

**DATES:** *Effective Date:* June 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Fax inquiries may be sent to Mr. Gimont at 202–401–2044.

**SUPPLEMENTARY INFORMATION:**

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### Section 1: Program Background and Purpose:

NDRC awardees identified in this notice were allocated Community Development Block Grant National Resilient Disaster Recovery (CDBG–NDR) grant funds on a competitive basis. These funds were made available by the Appropriations Act for disaster recovery from major disasters declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 *et seq.*) (Stafford Act) in 2011, 2012, and 2013. The Appropriations Act made available $16 billion in Community Development Block Grant Disaster Recovery (CDBG–DR) funds. On March 1, 2013, the President issued a sequestration order pursuant to section 251A of the Balanced Budget and Emergency Deficit Control Act, as amended (2 U.S.C. 901a), and reduced funding for CDBG disaster recovery grants under the Appropriations Act to $15.18 billion.

HUD has not allocated other Appropriations Act funds competitively. As of September 2014, HUD had allocated or set aside approximately $13 billion–$14 billion in response to Hurricane Sandy, and Tropical Storms Irene and Lee; $514 million in response to disasters occurring in 2011 or 2012; and $654 million in response to other 2013 disasters. The Department determined that the data available for the earliest disasters eligible under the Appropriations Act no longer credibly represented additional current unmet needs (beyond those for which HUD had already allocated funding by formula) to support a formula allocation method for the remaining funding. No other reasonably current data sources common to all possible eligible jurisdictions existed at the time of the allocation. Because the law directs that CDBG–DR assistance must flow to the Most Impacted and Distressed areas with unmet recovery and revitalization needs related to the effects of a covered major disaster, HUD decided that a competition framework would work best to elicit the data needed to inform allocation choices, and ensure that the unmet disaster recovery and revitalization needs of communities around the country were appropriately considered.

To comply with statutory direction that CDBG–NDR funds be used for disaster-related expenses in the Most Impacted and Distressed areas related to the Qualified Disaster, HUD has required that Grantees address unmet needs in areas identified in the Grantee's approved application and accepted by HUD as ''Most Impacted

and Distressed'' as a result of the effects of the Qualified Disaster.

The Appropriations Act requires funds to be used only for specific disaster recovery related purposes. The Appropriations Act also requires that, prior to the obligation of CDBG–NDR funds, a Grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed areas. This Action Plan is discussed in section 3.I.B, ''Action Plan, Amendments, and Benefit Cost Analysis,'' below.

Allowable costs for CDBG–NDR funds under this appropriation include only those expenses necessary to meet the Unmet Recovery Needs of the Most Impacted and Distressed target area(s), but once the necessary Tie-Back is established for a Project, it could be designed to also meet other community development objectives and economic revitalization needs, including greater Resilience to address the negative effects of climate change. Tie-Back to the Qualifying Disaster was established for CDBG–NDR projects by demonstrating a logical link to addressing Unmet Recovery Needs from the Qualifying Disaster. Under this competition, HUD awarded points for leverage, long-term commitments, and regional coordination. The most competitive proposals, however, brought other resources and commitments to bear beyond the CDBG–NDR request to enhance Resilience beyond the Most Impacted and Distressed target areas with Unmet Recovery Needs (MID–URN target areas).

**Summary of Competition Details**

HUD has established six goals for the NDRC: First, to fairly allocate remaining Appropriation Act funds; second, to create multiple examples of local disaster recovery planning that apply science-based and forward-looking risk analysis to address recovery, Resilience, and revitalization needs; third, to leave a legacy of institutionalizing, in as many States and local jurisdictions as possible, the implementation of thoughtful, innovative, and resilient approaches to addressing future risks; fourth, to provide resources to help communities plan and implement disaster recovery that makes them more resilient to future threats or hazards, including extreme weather events and climate change, while also improving quality of life for existing residents and making communities more resilient to economic stresses or other shocks; fifth, to fully inform and engage community stakeholders about the current and projected impacts of climate change and to develop pathways to Resilience based on sound science; and sixth, to leverage investments from the philanthropic community to help communities define problems, set policy goals, explore options, and craft solutions to inform their own local and regional resilient recovery strategies. As with all CDBG assistance, the priority is on serving low- and moderate-income people.

The NDRC applied elements of the Hurricane Sandy Task Force's rebuilding strategy to support Grantee efforts to build back stronger and more resilient through integrating comprehensive planning and investing in meaningful efforts in their recovery and revitalization. The Task Force was established by Executive Order 13632 (published in the **Federal Register** on December 14, 2012, at 77 FR 74341) to: (1) Ensure governmentwide and regionwide coordination was available to assist communities make decisions about long-term rebuilding and (2) develop a comprehensive rebuilding strategy.

The NDRC bears some similarities to other Federal programs that address disaster recovery and threat and hazard mitigation. This similarity (and the distinctions noted below) is deliberate. The similarity allows States and local governments to invest CDBG–NDR funds to support or fill gaps to address unmet needs inaccessible or unaffordable to other Federal programs, and for which insurance and State, local, and other resources are unavailable. In addition, any similarity in program structure will enable lessons learned from the competition to potentially be transferable to other Federal programs. The distinctions, on the other hand, spring from the CDBG nature of the funding source, as directed in the congressional appropriation. Among major disaster recovery programs, CDBG is notable in its statutory focus on determining and meeting the unmet needs of vulnerable lower-income people and communities and targeting the Most Impacted and Distressed areas. CDBG is also singular in its ability to consider a wide range of local community development objectives related to recovery and economic revitalization, including integrally related Resilience objectives. HUD intends that the most successful proposals from the competition will take advantage of these CDBG similarities and distinctions to envision and implement recovery Projects that serve multiple purposes and position recovering communities for a prosperous and more resilient future. To ensure programs harmonize and do not duplicate benefits, HUD required all Applicants to describe how they consult with or coordinate with funders of other proposed recovery and Resilience investments in the Most Impacted and Distressed target area and region. The CDBG context also leads naturally to requiring Resilience elements within recovery projects because it creates stability. Reducing current and future risk is essential to the long-term economic well-being of communities and businesses. When a disaster chills local and regional economies, investments in anchor Projects to reduce risk and stimulate economic revitalization can be an essential part of any disaster recovery.

*Eligible Applicants.* Eligible Applicants in Phase 1 were States with Qualified Disasters and units of general local government who received CDBG–DR funding from HUD for disasters occurring in 2011—2013 (including Grantees under prior disaster recovery supplemental funding)—a total of 67 potential Applicants (See Appendix B to the NOFA for a list of eligible Applicants). HUD set aside $181 million for applications serving Hurricane Sandy Qualified Disasters in the States of New York and New Jersey and in New York City, due to the catastrophic level of damage caused in those areas from Hurricane Sandy and tropical storms in 2011. Note that HUD reserved the right to fund applications out of rank order to ensure geographic diversity of funding. For the same reason, HUD also reserved the right to partially fund an application(s). To ensure HUD had complete understanding on how to scale down Projects, each Phase 2 Applicant was required to identify any phasing or scalability inherent in its proposal. Those invited to submit applications for Phase 2 should have developed proposals with scalable options to the degree possible and practicable, and were required to ensure that each component proposed for CDBG–NDR funding had independent utility.

Successful completion of Phase 1 was a threshold requirement for eligible Applicants for Phase 2.

*Phase 1: Framing Unmet Recovery Needs, Vulnerabilities, and Community Development Objectives (Closed).* During Phase 1 (the framing phase) of the NDRC, Applicants consulted with stakeholders and comprehensively framed the recovery needs, relevant risks and vulnerabilities (current and future), and related community development opportunities in the target

geographic areas. Every fundable application had to first demonstrate a logical link, or Tie-Back, to addressing Unmet Recovery Needs stemming from the effects of the community's presidentially declared major disaster from 2011, 2012, or 2013. The other objectives, needs, or issues a Project would address were unique to the Applicant's community. For example, a community that suffered a flood might want to offer flood buyouts and property acquisition in the Most Impacted and Distressed areas, followed by restoration of a wetland to limit future flooding and provide a nature preserve or recreation area. A community that lost housing and a road during a mudslide might not only want to construct housing in a safer area for survivors, but also to find a financing mechanism for affected downstream businesses to survive the effects of the last event and be prepared for and recover more quickly from future hazards. Once the community framed the recovery need(s), identified current and future risks and vulnerabilities and noted community development opportunities, the Applicant had to identify and seek commitments from the public and private Partners it needs to develop and implement a solution, and develop a high level implementation idea. The Applicant's responses in Phase 1 described this framing process and its results, identified the Partners and other resources, and described the resulting resilient recovery concept or idea.

The Phase 1 CDBG–NDR NOFA included criteria and deadlines for both this initial ''framing'' phase and the later ''implementation'' phase of the competition. Applicants had approximately 180 days from the Phase 1 CDBG–NDR NOFA publication to complete the framing process and to submit initial proposals stating in general terms the Applicant's vulnerability(ies), issue(s), community development objectives, team (meaning the Applicant, all Partners, and any other supporting entities), required threshold items, known obstacles, substantial consultation and citizen engagement (particularly with affected and Vulnerable Populations), and general information about Unmet Recovery Needs.

After the 180-day deadline, HUD reviewed, rated, and provided detailed comments on each initial application that met all threshold requirements. HUD then ranked the applications by score and selected the qualifying Applicants for the Phase 2 application round.

*Phase 2: From Framing to Implementation (Closed).* In the second phase of the competition (the implementation phase), the highest scoring Applicants from the first phase were invited to fully articulate a Resilience-enhancing disaster recovery or revitalization Project or program that addressed as many of the Phase 1 identified risks, vulnerabilities, and community development opportunities as feasible and compete for implementation funding. The best Projects demonstrated how the proposal or Project would help the community recover from the effects of the covered disaster, advance community development objectives such as economic revitalization, and improve the community's ability to absorb or rapidly recover from the effects of a future extreme event, stress, threat, hazard, or other shocks. The proposed Phase 2 Project could be a pilot for the overall Phase 1 solution, could be limited to the CDBG–NDR-eligible portion of a Phase 1 concept that would benefit a geography larger than the Most Impacted and Distressed target area, or could be a stand-alone portion of a Project idea envisaged in Phase 1 that could take years or decades to completely realize. In any case, the Phase 2 Project could not be contingent on actions outside the scope of the Project to provide a defined level of protection against the threat(s) and hazard(s) identified, meet a CDBG–NDR national objective, or comply with program requirements as described in this notice. The Applicant was asked to explain how the Phase 2 proposal logically arises from the Phase 1 framing.

In Phase 2, each Applicant completed a benefit cost analysis (BCA) for any Covered Project(s), as described in the NOFA. Although the required completion of a BCA is new to CDBG disaster recovery, Rebuild by Design competitors completed BCAs and the analysis process helped improve the final proposals. The Federal Emergency Management Agency (FEMA) and U.S. Department of Transportation (DOT) also employ BCAs in reviewing applications for major Projects, and cost efficiency analysis is employed in reviews of environmental impact and consideration of alternatives. The CDBG–NDR BCA provided a sense of the cost efficiency of the proposal, but the BCA score was not used alone to rate soundness of approach. HUD recognizes that the benefits and costs may be difficult or impossible to comprehensively quantify, but, regardless of a proposed Project's scale, HUD did not fund any Phase 2 activities for which the benefits to the Applicant's community, and to the United States as a whole, were not demonstrated by the evidence submitted to justify the costs. Appendix H to the NOFA provided guidance on completing an acceptable BCA. Note that quantifying or otherwise accounting for social and ecological benefits and costs were a critical component, as was consideration of all related resources, including leverage, and the benefits and costs of long-term commitments under Factor 5.

Some of the resources provided to CDBG Grantees to support completion of the environmental reviews required under 24 CFR part 58 are also useful sources of information for a benefit-cost analysis. Consideration of these resources at an early stage in a Project may help speed the required environmental reviews. Applicants were strongly encouraged to integrate general and Project planning with the environmental review process, and to coordinate these reviews under the Unified Federal Review (UFR) process, where possible and as appropriate. The Applicant could have used public outreach meetings not only to seek Phase 1 planning input and Phase 2 Project comments or to meet the consultation requirement of the NDRC competition, but also to inform the public about environmental effects of different design approaches or of a proposed Project and its alternatives. Examples of required outreach included scoping for the National Environmental Policy Act, notices and evaluation in compliance with Executive Orders 11988 and 11990 (the 8-step decision process for floodplain management and wetlands protection), and consultation for section 106 of the National Historic Preservation Act (54 U.S.C. 306108). The Applicant engagement plan was to include strategies to ensure that vulnerable and underserved populations are involved throughout the planning and decisionmaking processes, including outreach and engagement of low-income and minority populations in furtherance of the Department's environmental justice obligations under Executive Order 12,898. This informs decisionmakers of the widest possible range of needs and options. Meaningful engagement and participation ensures the highest probability of success for all stakeholders.

After HUD provided comments on the initial Phase 1 submissions, each continuing Applicant had approximately 120 days in Phase 2 to develop a final submission. HUD considered soundness of approach, needs, capacity, leverage, and long-term commitment at this phase. Leverage in this phase could have included

traditional financial and some types of in-kind contributions. The application must also have included the supporting actions undertaken by the Applicant locally (*e.g.,* building code updates, executive orders, zoning revisions, comprehensive and mitigation plan linkages, interagency partnerships, financing mechanisms, or completing and adopting a forward-looking communitywide Resilience assessment and plan) to better position the Applicant to be more resilient to future threat(s) and hazard(s).

Following submission of the Phase 2 applications, HUD and Federal agency partners reviewed, rated, and ranked the applications in accordance with the published criteria. HUD then determined the Phase 2 awards as published in this notice.

Selection of Awardees

HUD considered for funding any completed Phase 2 application that met all thresholds and received at least 75 percent of the total points available in Phase 2. The applicable postaward requirements that were included in Appendix A to the NOFA are updated in this notice and apply to awards described herein. These postaward grant management requirements are, insofar as feasible, identical to those imposed under the notices published for grants made under the formula allocations under the Appropriations Act.

In both phases, HUD required thoughtful, evidence-based practice, incorporating consideration of the latest findings regarding the range of possible effects of climate change and other risks on the target geography during the useful life of any proposed Project. Many of the communities eligible to apply had already been subject to repetitive or increasingly severe disaster events and their community and regional plans, built environment, building codes, and design/construction practices may not yet have adjusted to enhance community Resilience to expected threat(s) and hazard(s) based on the best available data and science. Planning for an investment in a structure or improvement intended to endure and remain in service through its useful life must involve detailed consideration of the context in which the structure will be placed: The expected intensity and frequency of wind, rain, fire, flooding, snow loads, earthquake, drought conditions, and effects of climate change, for example and as relevant, should all influence community investment and policy decisions.

States and local governments were strongly encouraged to take or commit to Resilience-enhancing actions to protect their communities from threat(s) and hazard(s), as well as to ensure the useful life of their Projects under changing conditions, including future risk caused by climate change. Taking or committing to actions enhanced the competitiveness of Phase 1 and 2 proposals. HUD only invited an Applicant to Phase 2 if it had at least committed to taking a permanent Resilience-enhancing action, and HUD awarded points in Phase 2 to Applicants that have or will implement significant Resilience-enhancing action(s), such as updating State and local building codes, zoning, hazard mitigation, consolidated or comprehensive plans (including area-specific plans), and other ordinances or matters within the span of control of the Applicant and public sector Partners. Such improvements may have included coordination or merger of local plans or requirements in a way that will clearly enhance Resilience, such as hazard mitigation assessments and plans incorporated into forward-looking comprehensive plans updated to consider future impacts from climate change. Only significant updates made or major actions taken after the date of the Qualified Disaster were considered in responding to Factor 5: Regional Coordination and Long-Term Commitment. If such changes were planned for completion within one year of grant award, Applicants could include them in this factor only if they also submitted, as an attachment to their application, a hard commitment to complete the changes by a specified date (see the Long-term Commitment Factor of Phase 2 for details). Applicants were required to identify leveraging funds to pay for costs attributable to any portion of a proposed Project (including any mitigating action) that was not necessary to meet Unmet Recovery Needs in the Most Impacted and Distressed area resulting from a Qualified Disaster.

**Section 2: NDRC Awards**

The following awards have been made to Applicants for funding a portion of their Application. The components of the Applications for which CDBG–NDR funds may be used will be identified in grant agreements between HUD and the following CDBG–NDR awardees:

| NDRC awardees | Total CDBG–NDR award |
|---|---|
| Connecticut | $54,277,359 |
| New Orleans, LA | 141,260,569 |
| Iowa | 96,887,177 |
| New York City, NY | 176,000,000 |
| Louisiana | 92,629,249 |
| Springfield, MA | 17,056,880 |
| Tennessee | 44,502,374 |
| Virginia | 120,549,000 |
| Shelby County, TN | 60,445,163 |
| Minot, ND | 74,340,770 |
| California | 70,359,459 |
| New York State | 35,800,000 |
| New Jersey | 15,000,000 |
| Total | 999,108,000 |

**Section 3: CDBG–NDR Program Requirements**

This notice contains the postaward requirements applicable to CDBG funds made available by the Appropriations Act and awarded under the NDRC as CDBG–NDR grants. This notice supersedes Appendix A to the NOFA and updates the CDBG–NDR program requirements to reflect HUD's recent regulatory amendments to implement Federal uniform requirements.

The Appropriations Act provides that funds shall be awarded directly to a State or unit of general local government (local government) at the discretion of the Secretary. A State or local government recipient of a CDBG–NDR grant is a ''Grantee,'' as defined by the NOFA. Other terms in this notice are defined in the NOFA, and the definitions in the NOFA are expressly incorporated and made a part of this notice and continue to apply in the post-award period.

**I. Use of Funds**

*A. General*

The Appropriations Act made funds available for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the Most Impacted and Distressed areas resulting from a major disaster declared pursuant to the Stafford Act, due to Hurricane Sandy and other eligible events in calendar years 2011, 2012, and 2013. The Appropriations Act requires funds to be used only for these specific disaster-related purposes.

*B. Action Plan, Amendments, and Benefit Cost Analysis*

The Appropriations Act requires that, prior to the obligation of funds by HUD, a Grantee shall submit a plan detailing the proposed use of funds, including criteria for eligibility and how the use of these funds will address disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization in the Most Impacted and Distressed areas. For purposes of awards made in response to Phase 2 submissions under the NOFA,

the Grantee's Phase 1 and Phase 2 submissions for this competition, constitute, together, the action plan required by the Appropriations Act.

Following execution of a grant agreement, the Grantee will publish on its Web site the action plan (DRGR Action Plan) contained in HUD's Disaster Recovery and Grant Reporting system (DRGR) that reflects the components funded through the CDBG–NDR grant. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan, which will help ensure clear communication of CDBG–NDR activities to the public.

A Grantee may amend the Action Plan, but must receive prior HUD approval for substantial amendments to the plan. Before making any substantial amendment to the Action Plan, a Grantee must follow the same citizen participation requirements required by the NOFA for the preparation and submission of an NDRC application. Additionally, HUD must agree in writing that the substantially amended Application would still score in the fundable range for the competition based on the rating factors in the NOFA. Additional information about substantial amendments can be found in section 3.V.A.3 below.

With the exception of general administration of the CDBG–NDR grant, the Grantee may only use CDBG–NDR funds to carry out or plan for the HUD approved components of a Grantee's Phase 2 activities for which the Grantee has submitted to HUD, and HUD has approved, an analysis of the activity's benefits and costs. For Covered Projects, as described in the NOFA, HUD has not approved the analysis if the benefits to the Applicant's community, and to the United States as a whole, are not demonstrated by the evidence submitted to justify the costs. Appendix H to the NOFA and the CDBG–NDR NOFA provided guidance on completing an acceptable BCA. For Applicants proposing a program rather than a specific Covered Project, HUD's acceptance of such a program-level BCA was *not* an approval of the Project- or activity-level analysis itself, which HUD will reserve the right to review after award through the Grant Terms and Conditions. A ''program'' for purposes of the BCA refers to a set of related measures or activities with a particular long-term goal or objective. A program is implemented by a specified agency that uses defined policies and procedures to select Projects or activities to assist.

*C. Applicable Statutory and Regulatory Requirements*

1. General. All recipients of CDBG–NDR grants are subject to: (1) The requirements of the Appropriations Act; (2) portions of the Fiscal Year (FY) 2014 General Section of the Department's broader NOFA (as amended) and the NOFA (including appendices) made applicable by the grant agreement and this notice; and (3) applicable regulations governing the CDBG program at 24 CFR part 570, unless modified by waivers and alternative requirements published in this notice or other applicable **Federal Register** notices and; (4) the requirements of the grant agreement governing the CDBG–NDR award.

2. Uniform Requirements. Grantees are subject to the revised Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Requirements). On December 26, 2013, the OMB published (at 78 FR 78608) the final Uniform Requirements, which are codified at 2 CFR part 200. HUD adopted the Uniform Requirements at 2 CFR part 2400. HUD published conforming changes to its CDBG program regulations on December 7, 2015 (80 FR 75931), that updated CDBG program regulations to reflect references to appropriate sections of 2 CFR part 200. The effective date of HUD's conforming rule is January 6, 2016.

3. Other PostAward Requirements, including incorporated sections of the Fiscal Year 2014 General Section of the Department's Broader NOFA, as Amended:

- Incorporated Sections of the General Section. HUD is incorporating portions of the FY 2014 General Section to the Department's FY 2014 NOFAs for Discretionary Programs (General Section), as amended by the technical correction to HUD's General Section to the Department's FY 2014 NOFAs for Discretionary Programs (technical correction), relevant to the award of CDBG–NDR funds. Grantees must adhere to the requirements of the sections of the General Section, as amended by the technical correction, identified in the NOFA under the heading ''1. Applicable Requirements of the General Section (as modified by the Technical Correction to the General Section).'' Other requirements of the General Section are superseded by the requirements applicable to the use of CDBG–NDR funds identified in this notice and in the grant agreement.
- System for Award Management. Grantees must have a valid, active registration in the System for Award Management (SAM).
- False Statements. A false statement in an application is grounds for denial or termination of an award and possible punishment, as provided in 18 U.S.C. 1001.
- Conducting Business in Accordance with Ethical Standards/Code of Conduct. Grantees must adhere to the conflict of interest requirements of 2 CFR part 570. In addition, local governments and States that have adopted the Uniform Requirements are required to develop and maintain a written standards of conduct as required by 2 CFR 200.318.
- Equal Access to HUD-assisted or HUD-insured Housing. The Department is committed to ensuring that its programs are open to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. HUD funding recipients and subrecipients must comply with 24 CFR 5.105(a)(2) in connection with determining eligibility for housing assisted with HUD funds or subject to an FHA-insured mortgage, and in connection with making such housing available. This includes making eligibility determinations and making housing available regardless of actual or perceived sexual orientation, gender identity, or marital status, and prohibiting inquiries about sexual orientation or gender identity for the purpose of making eligibility determinations or making housing available. Applicants are encouraged to become familiar with these requirements, HUD's definitions of sexual orientation and gender identity at 24 CFR 5.100, clarifications to HUD's definition of family at 24 CFR 5.403, and other regulatory changes made through HUD's Equal Access Rule, published in the **Federal Register** on February 3, 2012 at 77 FR 5662.
- Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a State that are using assistance under a program NOFA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity

acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. Please refer to 2 CFR 200.322 and to *www.epa.gov/osw/conserve/tools/cpg/pdf/rcra-6002.pdf* for complete text and requirements of section 6002.

• Compliance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) (Transparency Act), as Amended. Prime Grant Awardee Reporting. Prime recipients of the Department's financial assistance are required to report certain subawards in the Federal Funding Accountability and Transparency Act Subaward System (FSRS) Web site located at *https://www.fsrs.gov/* or its successor system for all prime awards listed on the FSRS Web site. Starting with awards made October 1, 2010, prime financial assistance awardees receiving funds directly from the Department were required to report subawards and executive compensation information both for the prime award and subaward recipients, including awards made as pass-through awards or awards to vendors, if the initial prime grant award is $25,000 or greater, or the cumulative prime grant award will be $25,000 or greater if funded incrementally, as directed by HUD in accordance with OMB guidance; and the subaward is $25,000 or greater, or the cumulative subaward will be $25,000 or greater. For reportable subawards, if executive compensation reporting is required and subaward recipients' executive compensation is reported through the SAM system, the prime recipient is not required to report this information. The reporting of award and subaward information is in accordance with the requirements of the Transparency Act, as amended by section 6202 of Public Law 110–252, and OMB Guidance issued to Federal agencies on September 14, 2010 (75 FR 55669), and in OMB policy guidance. Please refer to *www.fsrs.gov* for complete information on requirements under the Transparency Act and OMB guidance.

• Compliance with Section 872 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417), (Section 872). Section 872 requires the establishment of a governmentwide data system (currently designated the Federal Awardee Performance and Integrity Information System) to contain information related to the integrity and performance of entities awarded Federal financial assistance. Federal officials will make use of this information in making awards. OMB published final guidance to implement this requirement on July 22, 2015, at 80 FR 43301, for Federal awards issued on or after January 1, 2016, that meet the thresholds described in the preamble to the OMB guidance. Grantees are required to comply with any guidance issued by HUD to implement OMB's rule.

## II. Timely Expenditure of Funds and Prevention of Waste, Fraud, Abuse, and Duplication of Benefits

### *A. Statutory Expenditure Deadline and Period of Availability*

#### 1. Expenditure Deadline and Extensions

The Appropriations Act requires that HUD obligate all CDBG–NDR funds not later than September 30, 2017. To further ensure the timely expenditure of funds, section 904(c) under Title IX of the Appropriations Act, requires that all funds be expended within 2 years of the date HUD obligates funds to a Grantee, unless the Grantee requests and HUD approves an extension to the deadline. Funds are obligated to a Grantee upon HUD's signing of the Grantee's CDBG–NDR grant agreement, or amended grant agreement, obligating funds. Grantees may request to obligate awarded funds in phases as established in a schedule submitted by the Grantee, provided all funds are obligated prior to September 30, 2017. Grantees must not draw down funds in advance of need, to attempt to comply with the expenditure deadline.

#### 2. Extensions of the Expenditure Deadline

For any portion of funds that the Grantee believes will not be expended by the deadline and that it desires to retain, the NOFA required the Grantee to submit a letter to HUD justifying why it is necessary to extend the deadline for a specific portion of funds. Appendix E to the NOFA also required Applicants to submit extension requests with the application if the Applicant submitted a schedule that indicated time needed for completion of the proposal exceeds 24 months. Some Applicants submitted extension requests to HUD within their applications and such extensions were considered within the application review process. If granted, any extensions will be published in the **Federal Register** in a subsequent notice. Grantees that did not submit an extension request with their Applications may still submit a request. As required by Appendix E to the NOFA, the extension request must justify the need for the extension, detail the compelling legal, policy, or operational challenges necessitating the extension, and identify the date when the funds covered by the extension will be expended. The Grantee must justify how, under the proposed schedule, the Project will proceed in a timely manner. For example, large and complex infrastructure Projects are likely to require more than 24 months to complete. An extension request for such a Project should justify the new timeline for any proposed extension by comparing it to completion timelines for other, similarly sized Projects.

Grantees are advised that extensions of the 2-year expenditure deadline may not be granted. Any funds not expended by the deadline (or extended deadline, if an extension is approved) will be recaptured.

#### 3. Cancelation of Grant Funds

Although HUD has authority to grant extensions of the 24-month expenditure deadline, Grantees are advised that 31 U.S.C. 1552(a) continues to apply to funds appropriated under the Appropriations Act. Specifically, CDBG–DR funds are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act, including those subject to an extension of the expenditure deadline, must be expended by September 30, 2022. Any grant funds that have not been disbursed by September 30, 2022, will be canceled and will no longer be available for disbursement to the Grantee or for obligation or expenditure for any purpose.

### *B. Secretary's Certifications and Grantee Submissions*

The Appropriations Act requires the Secretary to certify, in advance of signing a grant agreement, that the awardee has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act, to ensure timely expenditure of funds, to maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds, and to detect and prevent waste, fraud, and abuse of funds.

To provide a basis for the Secretary to make the certification, each awardee submitted the certification required in Appendix F of the NOFA, related to the requirements of Public Law 113–2. In addition, before HUD executes a grant agreement, each awardee will satisfactorily complete a Certification Checklist and submit required documentation that, in HUD's

determination, is sufficient to support the Secretary's certification. The Certification Checklist will be posted by HUD and sent to awardees following award announcement. A HUD representative will review the awardee's submission and complete the HUD portion of the Certification Checklist. Failure to submit the checklist and documentation within 30 days of the effective date of this notice may result in the cancellation of the award selection.

To enable the Secretary to make the certification, each awardee must submit the items listed below to their designated HUD representative, in addition to submitting the Certification Checklist. Grant agreements will not be executed until HUD has issued a certification in response to the awardee's submission.

(1) Financial Control Checklist. An awardee has in place proficient financial controls at the time of the Secretary's certification if each of the following criteria is satisfied.

(a) The awardee submits its most recent single audit and annual financial statement, and the submission indicates that the awardee has no material weaknesses, deficiencies, or concerns that HUD considers to be relevant to the financial management of the CDBG program. If the single audit or annual financial statement identified weaknesses or deficiencies, the awardee must provide documentation showing how those weaknesses have been removed or are being addressed; and

(b) With its completed checklist, the awardee must submit the Guide for Review of Financial Management, as modified, to support the financial controls certification required for Grantees by Public Law 113–2 (Pub. L. 113–2 Financial Management Guide). The completed Public Law 113–2 Financial Management Guide must demonstrate that the financial standards are complete and conform to the requirements of the guide. The awardee must identify which sections of its financial standards address each of the questions in Public Law 113–2 Financial Management Guide and which personnel or unit is responsible for each checklist item.

(2) Procurement. An awardee has in place a proficient procurement process if:

(i) *For local governments:* The grantee will follow the specific applicable procurement standards identified in 2 CFR 200.318–200.326 (subject to 2 CFR 200.110, as applicable). The grantee must provide a copy of its procurement standards and indicate the sections of its procurement standards that incorporate these provisions. The procedures should also indicate which personnel or unit is responsible for each item.

(ii) *For States:* The grantee has adopted 2 CFR 200.318–200.326 (subject to 2 CFR 200.110, as applicable), or the effect of grantee's procurement process/standards are equivalent to the effect of procurements under 2 CFR 200.318–200.326, meaning that they operate in a manner providing fair and open competition. The grantee must provide its procurement standards and indicate how the sections of its procurement standards align with the provisions of 2 CFR 200.318–200.326, so that HUD may evaluate the overall effect of the grantee's procurement standards. The procedures should also indicate which personnel or unit is responsible for the task. Guidance on the procurement rules applicable to States is provided in section 3.V.A.21, of this notice. HUD will review this information and determine whether the standards, taken as a whole, are equivalent to the standards at 2 CFR part 200, subpart D.

(3) Duplication of Benefits. An awardee has adequate procedures to prevent the duplication of benefits if they contain uniform procedures for each of the following: verifying all sources of disaster assistance; determining a beneficiary's unmet need(s) before awarding assistance; and ensuring beneficiaries agree to repay the assistance if they later receive other disaster assistance for the same purpose. The procedures should also indicate which personnel or unit is responsible for the task. Duplication of benefits requirements applicable to the use of CDBG–NDR funds are discussed in section 3.II.C of this notice.

(4) Adequate Procedures to Determine Timely Expenditures. An awardee has adequate procedures to determine timely expenditures if they contain uniform procedures that indicate how the awardee will track expenditures each month; how it will monitor expenditures of its recipients; how it will reprogram funds in a timely manner for activities that are stalled; and how it will project expenditures. The procedures should also indicate which personnel or unit is responsible for the task.

(5) Procedures to Maintain Comprehensive Web sites Regarding All Disaster Recovery Activities Assisted with These Funds. An awardee has adequate procedures to maintain comprehensive Web sites regarding all disaster recovery activities if its procedures indicate that the awardee will have a separate page dedicated to its disaster recovery that will contain links to all Action Plans, including the DRGR Action Plan and portions required to be posted for citizen comment; Action Plan amendment; performance reports; citizen participation requirements; and activity/program information for activities described in the Action Plan. The procedures should also indicate the frequency of Web site updates and which personnel or unit is responsible for the task.

(6) Procedures to Detect Fraud, Waste, and Abuse of Funds. An awardee has adequate procedures to detect fraud, waste, and abuse if its procedures indicate how the awardee will verify the accuracy of information provided by applicants; provide a monitoring policy indicating how and why monitoring is conducted, the frequency of monitoring, and which items are monitored; and indicate that the internal auditor has affirmed and described its role in detecting fraud, waste, and abuse.

(7) Awardee Certification. As part of the submission of a complete Certification Checklist, the awardee is required to attest to the proficiency and adequacy of its controls.

(8) Design. This notice amends the NOFA to clarify that prior to the Grantee's obligation of funds for construction, the Grantee will demonstrate that the engineering design for a Project is feasible, prior to obligation of funds by the Grantee for construction. This demonstration is satisfied if a registered professional engineer (or other design professional) certifies that the design meets the appropriate code or industry design and construction standards.

(9) Continuing Obligation Related to Certification. After submitting materials necessary to support the Secretary's certification and the grant agreement is signed, Grantees have continuing obligations. HUD may request an update to the Grantee's certification submission each time the Grantee submits a substantial Action Plan amendment, or if HUD has reason to believe the Grantee has made material changes to the Grantee's support for its certifications.

Grantees must submit to the Department, for approval, an update to the program schedule (projection of expenditures) and milestones (outcomes) included in the application response to the Phase 2, Factor 3, Soundness of Approach rating. The projections must be based on each quarter's expected performance—beginning the quarter in which funds are available to the Grantee and continuing each quarter until all funds are expended. Each Grantee must also include these projected expenditures

and outcomes in activity set-up in the DRGR system within 90 days of the grant award letter. The information in the DRGR system (contained in the DRGR Action Plan) must be amended to reflect any subsequent changes, updates, or revision of the projections. Any subsequent changes, updates, or revision of the projections must receive written approval from HUD. Amending Action Plans solely to accommodate changes to the timeline for projected expenditures does not fall within the definition of substantial amendment and is not subject to citizen participation requirements.

Guidance on the preparation of projections is available on HUD's Web site under the heading Office of Community Planning and Development Disaster Recovery Assistance (commonly known as the CPD Disaster Recovery Web site). The projections will enable HUD, the public, and the Grantee, to track proposed versus actual performance. HUD will make the DRGR Action Plan and performance reports available on the DRGR Public Data Portal at *https://drgr.hud.gov/public/*.

Additionally, following execution of a grant agreement, the DRGR Action Plan that reflects the components funded through the CDBG–NDR grant must be posted on the Grantee's Web site.

Additional information on the DRGR system requirements can be found in section V.A.2 below.

Grantees are also required to ensure all contracts (with subrecipients, recipients, and contractors) clearly stipulate the period of performance or the date of completion. In addition, Grantees must enter expected contract completion dates for each activity in the DRGR system. When target dates are not met, Grantees are required to explain why in the activity narrative in the system.

Other reporting, procedural, and monitoring requirements are discussed under ''Grant Administration'' in section 3.V.A of this notice. The Department will institute risk analysis and on-site monitoring of Grantee management, as well as collaborate with the HUD Office of Inspector General to plan and implement oversight of these funds.

*C. Duplication of Benefits Requirements*

Duplication of benefits requirements in section 312 of the Stafford Act and in the Appropriations Act apply to the use of CDBG–NDR funds. To help prevent the duplication of benefits, HUD published a notice in the **Federal Register** on November 16, 2011, at 76 FR 71060. The Department published additional guidance on July 25, 2013, titled ''Guidance on Duplication of Benefit Requirements and Provision of CDBG–DR Assistance.'' The steps and actions described in the November 2011 and the July 2013 guidance documents are mandatory requirements applicable to the use of CDBG–NDR funds.

## III. Authority To Grant Waivers

The Appropriations Act authorizes the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment). Waivers and alternative requirements are based upon a determination by the Secretary that good cause exists and that the waiver or alternative requirement is not inconsistent with the overall purposes of title I of the Housing and Community Development Act of 1974, as amended (HCD Act). Regulatory waiver authority is also provided by 24 CFR 5.110, 91.600, and 570.5.

## IV. Overview of Grant Process

To begin expenditure of CDBG–NDR funds, the following expedited steps are necessary:

- If the application is selected for award, HUD sends an initial allocation letter notifying the Applicant that it has been selected for funding. HUD subsequently sends a grant award letter outlining next steps before the award is effective, and transmitting the unsigned grant agreement and grant conditions.
- Within 30 days of the effective date of this notice, awardee submits evidence, as described in section 3.II of this notice, that it has in place proficient financial controls and procurement processes and has established adequate procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act; ensure timely expenditure of funds; maintain comprehensive Web sites regarding all disaster recovery activities assisted with these funds; and detect and prevent waste, fraud, and abuse of funds.
- Once the Certification Checklist is completed and HUD determines that submissions are sufficient, the Secretary makes the certification required by the Appropriations Act.
- Grantee signs and returns the grant agreement.
- HUD signs the grant agreement and establishes the proper amount in a line of credit for the Grantee (this triggers the 2-year expenditure deadline for any funds obligated by this grant agreement).
- Grantee requests and receives DRGR system access (if the Grantee does not already have it).
- Grantee enters the activities from its application into the DRGR system that reflect the components funded through the CDBG–NDR grant (as contained in the DRGR Action Plan), submits it to HUD within the system (funds can be drawn from the line of credit only for activities that are established in DRGR System, and publishes on its Web site the DRGR Action Plan.
- The Grantee may draw down funds from the line of credit after the responsible entity completes applicable environmental review(s) pursuant to 24 CFR part 58 (or section 3.V.A.20 of this notice) and, as applicable, receives from HUD or the State an approved Request for Release of Funds and certification.
- Grantee begins to draw down funds within 60 days of receiving access to its line of credit.
- Grantee amends its published Action Plan to include any updates to its projection of expenditures and outcomes within 90 days of the date of the grant award letter.

## V. Applicable Rules, Statutes, Waivers, and Alternative Requirements

This section of the notice describes requirements imposed by the Appropriations Act, applicable waivers, and alternative requirements. For each waiver and alternative requirement described in this notice, the Secretary has determined that good cause exists and the action is not inconsistent with the overall purpose of the HCD Act.

The waivers and alternative requirements provide additional flexibility in program design and implementation to support full and swift resilient disaster recovery, while meeting the unique requirements of the Appropriations Act. The following requirements apply only to the CDBG–NDR funds awarded under the NOFA, and not to funds provided under any other component of the CDBG program, such as the annual formula Entitlement or State and Small Cities programs, Section 108 Loan Guarantee Program, the Neighborhood Stabilization Program, any prior CDBG disaster recovery appropriation, or any formula award under the Appropriations Act.

The NOFA required Applicants to submit waiver requests necessary to carry out an activity described in their applications (Phase 1 or Phase 2). HUD anticipates that Grantees may encounter changing conditions or other good cause that justifies requesting a new or modified waiver or alternative

requirement after the award. Therefore, Grantees may request additional waivers and alternative requirements from the Department as needed to address specific needs related to their recovery activities.

An overall benefit waiver request may be made by submitting a detailed justification that, at a minimum: (a) Identifies how the disaster-related needs of the low- and moderate-income population in the declared disaster area were sufficiently addressed by other means, or that the needs of non-low- and non-moderate-income persons are disproportionately greater by a significant margin, and that the jurisdiction lacks other resources to serve the needs of non-low- and non-moderate-income individuals; (b) describes proposed activity(ies) and/or program(s) that will be affected by the alternative requirement, including their proposed location(s) and role(s) in the Grantee's long-term disaster recovery plan; and (c) describes how the activities/programs identified in (b) prevent the Grantee from meeting the 50 percent requirement. For any other waiver or alternative requirement request, Grantees must submit a written request that includes: the requirement to be waived and, if applicable, the alternative requirement to be added (meaning how the current requirement should be altered); a detailed statement of how the request is necessary to address Unmet Recovery Needs; the demographics of the population to be assisted; and a statement of alternative approaches considered to eliminate the need for a waiver.

Except where noted, waivers and alternative requirements described below apply to all Grantees under this notice. Under the requirements of the Appropriations Act, regulatory waivers must be published in the **Federal Register** no later than 5 days before the effective date of such waiver.

Except as described in this notice, statutory and regulatory provisions governing the State CDBG program shall apply to any State Grantee, while statutory and regulatory provisions governing the Entitlement CDBG program shall apply to local government Grantees. Applicable statutory provisions can be found at 42 U.S.C. 5301 *et seq.* Applicable State and Entitlement regulations can be found at 24 CFR part 570.

All references in the NOFA and in this notice pertaining to timelines and/or deadlines are in terms of calendar days, unless otherwise noted. All references to ''substantial improvement'' shall be as defined in the HUD regulations at 24 CFR 55.2, unless otherwise noted.

*A. Grant Administration*

1. Application for CDBG–NDR Waiver and Alternative Requirement. The requirements for CDBG actions plans, located at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), and 24 CFR 91.220 and 91.320 are waived for funds provided under the NOFA. Instead, HUD required each Grantee to submit an application for CDBG–NDR, and the Applicant's Phase 1 and Phase 2 submissions for this competition together constitute an Action Plan required under Public Law 113–2. HUD notes that 24 CFR 570.304 and 24 CFR 570.485, to the extent they govern annual formula CDBG grant approvals, do not apply to National Disaster Resilience Competition (NDRC) allocations, but the standard of review of certifications continues to apply to Grantee certifications. HUD will monitor the Grantee's activities and use of funds for consistency with its approved Action Plan and all other requirements, including performance and timeliness. Per the Appropriations Act, and in addition to the requirements at 24 CFR 91.500, the Secretary may disapprove a substantial amendment to an Action Plan (application) if it is determined that the amended application does not satisfy all of the required elements identified in the NOFA, including in this notice, or the application would not score in the fundable range based on the rating factors in the NOFA. However, in reviewing substantial amendments, HUD will not penalize Grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process.

a. Action Plan-related Requirements. The application was required to meet the criteria of the NOFA and identify the proposed use(s) of the Grantee's allocation, including criteria for eligibility, and how the uses address long-term recovery needs. Because HUD may not obligate Appropriations Act funds after September 30, 2017, the last date that Grantees may submit an amendment that would involve obligation of awarded funds by HUD is June 1, 2017. The requirement to expend funds within 2 years of the date of obligation will be enforced relative to the activities funded under each obligation, as applicable. All proposed amendments must address an unmet need in a Most Impacted and Distressed area, as established in the Action Plan or the proposed amendment, using the methodology required by the NOFA. The Grantee must develop a policy describing (a) how it will promote sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency.

In addition, grantees must adopt and meet the following minimum elevation or floodproofing requirements, applicable to all grantees receiving funds pursuant to the Appropriations Act. In order to better ensure a sustainable long-term recovery, grantees must elevate (or may, for certain nonresidential structures as described below, floodproof) new construction and substantially improved structures one foot higher than the latest Federal Emergency Management Agency (FEMA) issued base flood elevation. This standard was made after considering the history of FEMA flood mitigation efforts. This higher elevation also takes into account projected sea level rise, which is not considered in current FEMA maps and National Flood Insurance Program premiums, which will potentially rise as FEMA Flood Insurance Rate Maps that take Hurricane Sandy into account are issued.

Each grantee must not use grant funds for any activity in an area delineated as a special flood hazard area, or equivalent, in FEMA's most recent and current data source unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain. At a minimum, actions to minimize harm must include elevating or floodproofing new construction and substantial improvements to one foot above the base flood elevation and otherwise acting in accordance with Executive Order 11988 and 24 CFR part 55. The relevant data source and best available data under Executive Order 11988 is the latest issued FEMA data or guidance, which includes advisory data (such as Advisory Base Flood Elevations) or preliminary and final Flood Insurance Rate Maps.

Executive Order 11988, on floodplain management, requires that Federal agencies use the best available flood data to determine the location of projects and activities. In addition, best available flood risk data must be used to determine requirements for reconstruction, and the elevation of structures for grants funding (in whole or part) new construction and substantial improvements, as defined at 24 CFR 55.2(b)(8). If a new construction

or substantial improvement project or activity is located in a floodplain, the lowest floor must be designed using the base flood elevation, determined in accordance with the best available data, plus one foot as the baseline standard for elevation. If higher elevations are required by locally adopted code or standards, those higher standards would apply.

Instead of elevating nonresidential structures that are not critical actions as defined at 24 CFR 55.2(b)(2), grantees may design and construct the project such that, below the flood level, the structure is floodproofed using the best available flood data plus one foot. Floodproofing requires structures to be water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic loads, hydrodynamic loads, the effects of buoyancy or higher standards required by the FEMA National Flood Insurance Program, as well as State and locally adopted codes. All mixed-use structures must be floodproofed consistent with the latest FEMA guidance.

Additionally, the Grantee will encourage, where appropriate, construction methods that emphasize high quality, durability, energy efficiency, a healthy indoor environment, sustainability, and water or mold resistance, including how it will support adoption and enforcement of modern building codes and reduction of hazard risk, including possible sea level rise, storm surge, and flooding. All rehabilitation, reconstruction, and new construction should be designed to incorporate principles of sustainability, including water and energy efficiency, Resilience, and mitigating the impact of future disasters. Whenever feasible, Grantees should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: Professional Certifications and Standard Work Specifications. Grantees rebuilding housing in areas prone to high winds are especially encouraged to consider inclusion of construction methods from the Resilient Star demonstration underway by the Department of Homeland Security.

At a minimum, HUD is requiring the following construction standards:

(a) Green Building Standard for Replacement and New Construction of Residential Housing. Grantees must meet the Green Building Standard in this subparagraph for: (i) All new construction of residential buildings and (ii) all replacement of substantially damaged residential buildings. Replacement of residential buildings may include reconstruction (*i.e.,* demolishing and rebuilding a housing unit on the same lot in substantially the same manner) and may include changes to structural elements such as flooring systems, columns, or load bearing interior or exterior walls.

(b) Certification Standards. For purposes of this notice, the Green Building Standard means the Grantee will require that all construction covered by subparagraph (a), above, meet an industry-recognized standard that has achieved certification under at least one of the following programs: (i) ENERGY STAR (Certified Homes or Multifamily High Rise); (ii) Enterprise Green Communities; (iii) LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development); (iv) ICC–700 National Green Building Standard; (v) EPA Indoor airPLUS (ENERGY STAR a prerequisite); or (vi) any other equivalent comprehensive green building program, including regional programs such as those operated by the New York State Energy Research and Development Authority or the New Jersey Clean Energy Program.

(c) Standards for Rehabilitation of Nonsubstantially Damaged Residential Buildings. For rehabilitation other than that described in subparagraph (a), above, Grantees must follow the guidelines specified in the HUD CPD Green Building Retrofit Checklist, available on the CPD Disaster Recovery Web site. Grantees must apply these guidelines to the extent applicable to the rehabilitation work undertaken, including the use of mold resistant products when replacing surfaces such as drywall. When older or obsolete products are replaced as part of the rehabilitation work, rehabilitation is required to use ENERGY STAR-labeled, WaterSense-labeled, or Federal Energy Management Program (FEMP) designated products and appliances. For example, if the furnace, air conditioner, windows, and appliances are replaced, the replacements must be ENERGY STAR-labeled or FEMP-designated products; WaterSense-labeled products (*e.g.,* faucets, toilets, showerheads) must be used when water products are replaced. Rehabilitated housing may also implement measures recommended in a Physical Condition Assessment (PCA) or Green Physical Needs Assessment (GPNA).

(d) Implementation. For construction Projects completed, under construction, or under contract prior to the date that assistance is approved for the Project, the Grantee is encouraged to apply the applicable standards to the extent feasible, but the Green Building Standard is not required. For specific required equipment or materials for which an ENERGY STAR- or WaterSense-labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

(e) Policies. HUD encourages Grantees to implement green infrastructure policies to the extent practicable. Additional tools for green infrastructure are available at the Environmental Protection Agency's (EPA) water Web site; Indoor airPLUS Web site; Healthy Indoor Environment Protocols for Home Energy Upgrades Web site; and ENERGY STAR Web site, *www.epa.gov/greenbuilding.*

(f) Housing Related Information.

(i) Grantees are reminded that public housing is eligible for FEMA Public Assistance and must ensure that there is no duplication of benefits when using CDBG–NDR funds to assist public housing. Information on the public housing agencies impacted by the disaster is available on the Department's Web site.

(ii) To the extent the Grantee undertakes housing activities, the Grantee will encourage the provision of housing, for all income groups, that is disaster-resistant, including transitional housing and permanent supportive housing. Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and promote the availability of affordable housing in low-poverty, nonminority areas where appropriate and in response to disaster-related impacts.

(iii) The Grantee shall minimize displacement of persons or entities, and assist any persons or entities displaced.

(iv) Any safe room construction, reconstruction, or rehabilitation is required to meet at least consistent with the requirements of FEMA P–320 or FEMA P–361.

(v) Wind retrofit construction, reconstruction, or rehabilitation activities funded under CDBG–DR are required to be implemented in conformance with FEMA P–804.

(g) Funds Awarded to a State. For each program or activity that will be carried out by the State, the application as entered into the DRGR Action Plan must describe: (1) The Projected use of the CDBG–NDR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or Applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the Projected use will meet CDBG eligibility criteria and a national objective; (4) how the Projected use relates to a specific impact of the disaster and will result in long-term

recovery; and (5) estimated and quantifiable performance outcomes (*i.e.,* a performance measure) relative to the identified unmet need.

If a State, in its application, uses a method of distribution to allocate funds to local governments, its Action Plan must describe all criteria used to determine the distribution, including the relative importance of each criterion. If this information was not included in the application, the Action Plan must be amended to include this information prior to drawing funds (this amendment is not a substantial amendment if the method of distribution has not changed since the submission of the application).

(h) Funds Awarded Directly to a Local Government. The local government's application as entered into the DRGR Action Plan, shall describe: (1) The Projected use of the CDBG–DR funds, including the entity administering the program/activity, budget, and geographic area; (2) the threshold factors or Applicant eligibility criteria, grant size limits, and proposed start and end dates; (3) how the Projected use will meet CDBG eligibility criteria and a national objective; (4) how the Projected use relates to a specific impact of the disaster and will result in long-term recovery; and (5) estimated and quantifiable performance outcomes (*i.e.,* a performance measure) relative to the identified unmet need.

b. General Grant Oversight.

(a) The Grantee must put in place mechanisms and/or procedures to detect and prevent fraud, abuse, and mismanagement of funds (including potential conflicts of interest).

(b) The Grantee must maintain adequate capacity of its administering agency(ies) and staffs, and the capacity of any local government or other organization or Partner expected to carry out disaster recovery programs. The Grantee will plan and provide for increasing the capacity of local governments or other organizations, as needed and where capacity deficiencies (*e.g.,* outstanding Office of Inspector General audit findings) have been identified. Grantees are responsible for providing adequate technical assistance to Partners, subrecipients, or subgrantees to ensure the timely, compliant, and effective use of funds. Although local governments or other organizations may carry out disaster recovery programs and Projects, each Grantee under the NOFA and this notice remains legally and financially accountable for the use of all funds and may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight (also see section 3.V.A.10 of this notice), policy development, and financial management.

(c) The Grantee will manage program income (*e.g.,* including, in agreements, whether subrecipients may retain it), and the purpose(s) for which it may be used. Waivers and alternative requirements related to program income can be found in paragraphs A.2(d) and A.17 of section 3.V of this notice;

(d) The Grantee must establish monitoring standards and procedures that are sufficient to ensure program requirements, including preventing duplication of benefits, are met and that provide for continual quality assurance and investigation. Some of this information may be adopted from the Grantee's submission of information that is required for the Department's certification. Grantees must also operate a robust internal audit function with an organizational diagram showing that responsible audit staff report independently to the chief officer or board of the organization designated to administer the CDBG–NDR award (typically, the organization is designated by a chief, elected official);

c. Clarification of Disaster-related Activities. Each CDBG–NDR activity must be CDBG-eligible (or permissible under a waiver or alternative requirement published in an applicable **Federal Register** notice), meet a national objective, and Tie-back to the Qualifying Disaster by demonstrating a logical link to addressing Unmet Recovery Needs from the Qualifying Disaster. Additional details on disaster-related activities are provided under section 3.V.B of this notice.

(a) Ineligible Business Assistance. Local and regional economic recoveries are typically driven by small businesses. To target assistance to small businesses, the Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) to prohibit Grantees from assisting businesses, including privately owned utilities, that do not meet the definition of a small business as defined by SBA at 13 CFR part 121.

(b) Tie-Back to the Qualified Disaster and Ineligible Projects for Temporary Measures.

(i) Tie-Back to the Disaster. Each Grantee must document Tie-Back, to show how each activity is connected to the Qualified Disaster for which it is receiving CDBG assistance. The Grantee must ensure that each activity reasonably ties back to addressing demonstrated direct and indirect effects of the Qualified Disaster. In regard to physical losses, damage or insurance estimates may demonstrate the connection to the direct effects of the disaster. For economic, social, or other nonphysical losses, post-disaster analyses or assessments, using the most rigorous methods feasible, may document the relationship between the disaster and the related effects. If Tie-back has been sufficiently documented in the application, the Grantee does not need to maintain additional documentation (although additional information documenting Tie-back may be necessary to support a substantial amendment).

(ii) Temporary Measures. The Appropriations Act states that funds shall be used for recovering from a Presidentially declared major disaster. As such, all activities must respond to the effects of the declared disaster. HUD requires CDBG–NDR Grantees to incorporate resiliency measures into all activities, to ensure that communities recover to be safer, stronger, and more resilient. Incorporation of these measures also reduces costs in recovering from future disasters. However, Projects for temporary measures, including those that are designed solely to prepare for future needs and not to address a recovery need of the Qualified Disaster (*e.g.,* sandbags, bladders, geotubes, newly established emergency operation centers) are ineligible for CDBG–NDR assistance. Equipment is generally ineligible for CDBG–NDR assistance unless necessary in the provision of an eligible public service or special economic development activity. Resilience measures that are not incorporated into rebuilding activities must Tie back to the Qualified Disaster and be a necessary expense related to disaster relief, long-term recovery, restoration of infrastructure, and housing, or economic revitalization. HUD has determined that, generally, designing a Project that improves Resilience to negative effects of climate change while meeting an Unmet Recovery Need is a necessary and reasonable cost of recovery.

(iii) Grantees are not limited in their recovery to returning to pre-disaster conditions. HUD encourages Grantees to carry out activities that not only address disaster-related effects, but leave communities sustainably positioned to meet the needs of their post-disaster populations and to further prospects for stability and growth.

(iv) Use of Funds for Disasters Not Covered by The Appropriations Act. CDBG–DR funds awarded under the NOFA and this notice are limited to activities that respond to the Qualified Disaster(s) for which HUD made the

award. However, if the Grantee addresses an unmet need that arose from a previous disaster or a previous community development need that was exacerbated by a Qualified Disaster, and this use of funds was described in the Grantee's application that was approved for funding by HUD, and included in the grant agreement, the Grantee's activity may meet the remaining unmet need. If an impact or need originating from a Qualified Disaster identified in the NOFA is subsequently exacerbated by a future disaster, in some cases funds under the NOFA and this notice may be used to address the resulting exacerbated unmet need, with prior HUD approval.

d. Use of the Urgent Need National Objective. The certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), are waived for the grants under this notice until two years after the date HUD obligates funds to a Grantee for the activity. In the context of disaster recovery, these standard requirements may prove burdensome and redundant. Since the Department has only selected Grantees for CDBG–NDR awards with documented disaster-related impacts (as supported by data provided by FEMA, SBA, and Applicants), each Grantee is limited to spending funds only in counties identified in the Action Plan as the Most Impacted and Distressed area.

Grantees need not issue formal certification statements to qualify an activity as meeting the urgent need national objective. Instead, each Grantee receiving a CDBG–NDR award was required to document how all programs and/or activities funded under the urgent need national objective respond to a disaster-related impact identified by the Grantee. This waiver and alternative requirement allows Grantees to more effectively and quickly implement disaster recovery programs. For activities that meet the urgent need national objective, Grantees were required to reference in their Action Plan the type, scale, and location of the disaster-related impacts that each Project, program, and/or activity is addressing (Action Plans must be amended, as necessary, to ensure that this information is included for each Project, Program, or CDBG-eligible activity undertaken with CDBG–NDR funds). As a reminder, at least 50 percent of each Grantee's CDBG–NDR grant award must be used for activities that benefit low- and moderate-income persons, unless waived.

e. Obligation and Expenditure of Funds. Upon the Secretary's certification, HUD will issue a grant agreement obligating the funds to the Grantee. Funds will be obligated based on the schedule described by the Grantee in its application or later requested by the Grantee and approved by HUD. In addition, HUD will establish the line of credit and the Grantee will receive DRGR system access (if it does not have access already). The Grantee must also enter its application activities into the DRGR system before it may draw funds, as described in paragraph A.2 below.

f. Environmental Requirements. Each activity must meet the applicable environmental requirements. After the responsible entity completes an environmental review(s) pursuant to 24 CFR part 58, as applicable (or paragraph A.20, as applicable), and receives from HUD or the State an approved Request for Release of Funds and certification (as applicable), the Grantee may draw down funds from the line of credit for the activity. Note that the disbursement of grant funds must begin no later than 60 days after the Grantee has received access to its line of credit.

g. Action Plan Amendments, Submission to HUD, Treatment of Leverage, Partners, and BCA. A Grantee is encouraged to work with its HUD representative before making any amendment to its Action Plan. HUD can help determine whether the amendment would constitute a substantial amendment, and help ensure the proposed change complies with the NOFA and all applicable requirements.

(i) Substantial Amendments. The following modifications constitute a substantial amendment requiring HUD approval: Any change to the funded portions of the Phase 1 or Phase 2 application that would result in a change of more than 5 points in the score for Capacity or Soundness of Approach factors, any change to the Most Impacted and Distressed target area(s) (a revised area must meet Most Impacted and Distressed threshold requirements in the NOFA, including Appendix G to the NOFA), any change in program benefit, beneficiaries, or eligibility criteria, the allocation or reallocation of more than $1 million, or the addition or deletion of an eligible activity. Amendments to the Action Plan that do not fall within the definition of a substantial amendment are referred to as ''nonsubstantial amendments.''

For substantial amendments, Grantees must complete the citizen participation requirements of this notice, at section 3.V.A.3, before HUD can approve the amendment. HUD will only approve a substantial amendment if the new score is still within the competitive range. If the substantial amendment criteria are triggered, HUD will review the proposed change against the rating factors and threshold criteria and consider whether the application, inclusive of the proposed change, would continue to score in the fundable range. This review is not limited to the Capacity and Soundness of Approach factors. In reviewing substantial amendments, HUD will not penalize Grantees for scaling and scoping decisions made by HUD as part of the NDRC award selection process. Additionally, in re-rating and re-ranking any substantial amendment, the Grantee's initial leverage score will remain unchanged if the Grantee will meet the amount of leverage included in its grant terms. As indicated in the NOFA, if a Grantee makes or proposes to make a substantial amendment to its Project, HUD reserves the right to amend the Grantee's award and reduce the grant amount or recapture the grant, as necessary.

(ii) Information for Substantial and Nonsubstantial Amendments. If the Grantee proposes to amend its Action Plan, each proposed amendment must be highlighted, or otherwise identified, within the context of the funded portions of the application and be submitted to HUD. All amendments must comply with provisions of this notice, including Tie-back requirements. Grantees may not amend an Action Plan to include funding for ineligible activities identified in section C.2 of the NOFA. The beginning of every proposed amendment must include a section that identifies exactly what content is being added, deleted, or changed and whether it is believed that the change would affect the scoring under the rating factors, and, thus, potentially trigger a substantial amendment. This section must also include a chart or table that clearly illustrates where funds are coming from and to where they are moving. The amendment must include a revised budget allocation table that reflects the entirety of all funds, as amended. A Grantee's most recent version of its application and its DRGR Action Plan must be accessible for viewing as a single document, at any given point in time, rather than the public or HUD having to view and cross-reference changes among multiple amendments. The requirement for each Grantee to expend funds within 2 years of the date of obligation will be enforced relative to the date activities are funded under each obligation, as applicable, even if the Action Plan is amended. Every amendment to the Action Plan (substantial and nonsubstantial) must be numbered sequentially and posted on

the Grantee's Web site. The Department will acknowledge receipt of the proposed amendment via email or letter within 5 business days of receipt. HUD may seek additional information from the Grantee to determine whether a proposed amendment is a substantial amendment.

(iii) Amendments that may affect the BCA accepted by HUD. If requested by HUD, a Grantee must submit an update to its BCA to support a request for a substantial amendment.

(iv) Leverage Accepted by HUD. Grantees are required to show, through quarterly reports as the Project proceeds, evidence that firmly committed leverage resources in the amount required by the grant terms and conditions were actually received and used for their intended purposes. The Grantee may not propose an amendment to reduce the amount of leverage pledged once a final amount is identified in the grant agreement. In re-rating and re-ranking any substantial amendment, the Grantee's initial leverage score will remain unchanged if the Grantee will meet the amount of leverage included in its grant terms. Sources of leverage funds may be substituted after grant award without affecting a Grantee's leverage score in any re-rating and re-ranking, as long as the dollar amount of leverage is equal to or greater than the total amount of leverage required by the grant terms and conditions. Substitution of a leverage source in the same amount committed and identified in the grant terms and conditions is a nonsubstantial amendment. Section 3.V.A.2.e describes additional DRGR leverage reporting requirements.

(v) Partners Accepted by HUD. The NOFA permitted a Grantee to identify a Partner in its application that the Grantee would be otherwise required by program requirements to competitively procure. A Grantee is not required to secure the services of any Partner by competitive procurement if the Partner is duly documented and identified in the application. The Department has granted permission for single source procurement of these Partners, pursuant to 2 CFR 200.320(f)(3) (cited in the NOFA as 24 CFR 85.36(d)(4)(i)(C), which has since been superseded by the Uniform Requirements) and advised State Grantees that have not adopted the local government procurement requirements in part 200 to review State requirements associated with single source procurement and to follow all applicable procurement requirements. In many cases, this will entail the Grantee undertaking a cost analysis prior to making payments to such a Partner, and the Grantee will be responsible for ensuring compliance with requirements that all CDBG–NDR costs be necessary and reasonable (for local government Grantees, see 2 CFR 200.323, for State governments that have not adopted 2 CFR 200.323, see State procurement requirements applicable to single source procurements). If a Partner dissolves the partnership after award and before activities are complete, the Grantee should make its best effort to replace the Partner with a similarly skilled Partner, if the Grantee's application was rated and ranked based on the capacity of the dissolved Partner. The Grantee's application may have to be re-rated and re-ranked based on the lost capacity unless the Grantee follows a contingency plan included in its application to address such a loss. If a Grantee wants to add a Partner that would otherwise have to be procured as a contractor after the award or if the Partner was identified in the application but was found by HUD to lack sufficient documentation, through HUD's application review process, then that selection would not be covered by the single-source permission above and would be subject to procurement requirements under 2 CFR part 200 or State law, as applicable. Additionally, as required by Appendix D to the NOFA, the Grantee shall execute a written subrecipient agreement, developer agreement, contract, or other agreement, as applicable, with each Partner regarding the use of the CDBG–NDR funds, before disbursing any CDBG–NDR funds to the Partner. The written agreement must conform with all CDBG–NDR requirements and shall require the Partner to comply with all applicable CDBG–NDR requirements, including those found in Disaster Relief Appropriations Act, 2013 (Pub. L. 113–2), title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5302 *et seq.*), the CDBG program regulations at 24 CFR part 570, this notice and any other applicable **Federal Register** notice, and commitments made in the grantee's Phase 1 and Phase 2 applications.

2. HUD Performance Review Authorities and Grantee Reporting Requirements in the Disaster Recovery Grant Reporting System (DRGR).

a. Performance Review Authorities. Section 5304(e) of 42 U.S.C. requires that the Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the Grantee has carried out its activities in a timely manner, whether the Grantee's activities and Grantee certifications are carried out in accordance with the requirements and the primary objectives of the HCD Act and other applicable laws, and whether the Grantee has the continuing capacity to carry out those activities in a timely manner. Applicants were informed by section VI.A.4 of the General Section of the Department's broader NOFA (as amended, and made applicable by the NOFA) that the Department expects Grantees to fulfill performance promises made as part of their application. This notice waives the requirements for submission of a performance report, pursuant to 42 U.S.C. 12708 and 24 CFR 91.520. In the alternative, and to ensure consistency between grants allocated under the Appropriations Act and prior CDBG disaster recovery appropriation laws, HUD is requiring that Grantees enter information in the DRGR system in sufficient detail to permit the Department's review of Grantee performance on a quarterly basis and to enable remote review of Grantee data to allow HUD to assess compliance and risk.

b. DRGR Action Plan. Each Grantee must enter the components of its Action Plan funded through the CDBG–NDR grant into the DRGR system, including performance measures. This is referred to as the DRGR Action Plan. As more detailed information about uses of funds is identified by the Grantee, the Grantee must enter this information into the DRGR system at a level of detail that is sufficient to serve as the basis for acceptable performance reports, HUD review of compliance requirements, and citizen understanding of progress. The information must also be entered into the DRGR system so that the Grantee is able to draw its CDBG–NDR funds from the line of credit. To enter an activity into the DRGR system, the Grantee must know the activity type, national objective, and the organization that will be responsible for the activity. In addition, a Data Universal Numbering System (DUNS) number must be entered into the system for any entity carrying out a CDBG–NDR funded activity, including the Grantee, recipient(s) and subrecipient(s), contractor(s), and developers. Additionally, following execution of a grant agreement, Grantees must publish on their Web sites the DRGR Action Plan. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan, which will help ensure clear communication of CDBG–NDR activities to the public.

c. Tracking Oversight Activities in the DRGR System; Use of DRGR Data for HUD Review and Dissemination. Each Grantee must also enter into the DRGR system summary information on monitoring visits and reports, audits,

and technical assistance it conducts as part of its oversight of its disaster recovery programs. The Grantee's Quarterly Performance Report (QPR) will include a summary indicating the number of Grantee oversight visits and reports (see subparagraph e for more information on the QPR). HUD will use data entered into the DRGR Action Plan and the QPR, transactional data from the DRGR system, and other information provided by the Grantee to: (1) Provide reports to Congress and the public; as well as to (2) monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; (3) reconcile budgets, obligations, funding draws, and expenditures; (4) calculate expenditures to determine compliance with administrative and public service caps and the overall percentage of funds that benefit low- and moderate-income persons; and (5) analyze the risk of Grantee programs to determine priorities for the Department's monitoring.

d. Tracking Program Income in the DRGR System. Grantees must use the DRGR system to draw grant funds for each activity. Grantees must also use the DRGR system to track program income receipts, disbursements, and revolving loan funds. If a Grantee permits local governments or subrecipients to retain program income, the Grantee must establish program income accounts in the DRGR system. The DRGR system requires Grantees to use program income before drawing additional grant funds, and ensures that program income retained by one organization will not affect grant draw requests for other organizations.

e. DRGR System Quarterly Performance Report (QPR). Each Grantee must submit a QPR through the DRGR system no later than 30 days following the end of each calendar quarter. Within 3 days of submission to HUD, each QPR must be posted on the Grantee's official Web site. HUD will also post the reports via the DRGR Public Web site. The Grantee's first QPR is due after the first full calendar quarter after the grant award. For example, a grant award made in April requires a QPR to be submitted by October 30. QPRs must be submitted on a quarterly basis until the grant program is completed and meets the criteria for closeout. During the grant closeout process, a final QPR may be required by HUD to ensure complete reporting. HUD will close out CDBG–NDR grants in accordance with this notice (or other applicable **Federal Register** notice) and notice CPD 2014–02, Closeout Instructions for Community Development Block Grant (CDBG) Programs Grants, as amended, insofar as the notice applies to CDBG–DR grants.

Each QPR will include information about the uses of funds for activities identified in the DRGR Action Plan during the applicable quarter. This includes, but is not limited to, the: Project name, activity, location, and national objective; funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG–DR funds to be expended on each activity; beginning and actual completion dates of completed activities; achieved performance outcomes, such as number of housing units completed or number of low- and moderate-income persons benefiting; and the race and ethnicity of persons assisted under direct-benefit activities. The DRGR system will automatically display the amount of program income receipted, the amount of program income reported as disbursed, and the amount of grant funds disbursed. Grantees must include a description of actions taken in that quarter to affirmatively further fair housing, within the section titled ''Overall Progress Narrative'' in the DRGR system. In addition, leveraged funds shall be identified for each activity, as applicable, in the DRGR system, and use of leverage funds required by the Grantee's grant agreement shall be included in the Grantee's QPR.

3. Citizen Participation Waiver and Alternative Requirement. To permit a more streamlined process, and ensure disaster recovery grants are awarded in a timely manner, provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, 91.105(b) and (c), and 91.115(b) and (c), with respect to citizen participation requirements, are waived and replaced by the requirements below.

Note that the citizen participation process is distinct from consultation requirements. The streamlined requirements mandate at least one public hearing at the Applicant's level of government for each substantial amendment, and require providing a reasonable opportunity (at least 15 days for any substantial amendment) for citizen comment and ongoing citizen access to information about the use of grant funds.

The streamlined citizen participation requirements for CDBG–NDR grants are:

a. Publication of the Action Plan, Access to Information, and Substantial Amendments: At all times, the Grantee must maintain a public Web site that contains the latest versions of its Action Plan, including the DRGR Action Plan and the version as submitted to HUD for the competition and including the following portions: Executive summary; Factor narratives; Eligibility; national objective; overall benefit; and schedule responses, threshold requirements documentation, and all exhibits (A–G) (but of the attachments, only Attachments D and F must be published); and opportunity for public comment, hearing, and substantial amendment criteria. Before the Grantee submits a proposed substantial amendment, the Grantee must publish the proposed submission, including a section that identifies exactly what content is being added, deleted, or changed, and whether it believes that the change would affect the scoring under the rating factors, and, thus, potentially trigger a substantial amendment; a chart or table that clearly illustrates where funds are coming from and to where they are moving; and a revised budget allocation table that reflects the entirety of all funds, as amended.

The manner of publication of a proposed substantial amendment must include prominent posting on the Grantee's official Web site, and must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. The topic of disaster recovery must, for citizens, be navigable from the Grantee's homepage. Grantees are required to hold at least one public hearing to solicit public comments before finalizing each substantial amendment submission.

Grantees are also encouraged to notify affected citizens of proposed amendments and public hearings, through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with organizations located in or serving the target area or neighborhood.

Grantees are responsible for ensuring that all citizens have equal access to information about the programs, including persons with disabilities and limited English proficiency (LEP). Each Grantee must ensure that program information is available in the appropriate languages for the geographic area served by the jurisdiction and the appropriate format for persons with disabilities.

For assistance in ensuring that this information is available to LEP populations, recipients should consult the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI, Prohibition Against National Origin Discrimination Affecting Limited

English Proficient Persons, published on January 22, 2007, in the **Federal Register** (72 FR 2732).

Subsequent to publication of any proposed substantial amendment, the Grantee must provide a reasonable time frame and method(s) (including electronic submission) for receiving comments on the submission. A summary by topic of all comments received on the amended submission and a list of commenters by name or organization must be submitted to HUD along with the submission.

Following execution of a grant agreement, the Grantee must post on its Web site the DRGR Action Plan that reflects the components funded through CDBG–NDR funds. HUD will provide clarifying guidance as to the content and format of the DRGR Action Plan that will help ensure clear communication of CDBG–NDR activities to the public. Subsequent to award, a Grantee may substantially amend the Action Plan if it follows the citizen participation requirements in this notice, and HUD agrees in writing that the initial application, inclusive of the proposed amendment, would still score in the fundable range for the competition.

b. Nonsubstantial Amendment. The Grantee is not required to undertake public comment when it makes any Action Plan amendment that is not substantial. The Grantee must impose an effective date 5 business days after submission to HUD.

c. Physical Accessibility. Meetings must be held in facilities that are physically accessible to persons with disabilities, or where physical accessibility is not achievable, Grantees and Partners must give priority to alternative methods of product or information delivery regarding programs and activities to qualified individuals with disabilities in the most integrated setting appropriate, in accordance with HUD's implementing regulations for section 109 of the HCD Act and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) at 24 CFR part 8 and all applicable laws and regulations. In addition, all notices of and communications during all training sessions and public meetings shall be provided in a manner that is effective for persons with hearing, visual, and other communication-related disabilities, or provide other means of accommodation for persons with disabilities, consistent with section 504 of the Rehabilitation Act of 1973 and HUD's section 504 regulations. See 24 CFR part 8.6.

d. Additional Post-Award Requirements. The Grantee must update its citizen participation plan for CDBG–NDR grants to reflect the requirements of this notice. The purpose of this plan is to inform citizens of the citizen complaint process and the Grantee's response policy, the methods through which the public can learn about the grant and activity status, and the process the city will use to amend the Action Plan. The plan must satisfy the requirements of 24 CFR 91.105 or 91.115, as applicable (except as provided for in notices providing waivers and alternative requirements for this grant).

(1) Web site. The topic of disaster recovery must be navigable by citizens from the Grantee (or relevant agency) homepage. Grantees are also encouraged to notify affected citizens through electronic mailings, press releases, statements by public officials, media advertisements, public service announcements, and/or contacts with neighborhood organizations.

(2) Availability and Accessibility of the Application/Action Plan and the DRGR Action Plan. The Grantee must make the previously published portions of the Application, the Application as submitted to HUD, the DRGR Action Plan, any Action Plan amendments, and all performance reports available to the public on its Web site and on request. In addition, the Grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of the grant, the Grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the Application and to the Grantee's use of grant funds.

(3) Citizen Complaints. The Grantee will provide a timely written response to every citizen complaint. As required by law, the Grantee will provide a response within 15 working days of the receipt of the complaint, if practicable.

4. Direct Grant Administration and Means of Carrying Out Eligible Activities.

a. Requirements Applicable to State Grantees. Requirements at 42 U.S.C. 5306 are waived, to the extent necessary, to allow a State to directly carry out eligible activities with CDBG–NDR funds, rather than distribute all funds to local governments. Experience in administering CDBG supplemental disaster recovery funding demonstrates that this practice can expedite recovery. Pursuant to this waiver, the standard at section 570.480(c), the provisions at 42 U.S.C. 5304(e)(2), and the CDBG State program regulations will also include activities that the State carries out directly. In addition, activities eligible under the NOFA may be carried out, subject to State law, by the State through its employees, through procurement contracts, or through assistance provided under agreements with subrecipients or recipients, so long as the State is consistent with its Action Plan, including description of capacity and commitments to work with Partners. Notwithstanding this waiver, State Grantees continue to be responsible for civil rights, labor standards, and environmental protection requirements contained in the HCD Act and 24 CFR part 570, as well as ensuring such compliance by subgrantees.

b. Requirements for All Grantees — Direct Administration and Assistance to Neighborhood Organizations Described in 42 U.S.C 5305(a)(15) of the HCD Act. Activities made eligible at 42 U.S.C. 5305(a)(15) may only be undertaken by the eligible entities described in that section, whether the assistance is provided to such an entity from the State or from a local government.

5. Consolidated Plan Waiver. To the extent that the Grantee did not receive points for consistency with the Consolidated Plan for the jurisdiction in which the Most Impacted and Distressed area is located, HUD is waiving the requirement for consistency with the consolidated plan, for no longer than 6 months (requirements at 42 U.S.C. 12706, 24 CFR 91.325(a)(5), 91.225(a)(5), 91.325(b)(3), and 91.225(b)(3)), because the effects of a major disaster alter a Grantee's priorities for meeting housing, employment, and infrastructure needs. In conjunction, 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review Grantee performance under the consistency criteria, is also waived for 6 months. All applications that did not submit the Certification of Consistency with the Consolidated Plan (form HUD–2991) in the attachments must update the Consolidated Plan within 6 months of grant award. At a minimum, the updated consolidated plan must include the criteria discussed in this notice. If not completed since the Qualified Disaster that led to the Grantee's eligibility under the NOFA, a Grantee must update its Analysis of Impediments to Fair Housing Choice in coordination with its post-waiver consolidated plan update or within the 18 months after the consolidated plan update, so that it more accurately reflects conditions following the disaster.

6. Requirement for Consultation During Plan Preparation. Currently, the statute and regulations require States to consult with affected units of local

government in nonentitlement areas of the State in determining the State's proposed method of distribution. Because Grantees complied with the extensive consultation requirements of the NOFA, including Appendix I to the NOFA, HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 42 U.S.C. 5306(d)(2)(D), and 24 CFR 91.325(b) and 91.110, to permit Grantees to rely on the consultation completed during Phase 1 and Phase 2 of the competition. No additional consultation is necessary to carry out the Project or program for which the Grantee received an allocation of CDBG–NDR funds.

7. Overall Benefit Waiver and Alternative Requirement. The primary objective of the HCD Act is the ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.'' (42 U.S.C. 5301(c)). To carry out this objective, the statute requires that 70 percent of the aggregate of a CDBG program's funds be used to support activities benefitting low- and moderate-income persons. This target could be difficult to reach, and perhaps even impossible, for many Grantees affected by the Qualified Disasters. CDBG–NDR Grantees experienced disaster impacts that affected entire communities—regardless of income—and the existing requirement may prevent Grantees from providing assistance to damaged areas of need. Therefore, this notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A),and 24 CFR 570.484 and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of funds must benefit low- and moderate-income persons. This provides Grantees with greater flexibility to carry out recovery activities by allowing up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums or blight national objectives.

A Grantee may seek a waiver to reduce the overall benefit requirement below 50 percent of the total grant (see instructions to request waivers in section 3.V), but overall benefit waivers are uncommon and Grantees, generally, must have submitted a request and justification for this waiver with its application. The 50 percent overall benefit requirement will not be reduced unless the Secretary specifically finds that there is a compelling need to further reduce the threshold.

8. Use of the ''Upper Quartile'' or ''Exception Criteria'' for Low- and Moderate-Income Area Benefit Activities. Per the requirements at 42 U.S.C. 5305(c)(2)(A), certain communities are allowed to use a percentage of less than 51 percent to qualify activities under the low- and moderate-income area benefit category. This exception is referred to as the ''exception criteria'' or the ''upper quartile.'' For entitlement communities that meet the regulatory exception criteria, the State (or its subgrantee, if permitted by the State) may apply the criteria if acting directly in that community.

9. Use of ''Uncapped'' Income Limits. The Quality Housing and Work Responsibility Act of 1998 (Title V of Pub. L. 105–276) enacted a provision that directed the Department to grant exceptions to at least 10 jurisdictions that are currently ''capped' under HUD's low- and moderate-income limits. Under this exception, a number of CDBG entitlement grantees may use ''uncapped'' income limits that reflect 80 percent of the actual median income for the area. Each year, HUD publishes guidance on its Web site identifying which grantees may use uncapped limits. The uncapped limits apply to disaster recovery activities funded pursuant to this notice in jurisdictions covered by the uncapped limits, including jurisdictions that receive disaster recovery funds from the State, if the State permits the use.

10. Grant Administration Responsibilities and General Administration Cap.

a. Grantee responsibilities. Per the Appropriations Act, each Grantee shall administer its award directly, in compliance with all applicable laws and regulations. Each Grantee shall be financially accountable for the use of all funds provided in this notice and may contract for administrative support, but Grantees may not delegate or contract to any other party any inherently governmental responsibilities related to management of the funds, such as oversight, policy approval or adoption, and financial management.

b. General administration Cap. For grants under this notice, the annual CDBG program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant award, inclusive of any program income, to be used for general administration costs, by the Grantee, by local governments, or by subrecipients. Thus, the total of all costs charged to the grant and classified as general administration must be less than or equal to the 5 percent cap. (See Notice CPD 13–07 for additional guidance regarding classification of general administration costs.)

(1) Alternative Requirements. For State Grantees under this notice, the provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i), (ii), and (iii) will not apply to the extent that they specify a cap on general administration and technical assistance expenditures, limit a State's ability to charge a nominal application fee for grant applications for activities the State carries out directly, and require a dollar-for-dollar match of State funds for administrative costs exceeding $100,000. Thus, 42 U.S.C. 5306(d)(5) and (6) are waived and replaced with the alternative requirement that the aggregate total for general administrative and technical assistance expenditures must not exceed 5 percent. States remain limited to spending a maximum of 20 percent of their total grant amount on a combination of planning and general administration costs. Planning costs subject to the 20 percent cap are those defined in 42 U.S.C. 5305(a)(12).

(2) Local Government Grantees Are Also Subject to the 5 Percent Administrative Cap. This 5 percent applies to all general administration costs, whether incurred by the Grantee or its subrecipients. Local government Grantees also remain limited to spending 20 percent of the total CDBG–NDR award on a combination of planning and general administration costs.

(3) Planning and Administrative Costs Pledged as Leverage: Grantees cannot charge to the grant any administrative and planning costs pledged as leverage.

11. Planning-Only Activities—Applicable to State Grantees Only. The annual State CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the State CDBG program, these planning grants are typically used for individual Project plans. By contrast, planning activities carried out by entitlement communities are more likely to include non-Project specific plans such as functional land-use plans, master plans, historic preservation plans, comprehensive plans, community recovery plans, development of housing codes, zoning ordinances, and neighborhood plans. These plans may guide long-term community development efforts comprising multiple activities funded by multiple sources. In the entitlement program, these general planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that effective CDBG disaster recoveries

have relied on some form of areawide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, for State Grantees receiving an award under this notice, the Department is removing the eligibility requirements at 24 CFR 570.483(b)(5) or (c)(3). Instead, States must comply with 570.208(d)(4) when funding disaster recovery-assisted, planning-only activities, or directly administering planning activities that guide recovery in accordance with the Appropriations Act. In addition, the types of planning activities that States may fund or administer are expanded to be consistent with those of entitlement communities identified at 24 CFR 570.205.

12. Waiver And Alternative Requirement for Distribution to CDBG Metropolitan Cities and Urban Counties—Applicable to State Grantees Only. Section 5302(a)(7) of 42 U.S.C. (definition of ''nonentitlement area'') and provisions of 24 CFR part 570 that would prohibit or restrict a State from distributing CDBG funds to entitlement communities and Indian tribes under the CDBG program, are waived, including 24 CFR 570.480(a) and 570.486(c) (revised April 23, 2012). Instead, the State may distribute funds to local governments and Indian tribes.

13. Use of Subrecipients—Applicable to State Grantees Only. The State CDBG program rule does not make specific provision for the treatment of entities that the CDBG Entitlement program calls ''subrecipients.'' The waiver allowing the State to directly carry out activities creates a situation in which the State may use subrecipients to carry out activities in a manner similar to an entitlement community. Therefore, for States taking advantage of the waiver to carry out activities directly through a subrecipient, the requirements at 24 CFR 570.503, 570.500(c), and 570.489(m) apply, except only the specific references to 2 CFR part 200 made applicable by the State CDBG regulations must be included in subrecipient agreements. Pursuant to 24 CFR 570.489(p) (revised December 7, 2015), a State Grantee must ensure that its costs and those of its State recipients and subrecipients are in conformance with 2 CFR part 200, subpart E, as may be amended, where carrying out activities directly, including through the use of a subrecipient.

14. Recordkeeping.

(a) State Grantees. When a State carries out activities directly, 24 CFR 570.490(b) is waived and the following alternative provision shall apply: The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD under 24 CFR 570.493 of the State's administration of CDBG–NDR funds. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other Federal requirements, the content of records maintained by the State shall be sufficient to: Enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the State; ensure compliance with requirements of this notice and any other notice governing the use of CDBG–NDR grants; and show how activities funded are consistent with the descriptions of activities proposed for funding in the Action Plan and DRGR system. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, disability, and gender characteristics of persons who are Applicants for, participants in, or beneficiaries of the program.

b. Local Government Grantees. Entitlement Grantees remain subject to the recordkeeping requirements of 24 CFR 570.506.

15. Change of Use of Real Property—Applicable to State Grantees Only. This waiver conforms to the change of the use of real property rule to the waiver allowing a State to carry out activities directly. For purposes of this program, all references to ''unit of general local government'' in 24 CFR 570.489(j) shall be read as ''unit of general local government or State.''

16. Responsibility for Review and Handling of noncompliance—Applicable to State Grantees Only. This change is in conformance with the waiver allowing the State to carry out activities directly. Section 570.492 of 24 CFR is waived and the following alternative requirement applies for any State receiving a direct award under this notice: The State shall make reviews and audits, including onsite reviews of any subrecipients, designated public agencies, and local governments, as may be necessary or appropriate to meet the requirements of 42 U.S.C. 5304(e)(2), as amended, and as modified by this notice. In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence. The State shall establish remedies for noncompliance by any designated subrecipients, public agencies, or local governments.

17. Program Income Alternative Requirement. The Department is waiving applicable program income rules at 42 U.S.C 5304(j), 24 CFR 570.500(a) and (b), 570.504, and 570.489(e) to the extent necessary to provide additional flexibility as described under this notice. The alternative requirements provide guidance regarding the use of program income received before and after grant closeout and address revolving loan funds.

a. Definition of Program Income.

(1) For the purposes of this subpart, ''program income'' is defined as gross income generated from the use of CDBG–NDR funds and received by a State, local government, or tribe, or a subrecipient of a State, local government, or tribe, unless excluded from the definition as described in paragraph 17.a.(2) and paragraph 17.d below. When income is generated by an activity that is only partially assisted with CDBG–NDR funds, the program income to the CDBG–NDR grant shall be prorated to reflect the percentage of CDBG–NDR funds used (*e.g.,* a single loan supported by CDBG–NDR funds and other funds; a single parcel of land purchased with CDBG–NDR funds and other funds). Program income includes, but is not limited to, the following:

(a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG–NDR funds;

(b) Proceeds from the disposition of equipment purchased with CDBG–NDR funds;

(c) Gross income from the use or rental of real or personal property acquired with CDBG–NDR funds by a State, local government, or tribe, or subrecipient of a State, local government, or tribe, less costs incidental to generation of the income (*i.e.,* net income);

(d) Net income from the use or rental of real property owned by a State, local government, or tribe or subrecipient of a State, local government, or tribe, that was constructed or improved with CDBG–NDR funds;

(e) Payments of principal and interest on loans made using CDBG–NDR funds;

(f) Proceeds from the sale of loans made with CDBG–NDR funds;

(g) Proceeds from the sale of obligations secured by loans made with CDBG–NDR funds;

(h) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(i) Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover

all or part of the CDBG–NDR portion of a public improvement; and

(j) Gross income paid to a State, local government, or tribe, or paid to a subrecipient thereof, from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG–NDR assistance.

(2) ''Program income'' does not include the following:

(a) The total amount of funds which is less than $25,000 received in a single year and retained by a State, local government, tribe, or retained by a subrecipient thereof;

(b) Amounts generated by activities both eligible and carried out by an entity under the authority of section 105(a)(15) of the HCD Act;

b. Retention of Program Income. Per 24 CFR 570.504(c), a local government Grantee receiving a direct CDBG–NDR award may permit a subrecipient to retain program income. State Grantees may permit a local government or tribe, which receives or will receive program income, to retain the program income, but are not required to do so.

c. Program Income—Use, Closeout, and Transfer.

(1) Program income received (and retained, if applicable) before or after closeout of the grant that generated the program income, and used to continue disaster recovery activities, is treated as additional CDBG–NDR grant funds subject to the requirements of this notice and must be used in accordance with the Grantee's Action Plan. To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, except as provided in subparagraph d of this paragraph.

(2) In addition to the regulations dealing with program income found at 24 CFR 570.489(e) and 570.504, modified by this notice, the following rules apply: A Grantee may transfer program income before closeout of the CDBG–NDR grant that generated the program income to its annual CDBG program. In addition, a State Grantee may transfer program income before closeout to any annual CDBG-funded activities carried out by a local government or Indian tribe within the State, including a local government that is an Entitlement CDBG grantee if that Entitlement grantee received CDBG disaster recovery assistance from the State or from HUD under Public Law 113–2.

Program income received by a Grantee, or received and retained by a subgrantee, after closeout of the grant that generated the program income, may also be transferred to a Grantee's annual CDBG award. In all cases, any program income received, and not used to continue disaster recovery activities, will not be subject to the waivers and alternative requirements of this notice. Rather, those funds will be subject to the Grantee's non-disaster formula CDBG program rules.

d. Revolving Loan Funds. Entitlement Grantees, State Grantees, and local governments or tribes (as permitted by a State Grantee) may establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities. These activities generate payments, which will be used to support similar activities going forward. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the U.S. Treasury for payments that could be funded from the revolving fund. Such program income is not required to be disbursed for nonrevolving fund activities.

State Grantees may also establish a revolving fund to distribute funds to local governments or tribes to carry out specific, identified activities. The same requirements, outlined above, apply to this type of revolving loan fund. Lastly, note that no revolving fund established per this notice, shall be directly funded or capitalized with an advance of CDBG–NDR grant funds.

18. Reimbursement of Disaster Recovery Expenses. Grantees may not use CDBG–NDR grant funds to pay for any activities carried out on or before the date of the letter notifying the grantee of the award of the grant, except that grant funds may be used to reimburse CDBG–NDR eligible costs of grant application preparation, including planning and citizen outreach activities. The provisions of 24 CFR 570.489(b) are applied to permit a State to reimburse itself for otherwise allowable application-related costs incurred by itself or its recipients, subgrantees or subrecipients (including public housing authorities) on or after the date of publication of the initial CDBG–NDR NOFA. An entitlement Grantee is subject to the provisions of 24 CFR 570.200(h) but may reimburse itself or its subrecipients for otherwise allowable application-related costs incurred on or after the publication date of the initial CDBG–NDR NOFA. Section 570.200(h)(1)(i) of 24 CFR will not apply to the extent that it requires preagreement activities to be included in a consolidated plan. The Department expected Grantees to include all preagreement activities in their applications. The provisions at 24 CFR 570.200(h) and 570.489(b), as modified by this paragraph, apply to Grantees reimbursing application-related costs incurred by itself or its recipients or subrecipients prior to signing a grant agreement with HUD.

19. One-for-One Replacement, Relocation, and Real Property Acquisition Requirements. Activities and Projects assisted by CDBG–NDR are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (URA) and section 104(d) of the HCD Act (42 U.S.C. 5304(d))(Section 104(d)). The implementing regulations for the URA are at 49 CFR part 24. The regulations for Section 104(d) are at 24 CFR part 42, subpart C. For the purposes of promoting the availability of decent, safe, and sanitary housing and expediting disaster recovery and rehousing efforts, HUD is waiving the following URA and Section 104(d) requirements for CDBG–NDR Grantees:

a. One-for-One Replacement. One-for-one replacement requirements at section 104(d)(2)(A)(i)–(ii) and (d)(3) and 24 CFR 42.375 are waived in connection with funds allocated under this notice for lower-income dwelling units that are damaged by the disaster and not suitable for rehabilitation. The Section 104(d) one-for-one replacement requirements generally apply to demolished or converted occupied and vacant occupiable lower-income dwelling units.

This waiver exempts disaster-damaged units that meet the Grantee's definition of ''not suitable for rehabilitation'' from the one-for-one replacement requirements. Before carrying out a program or activity which may be subject to the one-for-one replacement requirements, the Grantee must define ''not suitable for rehabilitation'' in its application or in policies/procedures governing these programs and activities. Grantees with questions about the one-for-one replacement requirements are encouraged to contact the HUD regional relocation specialist responsible for their State.

HUD is waiving the one-for-one replacement requirements because they do not account for the large, sudden changes that a major disaster may cause to the local housing stock, population, or economy. Furthermore, the requirements may discourage Grantees from converting or demolishing disaster-damaged housing when excessive costs would result from

replacing all such units. Disaster-damaged housing structures that are not suitable for rehabilitation can pose a threat to public health and safety and may impede economic revitalization. Grantees should reassess post-disaster population and housing needs to determine the appropriate type, amount, and location of lower-income dwelling units to rehabilitate and/or rebuild. Grantees should note, however, that the demolition and/or disposition of Public Housing Authority-owned public housing units is covered by section 18 of the United States Housing Act of 1937, as amended, and 24 CFR part 970, neither of which is waived by this notice.

b. Relocation Assistance. The Section 104(d) relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 are waived to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by this notice, for activities related to disaster recovery. Without this waiver, disparities exist in relocation assistance associated with activities typically funded by HUD and FEMA (*e.g.,* buyouts and relocation). Both FEMA and HUD funds are subject to the URA; however, HUD's CDBG Funds are also subject to Section 104(d), while FEMA funds are not. The URA provides that a displaced person is eligible to receive a rental assistance payment that covers a period of 42 months. By contrast, Section 104(d) allows a lower-income displaced person to choose between the URA rental assistance payment and a rental assistance payment calculated over a period of 60 months. This waiver of the Section 104(d) requirements assures uniform and equitable treatment by setting the URA and its implementing regulations as the sole standard for relocation assistance under this notice.

c. Arm's Length Voluntary Purchase. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who uses CDBG–NDR funds and does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. Given the often large-scale acquisition needs of Grantees, this waiver is necessary to reduce burdensome administrative requirements following a disaster. Grantees are reminded that any tenants occupying real property that is acquired through voluntary purchase may be eligible for relocation assistance.

d. Rental Assistance to a Displaced Person. The requirements at sections 204(a) and 206 of the URA, and 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the Grantee to use 30 percent of a low-income displaced person's household income in computing a rental assistance payment if the person had been paying more than 30 percent of household income in rent/utilities without ''demonstrable hardship'' before the Project. Thus, if a tenant has been paying rent/utilities in excess of 30 percent of household income without demonstrable hardship, using 30 percent of household income to calculate the rental assistance payment would not be required. Before carrying out a program or activity in which the Grantee will provide rental assistance payments to displaced persons, the Grantee must define ''demonstrable hardship'' in its application or in the policies and procedures governing these programs and activities. The Grantee's definition of demonstrable hardship applies when implementing these alternative requirements.

e. Tenant-Based Rental Assistance. The requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a Grantee to meet all or a portion of a Grantee's replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (*e.g.,* Section 8 Housing Choice Voucher Program), provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a), where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant this waiver would impede disaster recovery whenever TBRA program subsidies are available but funds for cash relocation assistance are limited. This waiver gives Grantees an additional relocation resource option.

f. Moving Expenses. The requirements at section 202(b) of the URA and 49 CFR 24.302, which require that a Grantee offer a displaced person the option to receive a fixed moving cost payment based on the Federal Highway Administration's Fixed Residential Moving Cost Schedule instead of receiving payment for actual moving and related expenses, are waived. As an alternative, the Grantee must establish and offer the person a ''moving expense and dislocation allowance'' under a schedule of allowances that is reasonable for the jurisdiction and that takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

Without this waiver and alternative requirement, disaster recovery may be impeded by requiring Grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if they find that approach preferable to the locally established ''moving expense and dislocation allowance.''

g. Optional Relocation Policies. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established at the Grantee or State recipient level. Unlike the annual formula CDBG program, States receiving CDBG–NDR funds may carry out disaster recovery activities directly or through subrecipients. The regulation at 24 CFR 570.606(d) governing optional relocation policies does not account for this distinction. This waiver also makes clear that local governments receiving CDBG disaster funds may establish separate optional relocation policies. This waiver is intended to provide States and local governments with maximum flexibility in developing optional relocation policies with CDBG–NDR funds.

20. Environmental Requirements.

a. Clarifying Note on the Process for Environmental Release of Funds When a State Carries Out Activities Directly. In the CDBG program, a State distributes CDBG Funds to local governments and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For State Grantees under this notice, HUD allows the State to carry out activities directly, in addition to distributing funds to subrecipients and/or subgrantees. Thus, per 24 CFR 58.4, when a State carries out activities directly, the State must submit the certification and request for release of funds to HUD for approval.

b. Adoption of Another Agency's Environmental Review. In accordance with the Appropriations Act, recipients of Federal funds that use such funds to supplement Federal assistance provided under sections 402, 403, 404, 406, 407, or 502 of the Stafford Act may adopt, without review or public comment, any environmental review, approval, or permit performed by a Federal agency, and such adoption shall satisfy the responsibilities of the recipient with respect to such environmental review, approval, or permit that is required by the HCD Act. The Grantee must notify

HUD in writing of its decision to adopt another agency's environmental review. The Grantee must retain a copy of the review in the Grantee's environmental records.

c. Release of Funds. In accordance with the Appropriations Act, and notwithstanding 42 U.S.C. 5304(g)(2), the Secretary may, upon receipt of a request for release of funds and certification, immediately approve the release of funds for an activity or Project assisted with CDBG–NDR funds if the recipient has adopted an environmental review, approval or permit under subparagraph b, above, or the activity or Project is categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

d. Historic Preservation Reviews. To facilitate expedited historic preservation reviews under section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), HUD strongly encourages Grantees to allocate general administration funds to support the capacity of the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) to review CDBG–NDR Projects.

21. Procurement.

a. State Grantees. Per 24 CFR 570.489(d), a State must have fiscal and administrative requirements for expending and accounting for all funds. Additionally, States and State subgrantees (Units of General Local Governments) and subrecipients) shall follow requirements of 24 CFR 570.489(g). HUD is imposing a waiver and alternative requirement to require the State to establish requirements for procurement policies and procedures based on full and open competition for subrecipients, in addition to units of general local government.

The State can comply with the requirement under 24 CFR 570.489(g) to follow its procurement policies and procedures and establish procurement requirements for its UGLGs and subrecipients in one of three ways (subject to 2 CFR 200.110, as applicable):

(i) A State can follow its existing procurement policies and procedures and establish requirements for procurement policies and procedures for units of general local government and subrecipients, based on full and open competition, that specify methods of procurement (*e.g.,* small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability;

(ii) A State can adopt 2 CFR 200.317, which requires the State to follow the same policies and procedures it uses for procurements from its non-Federal funds and comply with 2 CFR 200.322 (procurement of recovered materials) and 2 CFR 200.326 (required contract provisions), but requires the State to make its subrecipients and UGLGs follow 2 CFR 200.318 through 200.326; or

(iii) A State can adopt the provisions that apply to CDBG entitlement grantees (2 CFR 200.318 through 2 CFR 200.326) for itself and its subgrantees (subrecipients and units of general local government).

b. Direct Grants to Local Governments. Any unit of general local government receiving a direct grant from HUD is subject to procurement requirements in the Uniform Administrative Requirements at 2 CFR 200.318 through 2 CFR 200.326 (subject to 2 CFR 200.110, as applicable).

c. Additional Requirements Related to Procurement (States and Local Governments). HUD may request periodic updates from grantees that employ contractors. A contractor is a third-party firm that the grantee acquires through a procurement process to perform specific functions, consistent with the procurement requirements in the CDBG program regulations. A subrecipient is not a contractor (see 2 CFR 200.330). Grantees are also required to ensure all contracts and agreements (with subrecipients, recipients, and contractors) clearly state the period of performance or date of completion. Grantees must incorporate performance requirements and penalties into each contract or agreement. The Appropriations Act requires HUD to provide Grantees with technical assistance on contracting and procurement processes.

22. Public Web site. The Appropriations Act requires Grantees to maintain a public Web site that provides information accounting for how all grant funds are used and managed/administered, including details of all contracts and ongoing procurement policies. To meet this requirement, each Grantee must make the following items available on its Web site: The Action Plan (including the latest version of its Action Plan, the latest version of its DRGR Action Plan, the version as submitted to HUD for the competition, and all amendments, as described in section 3.V.A.3 of this notice); each QPR (as created using the DRGR system) detailing expenditures for each contractor; procurement policies and procedures; executed CDBG–NDR contracts; and the status of services or goods currently being procured by the Grantee (*e.g.,* phase of the procurement, requirements for proposals, etc.).

23. Timely Distribution of Funds. The provisions at 24 CFR 570.494 and 24 CFR 570.902 regarding timely distribution of funds are waived and replaced with the following alternative requirement: Grantees must adhere to the requirement in section 904(c) of the Appropriations Act, which requires that all funds be expended within 2 years of the date HUD obligates funds to a Grantee, as described in section 3.II.A.1.a in this notice. HUD expects each Grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner to ensure this deadline is met.

Additionally, to track Grantees' progress, HUD will evaluate timeliness in relation to each Grantee's established projection schedules (see section 3.II. B and section 3.V.A.1.j of this notice). The Department will, absent substantial evidence to the contrary, deem a Grantee to be carrying out its programs and activities in a timely manner if the schedule for carrying out its activities is substantially met. In determining the appropriate corrective action pursuant to this section, HUD will take into account the extent to which unexpended funds have been obligated by the Grantee and its subrecipients for specific activities at the time the finding is made and other relevant information. As stated in the NOFA, if a Grantee does not proceed within a reasonable time frame, HUD reserves the right to withdraw any funds the Grantee has not obligated under their award. If funds are withdrawn prior to September 30, 2017, HUD shall redistribute any withdrawn amounts to one or more other jurisdictions eligible for CDBG–DR funding.

24. Review of Continuing Capacity to Carry Out CDBG-Funded Activities in a Timely Manner. If HUD determines at any time that the Grantee has not carried out its CDBG–NDR activities and certifications in accordance with the requirements and criteria described in this notice, HUD will undertake a further review to determine whether or not the Grantee has the continuing capacity to carry out its activities in a timely manner. In making the determination, the Department will consider the following alternative requirements to provisions under 42 U.S.C. 5304(e): The nature and extent of the Grantee's performance deficiencies, types of corrective actions the Grantee has undertaken, and the success or likely success of such actions.

25. Corrective and Remedial Actions. To ensure compliance with the

requirements of the Appropriations Act and to effectively administer the CDBG–NDR program in a manner that facilitates recovery, particularly the alternative requirements permitting States to act directly to carry out eligible activities, HUD is waiving 42 U.S.C. 5304(e) of the HCD Act to the extent necessary to impose the following alternative requirement: HUD may undertake corrective and remedial actions for States in accordance with the authorities applicable to entitlement Grantees in subpart O (including corrective and remedial actions in 24 CFR 570.910, 570.911, and 570.913) or under subpart I of the CDBG regulations at 24 CFR part 570. Before determining appropriate corrective actions, HUD will notify the Grantee of the procedures applicable to its review. As in the annual CDBG program, in accordance with 24 CFR 570.300, the policies and procedures set forth in subpart O apply to local governments receiving direct grants from HUD.

26. Reduction, Withdrawal, or Adjustment of a Grant or Other Appropriate Action. Prior to a reduction, withdrawal, or adjustment of a grant, or other appropriate action, taken pursuant to this notice, the Grantee shall be notified of such proposed action and given an opportunity within a prescribed time period for an informal consultation. Consistent with the procedures described in this notice, the Secretary may adjust, reduce or withdraw the grant, or take other actions, as appropriate, except that funds already expended on eligible approved activities shall not be recaptured.

*B. Common Eligibility Waivers and Alternative Requirements and Other Provisions: Housing, Floodplain Issues, Infrastructure, Economic Revitalization*

1. Housing-Related Eligibility Waivers. The broadening of 42 U.S.C. 5305(a)(24) is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case of the disasters eligible under this notice. Thus, 42 U.S.C. 5305(a) is waived to the extent necessary to allow: Homeownership assistance for households with up to 120 percent of the area median income, down payment assistance for up to 100 percent of the down payment (an increase from the limit in 42 U.S.C. 5305(a)(24)(D)), and new housing construction. While homeownership assistance may be provided to households with up to 120 percent of the area median income, only those funds used to serve households with up to 80 percent of the area median income may qualify as meeting the low- and moderate-income person benefit national objective.

2. Housing incentives. Incentive payments are generally offered in addition to other programs or funding (such as insurance), to encourage households to relocate in a suitable housing development or an area promoted by the community's comprehensive recovery plan. For example, a Grantee may offer an incentive payment (possibly in addition to a buyout payment) for households that volunteer to relocate outside of a floodplain or to a lower-risk area. Therefore, 42 U.S.C. 5305(a) and associated regulations are waived to the extent necessary to allow the provision of housing incentives. Grantees providing housing incentives must maintain documentation, at least at a programmatic level, describing how the amount of assistance was determined to be necessary and reasonable. Incentives to relocate individuals outside of a floodplain, when combined with acquisition that would lead to redevelopment in the floodplain, is not permissible if it does not increase Resilience. When assessing compliance under this alternative requirement, HUD will look closely at how those activities that include housing incentives are necessary and reasonable, are consistent with the BCA submitted with the application, and increase Resilience. In addition, the incentives must be in accordance with the Grantee's Action Plan and any other program policies. Note that this waiver does not permit a compensation program. Additionally, a Grantee may require the incentive to be used for a particular purpose by the household receiving the assistance.

3. Limitation on Emergency Grant Payments Interim Mortgage Assistance. 42 U.S.C. 5305(a)(8) is modified to extend interim mortgage assistance to qualified individuals from 3 months, for up to 20 months. Interim mortgage assistance is typically used in conjunction with a buyout program, or the rehabilitation or reconstruction of single-family housing, during which mortgage payments may be due but the home is uninhabitable. The time required for a household to complete the rebuilding process may often extend beyond 3 months. Thus, interim assistance is critical for many households facing financial hardship during this period. A Grantee using this alternative requirement must document, in its policies and procedures, how it will determine the amount of assistance to be provided is necessary and reasonable.

4. Acquisition of Real Property and Flood Buyouts. Grantees under this notice and the NOFA are able to carry out property acquisition for a variety of purposes. However, the term ''buyouts,'' as referenced in this notice refers, to acquisition of properties located in a floodway or floodplain that is intended to reduce risk from future flooding. HUD is providing alternative requirements for consistency with the application of other Federal resources commonly used for this type of activity.

a. Buyout Requirements.

(1) Any property acquired, accepted, or from which a structure will be removed pursuant to the Project will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices.

(2) No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than (a) a public facility that is open on all sides and functionally related to a designated open space (*e.g.,* a park, campground, or outdoor recreation area), (b) a rest room, (c) a flood control structure, or (d) a structure that the local floodplain manager approves in writing before the commencement of the construction of the structure.

(3) After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance, for any purpose, will be made by the recipient to any Federal entity in perpetuity.

(4) Grantees have the discretion to determine an appropriate valuation method (including the use of pre-flood value or post-flood value as a basis for property value). However, in using CDBG–NDR funds for buyouts, the Grantee must uniformly apply whichever valuation method it chooses.

(5) All buyout activities must be classified using the ''buyout'' activity type in the DRGR system.

(6) Any State Grantee implementing a buyout program or activity must consult with affected local governments.

b. Redevelopment of Acquired Properties.

(1) Properties purchased through a buyout program may not typically be redeveloped, with a few exceptions. See subparagraph a.(2), above.

(2) Grantees may redevelop an acquired property if: (a) The property is not acquired through a buyout program, and (b) the purchase price is based on the property's post-flood fair market

value (the pre-flood value may not be used). In addition to the purchase price, Grantees may opt to provide relocation assistance to the owner of a property that will be redeveloped if the property is purchased by the Grantee or subgrantee through voluntary acquisition, and the owner's need for additional assistance is documented.

(3) In carrying out acquisition activities, the Grantee must ensure compliance with its long-term redevelopment plans.

5. Alternative Requirement for Housing Rehabilitation—Assistance for Second Homes. The Department is instituting an alternative requirement to the rehabilitation provisions at 42 U.S.C. 5305(a) as follows: A ''second home'', as defined in IRS Publication 936 (Home Mortgage Interest Deductions), is not eligible for rehabilitation assistance, residential incentives, or to participate in a CDBG–NDR buyout program (as defined by this notice).

6. Floodplains and Flood Insurance. Grantees, recipients, and subrecipients must implement procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, including the purchase and notification requirements described below, prior to providing assistance. For additional information, please consult with the Field Environmental Officer in the local HUD Field Office, or review the guidance on flood insurance requirements on HUD's Web site. Additional requirements for flood insurance, future Federal disaster assistance, and flood control structures are included below.

a. Flood Insurance Purchase Requirements. HUD does not prohibit the use of CDBG–NDR funds for existing residential buildings in a Special Flood Hazard Area (SFHA) (or ''100-year'' floodplain). However, Federal laws and regulations related to both flood insurance and floodplain management must be followed, as applicable. With respect to flood insurance, a HUD-assisted homeowner for a property located in an SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD-assisted property within an SFHA.

b. Future Federal Assistance to Owners Remaining in a Floodplain.

(1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person, at any time, has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance under applicable Federal law and the person has, subsequently, failed to obtain and maintain flood insurance, as required under applicable Federal law, on such property. This means that a Grantee may not provide disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a Grantee that receives CDBG–NDR funds or that designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in subparagraph (5), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(a) Obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(b) Maintain flood insurance in accordance with applicable Federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(a) The transferee fails to obtain or maintain flood insurance, in accordance with applicable Federal law, with respect to the property;

(b) The property is damaged by a flood disaster; and

(c) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage, the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(5) The notification requirements apply to personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(6) The term ''Federal disaster relief assistance'' applies to HUD or other Federal assistance for disaster relief in ''flood disaster areas.'' The term ''flood disaster area'' is defined in section 582(d)(2) of the National Flood Insurance Reform Act of 1994, as amended, to include an area receiving a Presidential declaration of a major disaster or emergency as a result of flood conditions.

c. Floodplain Management. HUD CDBG–NDR grants must conform to Executive Orders 11988, on Floodplain Management, and 11990, on Wetlands, as well as HUD's regulations at 24 CFR parts 55 and 58, which may include identifying alternate locations, and, as necessary, modifying the Project.

d. Federally Funded Levees, Floodwalls, and Other Flood Control Structures. The requirements in this section apply to new structures and improvements to existing structures.

(1) Operation and Maintenance. HUD expects the Grantee or one of its Partners to take responsibility for operating and maintaining any levee, floodwall, or other flood control structure.

(2) Purpose. One function of such a structure must be for the purpose of providing flood protection for existing structures at risk of flooding, although the CDBG–NDR Project incorporating such a structure must also meet an Unmet Recovery Need and may include co-benefits that meet other community development objectives, but must not be created to reduce flooding to currently undeveloped land.

(3) Special Requirements for Levees. A levee or levee system (new or existing) proposed under this NOFA must be technically sound (*i.e.,* levee is tied off to high ground, is geotechnically stable, etc.), well maintained, and provide reliable flood protection. Any levee Project carried out as a CDBG–NDR activity must meet FEMA accreditation standards upon completion and the Sources and Uses statement must identify, and the

Leverage response commit to providing a source of funding for operations and maintenance of the levee in perpetuity.

If HUD provides funding for such a structure under this notice, the grant terms and conditions will require the Grantee to upload into the DRGR system (and, if directed by HUD, the National Levee Database) shape files or other geographic information system data delineating the exact location of the assisted structure and of the area served and protected by the structure (meaning the area subject to inundation to any depth in the event of a levee breach at any location), and to provide additional data for input to the National Levee Database, including the status of the levee under the U.S. Army Corps of Engineers Public Law 84–99 Program (Levee Rehabilitation and Improvement Program), accreditation status under the National Flood Insurance Program; levee owner/operator, and public party that is legally responsible for the maintenance of the levee; number of all structures, and of people that reside, in the leveed area; critical structures and facilities in the leveed area, as-built plans sealed by a licensed professional engineer; levee cross-section plots and coordinates; levee features (*i.e.,* gravity drains, pump stations relief wells, boreholes, etc.); levee design flow; levee design frequency; level of freeboard being no less than 3 vertical feet; and points of contact for public safety/emergency management and repository for the Levee Emergency Action Plan, levee operations and maintenance, and flood risk/floodplain management plan for the levee.

Information provided to HUD for submission to the National Levee Database (or to the database, as directed by HUD) is to be updated on an annual basis or any time that there is a change in the status of the levee, including updates to the inspection date, inspection type, and inspection rating of the levee. This information will be shared with FEMA, the U.S. Army Corps of Engineers, members of the House and Senate appropriations committees, and any other interested Federal agencies and affected parties, as appropriate. This information is intended to be used to ensure that no additional Federal resources are used for operations and maintenance of the structure in the future.

(4) Public Notification. In addition, because occupants in the floodplain behind flood control structures are at risk when the levee or other structure is overtopped or fails, the grant terms and conditions governing HUD funding for any levee, floodwall, or other flood control structure will require the Grantee to provide, to all property owners, businesses, and residents in the leveed area, notification of the presence, condition, and level of protection of the levee, on no less than an annual basis. This notification must include messages regarding public safety information and evacuation procedures, promotion of flood insurance, family and business evacuation planning, and point of contact for reports of any problems, questions, and additional information related to the structure.

7. Use of CDBG–NDR as Match and Order of Assistance Between FEMA, U.S. Army Corps of Engineers, and CDBG–NDR. As provided by the HCD Act, funds may be used as a matching requirement, share, or contribution for any other Federal program when used to carry out an eligible CDBG–NDR activity. This includes programs or activities administered by FEMA or the U.S. Army Corps of Engineers. By law, the amount of CDBG–NDR funds that may be contributed to a U.S. Army Corps of Engineers Project is $250,000 or less. However, the Appropriations Act prohibits use of funds for any activity reimbursable by, or for which funds are made available by, FEMA or the U.S. Army Corps of Engineers.

8. National Objective Documentation for Economic Development Activities. Sections 570.483(b)(4)(i) and 570.208(a)(4)(i) of 24 CFR are waived to allow the Grantees under this notice to identify low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. This method replaces the standard CDBG requirement in which Grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (*i.e.,* number of persons). Thus, it streamlines the documentation process by allowing the collection of wage data from the assisted business for each position created or retained, rather than from each individual household.

This alternative requirement has been granted on several prior occasions to CDBG disaster recovery Grantees, and to date, those grants have not exhibited any issues of concern in calculating the benefit to low- and moderate-income persons. The Department has determined that, in the context of disaster recovery, this waiver is consistent with the HCD Act.

9. Public Benefit for Certain Economic Development Activities. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which goods or services are provided by the activity. These dollar thresholds can impede recovery by limiting the amount of assistance the Grantee may provide to a critical activity.

This notice waives the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4) for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure Projects). However, Grantees shall report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD is also waiving 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

10. Clarifying note on Section 3 Resident Eligibility and Documentation Requirements. The definition of ''low-income persons'' in 12 U.S.C. 1701u and 24 CFR 135.5, is the basis for eligibility as a Section 3 resident. This notice authorizes Grantees to determine that an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

11. Waiver and Modification of the Job Relocation Clause to Permit Assistance to Help a Business Return. Traditional CDBG requirements prevent program participants from providing assistance to a business to relocate from one labor market area to another, if the relocation is likely to result in a significant loss of jobs in the labor market from which the business moved.

This prohibition can be a critical barrier to reestablishing and rebuilding a displaced employment base after a major disaster. Therefore, 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h) are waived to allow a Grantee to provide assistance to any eligible business that was operating in the disaster-declared labor market area before the incident date of the applicable disaster and has since

moved, in whole or in part, from the affected area to another State or to a labor market area within the same State to continue business. 12. Alternative Requirement for Assistance to Businesses, Including Privately-Owned Utilities. The Department is instituting an alternative requirement to the provisions at 42 U.S.C. 5305(a) as follows: When CDBG–NDR Grantees provide funds to for-profit businesses, such funds may only be provided to a small business, as defined by the SBA under 13 CFR part 121. CDBG–NDR funds may not be used to directly assist a privately owned utility for any purpose. Note that a private utility may be a Partner to the Applicant for purposes of implementing a CDBG–NDR program.

*C. Certifications and Collection of Information*

1. Certifications Waiver and Alternative Requirement. Sections 91.325 and 91.225 of title 24 of the Code of Federal Regulations are waived, and as an alternative requirement, each State or local government that applied for an award under the NOFA are held to the certifications required by Appendix F to the NOFA and submitted with its Phase 1 and its Phase 2 applications as a requirement for funding.

a. As required by the NOFA, an Applicant signing the SF–424 cover page, either through electronic submission or in paper copy submission (for those Applicants granted a waiver to submit in paper), affirms that the certifications and assurances associated with the Application are material representations of the facts upon which the Department will rely when making an award to the Applicant. If it is later determined that the signatory to the application submission knowingly made a false certification or assurance or did not have the authority to make a legally binding commitment for the Applicant, the Applicant may be subject to criminal prosecution, and the Department may terminate the award to the Applicant organization or pursue other available remedies.

b. Affirmatively Furthering Fair Housing Certification. All activities under this notice shall be carried out in a manner that affirmatively furthers fair housing, as required by section 808(e)(5) of the Fair Housing Act, as amended (42 U.S.C. 3608(e)(5)). Each Applicant made the required certification for CDBG–NDR activities included in Appendix F of the NOFA.

Grantees shall adhere to the certifications included in Appendix F of the NOFA and 24 CFR 570.601, and take appropriate actions to support and document compliance with the certification.

2. Information Collection Approval Note. The information collection requirements contained in this document were approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number [Paperwork Reduction Act Number 2506–0203]. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The public reporting burden for the collection of information following the award of funds is estimated to average 56.2 hours per annum, per respondent, for grant set-up and administration. This includes the time for executing the grant agreement, establishing the grant within the DRGR system, voucher submissions, and quarterly reports. The information will be used for monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Section 4: Duration of Funding

CDBG–NDR funds are subject to 31 U.S.C. 1552(a), and, therefore, are to remain available for expenditure for 5 years following the period of availability for obligation. All funds under the Appropriations Act must be expended by September 30, 2022. In addition, the Appropriations Act requires that HUD obligate all CDBG–NDR funds by September 30, 2017. The Appropriations Act (Section 904(c) of title IX in division A) also requires that all funds be expended within 2 years of the date HUD obligates funds. For more information, including information on extensions, see section 3.II of this notice.

Section 5: Catalog of Federal Domestic Assistance

The primary Catalog of Federal Domestic Assistance (CFDA) number for the disaster recovery grants under this notice is 14.272. Additional supporting CFDAs are 14.218 and 14.228.

Section 6: Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made on the NDRC NOFA, in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to the NDRC and this notice. It is available for public inspection between 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Dated: June 1, 2016.

**Nani A. Coloretti,**

*Deputy Secretary.*

[FR Doc. 2016–13430 Filed 6–6–16; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5913–N–12]**

## 60-Day Notice of Proposed Information Collection: Pay for Success Pilot Application Requirements

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment. The Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units (Pay for Success Pilot) authorizes HUD to establish a competitive process for selecting one or more qualified intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program. These retrofits are authorized at properties participating in the project-based rental assistance (PBRA) program under section 8 of the United States Housing Act of 1937; supportive housing for the elderly program operating under section 202 of the Housing Act of 1959; and supportive housing for persons with disabilities under section 811(d)(2) of the Cranston-Gonzalez National

Affordable Housing Act. The documents that are the subject of this notice are those used by applicants applying to participate in this program.

**DATES:** *Comments Due Date:* August 8, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Mark Kudlowitz, Director, Program Administration Office, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email at *Mark.A.Kudlowitz@hud.gov* or telephone (202) 402–3372. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

## I. Evaluation of Proposed Information Collection

HUD will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected parties concerning the collection of proposed information on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

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

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

## II. Description of Proposed Information Collection

*Title of Information Collection:* Budget-Neutral Demonstration Program for Energy and Water Conservation Improvements at Multifamily Housing Residential Units (Pay for Success Pilot).

*Description of the need for the information and proposed use:* The Pay for Success (PFS) Pilot authorizes HUD to establish a competitive process for selecting one or more qualified intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program at select assisted multifamily housing properties. Participation in the program is voluntary. Participating applicants are required to submit application information for the purpose of putting together a proposal for evaluation. Through this application information, HUD evaluates whether applicants have met all of the requirements necessary to apply and be selected to participate in the PFS Pilot.

*OMB Approval Number:* N/A.

*Type of Request:* New information collection request.

*Form Number:* N/A.

*Respondents (i.e. affected public):* Businesses or other for-profits, nonprofit organizations, and State, Local, or Tribal Government entities.

*Estimated Number of Respondents:* 15.

*Estimated Number of Responses:* 15.

*Frequency of Response:* Once.

*Average Hours per Response:* 20.

*Total Estimated Burden:* 300 hours.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 1, 2016.

**Janet M. Golrick,**

*Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.*

[FR Doc. 2016–13427 Filed 6–6–16; 8:45 am]

BILLING CODE 4210–67–P

# DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R1–ES–2016–N090; FXES11130100000–167–FF01E00000]**

## Endangered Species; Recovery Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a recovery permit to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

**DATES:** To ensure consideration, please send your written comments by July 7, 2016.

**ADDRESSES:** Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Colleen Henson, Fish and Wildlife Biologist, at the above address, or by telephone (503–231–6131) or fax (503–231–6243).

**SUPPLEMENTARY INFORMATION:**

## Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife

species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

### Application Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following application. Please refer to the permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Program Manager for Restoration and Endangered Species Classification at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552).

**Permit Number: TE–054395**

*Applicant: Bureau of Land Management, Medford, Oregon.*

The applicant requests a permit renewal to remove and reduce to possession from Federal lands *Fritillaria gentneri* (Gentner's fritillary) and *Lomatium cookii* (Cook's lomatium) in conjunction with recovery efforts in Jackson and Josephine Counties, Oregon and Siskiyou County, California for the purpose of enhancing the species' survival.

### Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: May 27, 2016.

**Theresa E Rabot,**

*Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–13370 Filed 6–6–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLIDC000000.16XL1109AF.L11200000 .MR0000.241A.00; 4500093609]**

### Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council, Idaho

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The Coeur d'Alene District RAC will meet July 7, 2016, at the Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, ID 83815. The meeting will begin at 9:00 a.m. and end no later than 4:00 p.m. The public comment period will take place from 1:00 p.m. until 1:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Endsley, Coeur d'Alene District, Idaho, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815, (208) 769–5004.

**SUPPLEMENTARY INFORMATION:** The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The meeting agenda will include updates from the Cottonwood and Coeur d'Alene Field Offices; presentations on hazardous fuels reduction and forestry projects; overviews of improvements planned at various recreation sites and general district project information. Additional agenda topics or changes to the agenda will be announced in local press releases. More information is available at *http://www.blm.gov/id/st/en/get_involved/resource_advisory/coeur_d_alene_district.htmlRAC* meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided below.

**FOR FURTHER INFORMATION CONTACT:** Suzanne Endsley, RAC Coordinator, Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, ID 83815. Telephone: (208) 769–5004. Email: *sendsley@blm.gov.*

**Authority:** 43 CFR 1784.4–1.

Dated: May 26, 2016.

**Linda Clark,**

*BLM Coeur d'Alene District Manager.*

[FR Doc. 2016–13371 Filed 6–6–16; 8:45 am]

**BILLING CODE 4310–GG–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–953]**

### Certain Wireless Standard Compliant Electronic Devices, Including Communication Devices and Tablet Computers, Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation on the Basis of Settlement; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 48) granting the joint motion of complainants Ericsson Inc. of Plano, Texas, and Telefonaktiebolaget LM Ericsson of Stockholm, Sweden (collectively, ''Ericsson'') and respondent Apple Inc. of Cupertino, California (''Apple'') to terminate the above-referenced investigation on the basis of a settlement agreement. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://*

*edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 3, 2015, based on a complaint filed by Ericsson. 80 FR 18255–56 (Apr. 3, 2015). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless standard compliant electronic devices, including communication devices and tablet computers by reason of infringement of certain claims of U.S. Patent Nos. 8,717,996; 8,660,270; 6,058,359; 6,301,556; 8,102,805; 8,607,130; 8,837,381; and 8,331,476. The complaint further alleges the existence of a domestic industry. The Commission's Notice of Investigation names Apple as respondent. The Office of Unfair Import Investigations was also named as a party.

On January 19, 2016, Ericsson and Apple filed a second amended joint motion (''joint motion'') to terminate the Investigation on the basis of a settlement agreement. On January 22, 2016, the ALJ issued show cause Order No. 44, identifying several deficiencies with the motion. On January 29, 2016, Ericsson and Apple responded to Order No. 44 and filed a copy of their settlement agreement on January 29, 2016. Also on January 29, 2016, the Commission investigative attorney (''IA'') filed a response to the joint motion, supporting the motion to terminate with certain reservations regarding the filing of the settlement agreement and the redacted settlement agreement. On February 3, 2016, Ericsson and Apple filed a reply brief, addressing certain issues in the IA's response. Proceedings to resolve issues surrounding the scope of the redactions followed and the complaint agreement was filed.

On May 5, 2016, the ALJ issued the subject ID, granting the joint motion for termination of the investigation. The ALJ found that the joint motion complied with the requirements of Commission Rule 210.21(b)(1) and that granting the motion would not be contrary to the public interest. No petitions for review of the subject ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 1, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–13350 Filed 6–6–16; 8:45 am]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0005]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Application and Permit for Importation of Firearms, Ammunition, and Implements of War, ATF F 6 (5330.3A) Part I

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree M. Dickinson IOI/Industry Liaison, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405, at email: *desiree.dickinson@atf.gov.* 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 20503 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection* (check justification or form 83–I): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition, and Implements of War.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF F 6 (5330.3A) Part I Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

*Other (if applicable):* Individuals or households, Federal Government, State, Local or Tribal Government.

*Abstract:* The application and subsequent permit are used to bring firearms, ammunition and defense articles into the United States.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 10,000 respondents will take 30 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 6,500 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., Room 3E–405B, Washington, DC 20530.

Dated: June 1, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–13305 Filed 6–6–16; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

**[OMB Number 1140–0055]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Identification of Explosive Materials

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until August 8, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Anita Scheddel, Program Analyst, Explosives Industry Programs Branch, 99 New York Ave. NE., Washington, DC 20226 at email: *eipb-informationcollection@atf.gov.* 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 20503 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;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection* (check justification or form 83–I): Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Identification of Explosive Materials.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): None.

Abstract: Marking of explosives enables law enforcement entities to more effectively trace explosives from the manufacturer through the distribution chain to the end purchaser. This process is used as a tool in criminal enforcement activities.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,205 respondents will take 3 seconds to respond.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 956 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., Room 3E–405B, Washington, DC 20530.

Dated: June 1, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–13349 Filed 6–6–16; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Modification to Consent Decree Under the Clean Water Act

On June 1, 2016, the United States Department of Justice filed, on behalf of the Environmental Protection Agency, a proposed Modification to the 2002 Consent Decree in *United States and the State of Maryland* v. *Mayor and the City Council of Baltimore, Maryland,* Civil Action No. 1:02–CV–01524–JFM, with the United States District Court for the District of Maryland (''proposed Modified Consent Decree.'')

On September 30, 2002, the Court entered the 2002 Consent Decree between the parties resolving Plaintiffs' claims that the City of Baltimore violated the Clean Water Act (the ''CWA''), 33 U.S.C. 1319(b) and (d), resulting from Baltimore's operation of its sewer system and wastewater control plant. Under the 2002 Consent Decree, Baltimore was required to eliminate any remaining combined sewers in the collections system, eliminate structures for sanitary sewer overflows (SSO), conduct thorough evaluations of the City's eight sewersheds, propose rehabilitation measures for each sewershed and implement such measures after approval. The 2002 Consent Decree provides for implementation completion by January 2016.

Baltimore did not meet the January 2016 deadline for all of the rehabilitation measures. This proposed Modified Consent Decree allows Baltimore more time to conduct the SSO work using a two-phased approach. Under the proposed Modified Consent Decree, the Phase I work is required to be completed by January 2021, and then Baltimore is required to submit a Phase II Plan for EPA approval by December 2022. The Phase II Plan must propose a schedule for work to be completed no later than December 2030. After the Phase II work Baltimore will conduct two years of post-implementation monitoring. If after the Phase II work is complete the Plaintiffs determine that additional work is necessary, they can require Baltimore to undertake additional remedial measures.

The publication of this notice opens a period for public comment on the

proposed Modified Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, *United States and State of Maryland* v. *Mayor and the City Council of Baltimore, Maryland,* Civil Action No. 1:02–CV–01524–JFM., D.J. Ref. No. DJ # 90–5–1–1–4402/1. All comments must be submitted no later than sixty (60) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611. |

During the public comment period, the proposed Modified Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Modified Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2016–13330 Filed 6–6–16; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act, Clean Water Act, and Emergency Planning and Community Right-To-Know Act

On June 1, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Rhode Island in the lawsuit entitled *United States* v. *Newport Biodiesel, Inc.,* Civil Action No. 1:16–cv–00242.

The United States filed this lawsuit under the Clean Air Act, the Clean Water Act, and the Emergency Planning and Community Right-to-Know Act. The United States' complaint seeks injunctive relief and civil penalties for alleged violations at Newport Biodiesel, Inc.'s biodiesel manufacturing facility in Newport, Rhode Island. Alleged violations include Newport Biodiesel Inc.'s failure to comply with regulations that govern emissions of hazardous air pollutants (specifically methanol); failure to design and maintain a safe facility and take steps to prevent accidental releases; failure to prepare and implement a spill prevention control and countermeasure plan; and failure to file chemical inventory forms. The consent decree requires the defendant to perform injunctive relief and pay a $396,000 civil penalty.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Newport Biodiesel, Inc.,* D.J. Ref. No. 90–5–2–1–11301. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

| *To submit comments:* | *Send them to:* |
|---|---|
| By email ..... | *pubcomment-ees.enrd@usdoj.gov.* |
| By mail ..... | Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611. |

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert E. Maher Jr.,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2016–13327 Filed 6–6–16; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 29, 2016 through May 20, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially

separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(e) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,066 | Guardian Industries Corp., Floreffe Facility, Aerotek Staffing, Allegiance, Express Employment. | Jefferson Hills, PA | January 1, 2014. |
| 90,081 | Johnson Crushers International, Inc., Astec Industries, Inc., Staffing Partners. | Eugene, OR | January 1, 2014. |
| 90,249 | Atlas Tube, JMC Steel Group | Blytheville, AR | January 1, 2014. |
| 90,302 | Interfor, Inc., Interfor Corporation, Gliss General Labor & Industry | Molalla, OR | January 1, 2014. |
| 91,136 | FiberMark North America, Inc., Crocker Technical Papers, Neenah Paper, Inc. | Fitchburg, MA | November 13, 2014. |
| 91,176 | Tronox Worldwide LLC | Hamilton, MS | November 19, 2014. |
| 91,353 | Chemours Chemical Company, Titanium Technologies, The Chemours Company, KBR, KBR Design, etc. | Edge Moor, DE | January 18, 2015. |
| 91,460 | Cascade Steel Rolling Mills, Inc., Schnitzer Steel Industries, Inc., Express Employment Professionals. | McMinnville, OR | February 11, 2015. |
| 91,496 | Rough and Ready Lumber LLC | Cave Junction, OR | June 1, 2015. |
| 91,510 | ArcelorMittal Plate LLC, Conshohocken Division, ArcelorMittal USA LLC, Adecco, BSI, etc. | Conshohocken, PA | February 4, 2015. |
| 91,532 | Ingersoll Rand, Compression Technologies and Services, Strom Engineering, etc. | Cheektowaga, NY | March 1, 2015. |
| 91,672 | Connor Manufacturing Services, Inc., Express Employment Professionals and Cody Staffing. | Fairview, OR | April 6, 2015. |

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 85,373 | GE Industrial Solutions Service Engineering Organization | Plainville, CT | June 11, 2013. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,001 | Midland Credit Management, San Diego Call Center, Encore Capital Group. | San Diego, CA | January 1, 2014. |
| 90,153 | Ericsson, Inc., Service Assurance, Apeiron, Apex Systems, The Ash Group, etc. | Overland Park, KS | January 1, 2014. |
| 90,153A | Ericsson, Inc., Fulfillment & Provisioning, Apeiron, Apex Systems, The Ash Group, etc. | Overland Park, KS | January 1, 2014. |
| 90,153B | Ericsson, Inc., Processes, Systems, Tools & Methods (PST&M), Apeiron, Apex Systems, etc. | Overland Park, KS | January 1, 2014. |
| 90,182 | Convergys Corporation | Wichita, KS | January 1, 2014. |
| 91,069 | SuperValu, Inc., Finance Shared Service Division | Boise, ID | October 22, 2014. |
| 91,123 | 3M Brookville, Abrasives Division, 3M, Volt | Brookville, OH | November 5, 2014. |
| 91,133 | Verizon Corporate Resources Group, LLC, Order Management | San Antonio, TX | November 11, 2014. |
| 91,133A | Verizon Business Networks Services, Inc., Senior Analyst-Order Management, Voice Over Internet Protocol, etc. | San Antonio, TX | January 19, 2015. |
| 91,135 | ShopKo Stores Operating Co., LLC, Merchandise Support and Supply Chain Departments, SKO Group, etc. | Green Bay, WI | November 12, 2014. |
| 91,139 | Leggett & Platt Springs Manufacturing, LLC, Leggett & Platt, Inc., Aerotek. | Colorado Springs, CO | November 13, 2014. |
| 91,149 | Time Customer Service, Inc., Information Technology Department, Time, Inc. | Tampa, FL | November 17, 2014. |
| 91,186 | Daikin Applied Americas, Inc., Commercial HVAC Equipment Manufacturer Div., ISSI Technology Professionals. | Auburn, NY | December 28, 2015. |
| 91,223 | Maquet Cardiovascular, Vascular Interventions Division, Paramount Staffing. | Wayne, NJ | December 14, 2014. |
| 91,246 | Carlisle Industrial Brake & Friction, Carlisle Brake and Friction, Adecco and Employment Plus. | Bloomington, IN | December 1, 2014. |
| 91,247 | ESCO Corporation, Madden Industrial Craftsmen, Inc. and Aerotek Staffing. | Portland, OR | December 16, 2014. |
| 91,261 | New York Life Insurance Company, Technology and Finance, Asset Staffing, Collabera, Custom Staffing, etc. | Sleepy Hollow, NY | December 11, 2014. |
| 91,282 | ALM Media LLC, National Underwriter Company, Finance, Customer Service, etc. | Erlanger, KY | July 24, 2015. |
| 91,286 | Zodiac Pool Systems, Inc., Aerotek | Vista, CA | January 5, 2015. |
| 91,309 | Quadion LLC, Quadion Holdings LLC | Watertown, SD | January 16, 2016. |
| 91,309A | Quadion LLC, Quadion Holdings LLC, Celarity | Plymouth, MN | January 7, 2015. |
| 91,323 | Leggett & Platt Spring Manufacturing, LLC, Leggett & Platt, Inc | Delano, PA | January 8, 2015. |
| 91,340 | Newmont Mining Corporation, IT, Supply Chain, Human Resources, and Financial Services, etc. | Greenwood Village, CO | January 12, 2015. |
| 91,350 | TE Connectivity, Aerospace, Defense and Marine Division | Mount Joy, PA | January 14, 2015. |
| 91,378 | Alcoa, Inc., Global Primary Products Division, CCC Group Inc., Feguson Enterprises, etc. | Point Comfort, TX | January 25, 2015. |
| 91,383 | MSSL Wiring System, Inc., Stoneridge, Inc., Motherson | Warren, OH | February 5, 2015. |
| 91,383A | Adecco Staffing, MSSL Wiring System, Inc., Stoneridge, Inc., Motherson. | Warren, OH | January 22, 2015. |
| 91,389 | Cambia Health Solutions, Claims Processing and Sales Department. | Medford, OR | January 26, 2015. |
| 91,389A | Virtual Communication, Cambia Health Solutions, Claims Processing and Sales Department. | Medford, OR | January 26, 2015. |
| 91,396 | Southern Graphic Systems LLC, SGS—Battle Creek Division | Battle Creek, MI | January 27, 2015. |
| 91,471 | Flowserve Corporation, Adecco Staffing | Dayton, OH | February 16, 2015. |
| 91,494 | Thorco Industries LLC, Marmon Group/Berkshire Hathaway, Penmac Staffing Services. | Lamar, MO | February 19, 2015. |
| 91,499 | Saginaw Machine Systems, Inc., SMS Holding Co. Inc., RPM Industrial, Ray Beebe, ITH Staffing, etc. | Saginaw, MI | February 22, 2015. |
| 91,531 | Royal Appliance Manufacturing Company, TTI Floor Care N.A | North Canton, OH | March 1, 2015. |
| 91,544 | BKFS I Services, LLC, Data & Analytics, Black Knight Financial Services, Appleone Employment, etc. | Glendale, CA | March 3, 2015. |
| 91,570 | EigenLight Corporation, Neophotonics Corporation, Adecco | Somersworth, NH | February 25, 2015. |
| 91,576 | URS Corporation, A Nevada Corporation, IPREP Group, Aecom, Accountemps. | Austin, TX | March 10, 2015. |
| 91,578 | QBE Americas, Inc., QBE Holdings, Inc | Eden Prairie, MN | March 10, 2015. |
| 91,580 | The Bank of New York Mellon, The Bank of New York Mellon Corporation, Information Technology, etc. | Syracuse, NY | March 5, 2015. |
| 91,592 | Hewlett Packard Enterprise, ES Applications Delivery Management Services Division. | North Quincy, MA | March 14, 2015. |
| 91,605 | StatCorp Medical, Spacelabs Healthcare, OSI Systems, Inc., Adecco, Trueblue, etc. | Jacksonville, FL | March 17, 2015. |
| 91,609 | Kim Lighting, Hubbell Lighting, Inc., Select Staffing | City of Industry, CA | March 18, 2015. |
| 91,614 | Littelfuse, Inc., ABU/CVP Division, Robert Half Technology | Boston, MA | March 21, 2015. |
| 91,633 | Maersk Agency USA, Inc., Marine Operations Division | Charlotte, NC | March 25, 2015. |
| 91,650 | LCC International, Inc., TechMahindra | Overlook Park, KS | March 31, 2015. |
| 91,651 | DME Co., LLC, Milacron, LLC, Accounts Payable Division | Madison Heights, MI | March 31, 2015. |
| 91,654 | WKW Roof Rail Systems, LLC, WKW-Erbsloeh Automotive, Inc., Aeroteck, Manpower. | Battle Creek, MI | March 31, 2015. |

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 91,657 | Hewlett Packard Enterprise, ES ITO Midrange Delivery | Tulsa, OK | April 1, 2015. |
| 91,667 | Standard Motor Products, Inc., Temperature Control Division, Regal Temporary Services, Inc., etc. | Grapevine, TX | April 5, 2015. |
| 91,671 | DB Schenker, AXO Temporary Staffing, Select Staffing | El Paso, TX | April 6, 2015. |
| 91,674 | Xerox HR Solutions, LLP, Human Capital Services Division, Xerox Business Services, LLC. | Cherry Hill, NJ | April 6, 2015. |
| 91,675 | Toys″R″Us—Delaware, Inc., Ajilon Finance, Amerit Consulting, Inc., Creative Circle, LLC, etc. | Wayne, NJ | April 6, 2015. |
| 91,676 | Talentwise, A SterlingBackcheck Company, MRI Network Contract Staffing, etc. | Winchester, VA | April 6, 2015. |
| 91,680 | Ketchum, Inc., Omnicom Group, Inc., Finance Department | Pittsburgh, PA | April 8, 2015. |
| 91,682 | Recreational Equipment Inc. (REI), IT Operations Services, Apex Systems. | Kent, WA | April 9, 2015. |
| 91,684 | Abbott Laboratories, Global Information Services Division, Apex Systems, Inc, etc. | Abbott Park, IL | April 11, 2015. |
| 91,685 | Sulzer Pumps (US), Inc., Pumps Equipment, Staffing Partners, Opti Staffing, etc. | Portland, OR | April 11, 2015. |
| 91,693 | Hudson Clothing, LLC, DBG Corporation, Warehouse Division | Commerce, CA | April 12, 2015. |
| 91,694 | Transtector Systems, Smiths Microwave Telecoms Division, Humanix and Express Employment, etc. | Hayden, ID | April 12, 2015. |
| 91,697 | Oracle America, Inc., Oracle Corporation, J.D. Edwards Development Division. | Denver, CO | April 13, 2015. |
| 91,703 | Polar Tank Trailer, American Industrial Partners | Springfield, MO | April 13, 2015. |
| 91,708 | Cambridge Metals & Plastics, Water Works Manufacturing, Aerotek, Avenue Staffing, etc. | Cambridge, MN | April 14, 2015. |
| 91,720 | Caterpillar Track Components, Industrial Solutions, Components and Distribution (ISCD), Necso, etc. | Danville, KY | February 15, 2015. |
| 91,722 | Labinal, LLC, Safran USA, Inc., Aerotek | Everett, WA | April 20, 2015. |
| 91,729 | ACI Worldwide Corporation, ACI Worldwide, Inc., KBACE, Tallgrass Technologies, Ernst & Young, etc. | Elkhorn, NE | April 22, 2015. |
| 91,730 | Assembled Products, Inc., Jason Incorporated, Accurate Personnel Services, Quality Labor, etc. | Buffalo Grove, IL | April 22, 2015. |
| 91,737 | Alex Apparel Group Inc., Pay2Staff LLC | New York, NY | April 25, 2015. |
| 91,739 | The L.S. Starrett Company, Workforce Unlimited | Mount Airy, NC | April 22, 2015. |
| 91,781 | Magnetics Division of Spang & Company, Magnetics Division, Spang & Company. | East Butler, PA | January 15, 2016. |
| 91,781A | Magnetics Division of Spang & Company, Magnetics Division, Spang & Company. | Pittsburgh, PA | January 15, 2016. |

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 91,210 | General Security Services Corporation | Minneapolis, MN | December 9, 2014. |
| 91,252 | Joy Global Suface Mining, Inc., Joy Global, Inc., Worldwide Labor Support, Inc., Manpower, etc. | Virginia, MN | December 21, 2014. |
| 91,277 | Hammerlund Construction, Inc | Grand Rapids, MN | December 31, 2014. |
| 91,345 | Champion Charter Sales & Service, Gundlach Champion, Inc | Hibbing, MN | January 14, 2015. |
| 91,438 | Neovia Logistics, Randstad, Laser Spot Inc., and G4S | Normal, IL | February 4, 2015. |
| 91,493 | Matric Limited, Matric Group LLC | Seneca, PA | February 22, 2016. |
| 91,493A | Leased Workers from Career Concepts, Matric Limited | Seneca, PA | February 19, 2015. |
| 91,530 | Progress Metal Reclamation Company, Recycling Division, Caterpillar, Inc. | Ashland, KY | March 1, 2015. |
| 91,585 | Zeigler Inc., Mining Division | Buhl, MN | March 11, 2015. |
| 91,599 | Range Steel Fabricators, Inc | Hibbing, MN | March 15, 2015. |
| 91,603 | SSSI, Inc., d/b/a Songer Steel Services, Inc., Kforce | Washington, PA | March 16, 2015. |
| 91,696 | Jasper Engineering & Equipment Company | Hibbing, MN | April 13, 2015. |
| 91,706 | General Fasteners Company | Riverton, IA | April 14, 2015. |
| 91,726 | Chemtrade Performance Chemical LLC, Chemtrade Logistics | Kalama, WA | April 21, 2015. |

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 91,695 | Galey and Lord LLC, Patriarch Partners | Society Hill, SC | April 12, 2015. |
| 91,698 | Texas & Northern Railroad Company, Transtar, Inc | Lone Star, TX | April 13, 2015. |

**Negative Determinations for Worker Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,171 | Hewlett Packard Enterprise Services, Hewlett-Packard Company, Enterprise Services, etc. | Vancouver, WA. | |
| 90,310 | Hewlett Packard, Treasury Group, Credit and Collections Division | Colorado Springs, CO. | |
| 91,328 | Diamond Bar Outdoors, Administrative Services, Nova Lifestyle | Commerce, CA. | |
| 91,356 | Paul Ecke Ranch | Encinitas, CA. | |
| 91,553 | Bank of America, Global Engagement Team, Process Governance and Controls Team, etc. | Charlotte, NC. | |
| 91,558 | Continental Casualty Company, Special Funds Unit | Syracuse, NY. | |
| 91,568 | Hewlett Packard Enterprise, Engineering Group, Storage Division, Utility Development Unit, etc. | Colorado Springs, CO. | |
| 91,643 | Ethnotek, LLC | Eagan, MN. | |

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,183 | Milestone AV Technologies | Wichita, KS. | |
| 90,215 | Chase Industries Inc., Chem-Pruf Division, Express Employment Professionals. | Brownsville, TX. | |
| 91,073 | Imperial Sugar Company, Imperial-Savannah LP, Louis Dreyfus Commodities LLC, etc. | Gramercy, LA. | |
| 91,272 | L–3 Communications Integrated Systems, L.P., C3 ISR Division, L–3 Communications Corporation. | Beale Air Force Base, CA. | |
| 91,534 | EVRAZ Oregon Steel, EVRAZ Oregon Steel Tubular Division, EVRAZ Inc. NA, etc. | Portland, OR. | |
| 91,686 | Custom Stamping and MFG. Co | Portland, OR. | |

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,337 | Wilson Trailer Company | Sioux City, IA. | |
| 91,036 | Halliburton Energy Services | Duncan, OK. | |
| 91,096 | EC Manufacturing, LLC, Aerotek, Pro Staff, Grafton Staffing Company. | Shawnee, KS. | |
| 91,141 | U.S. Security Associates, U.S. Security Holdings, Inc | Courtland, AL. | |
| 91,170 | Enovation Controls, LLC, Key Personnel | Tulsa, OK. | |
| 91,183 | Baker Hughes Incorporated, Artificial Lift Division, Kelly Temporary Services. | Tulsa, OK. | |
| 91,263 | Halliburton Energy Services, Wireline Operations | Montgomery, PA. | |
| 91,264 | Shenango Incorporated, DTE Energy Services, Steel City and Safety Supply, MK Technologies, etc. | Pittsburgh, PA. | |
| 91,273 | The Boeing Company, Vertical Lift Division, American Cybersystems, Apex Systems, etc. | Ridley Park, PA. | |
| 91,384 | Norfolk Southern Railway Company, Ashtabula Coal Dock | Ashtabula, OH. | |
| 91,408 | Michigan South Central Power Agency, Endicott Generating Station, Mapower. | Litchfield, MI. | |
| 91,450 | SuperValu Inc., Infrastructure Services Group | Boise, ID. | |
| 91,524 | Cameron International Corporation, Valves and Measurement Division, Micro-Tech Staffing. | Millbury, MA. | |
| 91,658 | Coyne International Enterprises Corporation, Coyne Textile Services. | Syracuse, NY. | |
| 91,688 | Ceres Crystal Industries, Inc., Coastal Staffing, Durham Staffing | Niagara Falls, NY. | |
| 91,764 | QVC St. Lucie, Inc., QVC, Inc | Port Saint Lucie, FL. | |

**Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance**

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 91,048 | Seventy Seven Energy Inc | Oklahoma City, OK. | |
| 91,220 | Crisp Manufacturing Co., Inc | Rural Retreat, VA. | |
| 91,229 | American Process, Inc., Star Staff | Alpena, MI. | |
| 91,236 | IAC Acoustics, fka GT Exhaust, IAC Acoustics, Aurstaff, Express, Celebrity, and Aerotek. | Lincoln, NE. | |
| 91,236A | IAC Acoustics, fka Maxim Silencers, IAC Acoustics | Stafford, TX. | |
| 91,371 | Rivergate Scrap Metals, Bors, Inc., TCMI, Inc., OPTI Staffing | Portland, OR. | |
| 91,437 | Hoquiam Plywood Products | Hoquiam, WA. | |
| 91,560 | General Cable, General Cable Corporation, Staffmark | Malvern, AR. | |
| 91,719 | American Light Bulb MFG | Mullins, SC. | |
| 91,733 | H.C. Haynes Inc | Winn, ME. | |
| 91,779 | MTE Corporation | Menomonee Falls, WI. | |

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

| TA–W No. | Subject firm | Location | Impact date |
|---|---|---|---|
| 90,323 | Hewlett Packard Enterprise Services, Hewlett Packard Enterprise, Midrange Server Services Division. | Plano, TX. | |
| 90,332 | LexisNexis, Aelpo Team, Matthew Bender, Populus Group, Linium Consulting. | Albany, NY. | |
| 91,281 | CareFusion Resources, LLC, Vital Signs, Inc. Division, Carefusion Corporation. | Englewood, CO. | |
| 91,409 | Southern Graphic Systems LLC | Battle Creek, MI. | |
| 91,647 | Ingersoll Rand, Compression Technologies and Services Division | Cheektowaga, NY. | |
| 91,780 | Newmont Mining Corporation, IT, Supply Chain, Human Resources, and Financial Services, etc. | Greenwood Village, CO. | |

I hereby certify that the aforementioned determinations were issued during the period of *April 29, 2016 through May 20, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 24th day of May 2016.

**Jessica R. Webster,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2016–13343 Filed 6–6–16; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than June 17, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 17, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 24th day of May 2016.

**Jessica R. Webster,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

## APPENDIX

[78 TAA petitions instituted between 4/29/16 and 5/20/16]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 91755 | Kraft-Heinz (Workers) | Allentown, PA | 04/29/16 | 04/28/16 |
| 91756 | Schlumberger Technology Corporation (Workers) | Bakersfield, CA | 04/29/16 | 04/28/16 |
| 91757 | Lewis Bakery (Union) | Vincennes, IN | 04/29/16 | 04/28/16 |
| 91758 | Hawaiian Commercial & Sugar Company (HC&S) (Union). | Puunene, HI | 04/29/16 | 04/26/16 |
| 91759 | Dynegy Midwest Generation (Union) | Alton, IL | 05/02/16 | 04/29/16 |
| 91760 | Four Seasons Residence Club (State/One-Stop) | Carlsbad, CA | 05/02/16 | 04/29/16 |
| 91761 | Agility Logistics (State/One-Stop) | Irvine, CA | 05/02/16 | 04/29/16 |
| 91762 | RR Donnelley (State/One-Stop) | Portland, OR | 05/02/16 | 04/29/16 |
| 91763 | Cigna (State/One-Stop) | Bloomfield, CT | 05/03/16 | 05/02/16 |
| 91764 | QVC St. Lucie, Inc (State/One-Stop) | Port Saint Lucie, FL | 05/03/16 | 05/02/16 |
| 91765 | St. Peter's Health Partners-Transcription Unit (State/One-Stop). | Albany, NY | 05/03/16 | 05/02/16 |
| 91766 | Berwick Offray, LLC (State/One-Stop) | Lansing, IA | 05/03/16 | 05/02/16 |
| 91767 | Mount Vernon Mills Cuero Plant (Company) | Cuero, TX | 05/03/16 | 04/13/16 |
| 91768 | Accuri Cytometers, Inc. (Workers) | Ann Arbor, MI | 05/03/16 | 04/26/16 |
| 91769 | Eaton Aurora (Company) | Aurora, OH | 05/03/16 | 04/15/16 |
| 91770 | US Synthetics (Workers) | Orem, UT | 05/04/16 | 05/03/16 |
| 91771 | QBE North America (State/One-Stop) | Jacksonville, FL | 05/04/16 | 05/03/16 |
| 91772 | Blount International (State/One-Stop) | Portland, OR | 05/04/16 | 05/03/16 |
| 91773 | CH2M Hill (State/One-Stop) | Bellington, WA | 05/04/16 | 05/03/16 |
| 91774 | Honeywell International PMT Customer Service Division (Union). | Des Plaines, IL | 05/05/16 | 05/04/16 |
| 91775 | Honeywell International PMT Customer Service Division (State/One-Stop). | McCook, IL | 05/05/16 | 05/04/16 |
| 91776 | Honeywell International PMT Customer Service Division (State/One-Stop). | Saraland, AL | 05/05/16 | 05/04/16 |
| 91777 | UTC Aerospace Systems (Company) | Cleveland, OH | 05/05/16 | 05/04/16 |
| 91778 | Fujitsu America Inc. (State/One-Stop) | Richardson, TX | 05/05/16 | 05/04/16 |
| 91779 | MTE Corporation (Company) | Menomonee Falls, WI | 05/06/16 | 05/05/16 |
| 91780 | Newmont Mining Corporation (State/One-Stop) | Greenwood Village, CO | 05/06/16 | 05/05/16 |
| 91781A | Magnetics Division of Spang & Company (Company). | Pittsburgh, PA | 05/06/16 | 05/05/16 |
| 91781 | Magnetics Division of Spang & Company (Company). | East Butler, PA | 05/06/16 | 05/05/16 |
| 91782 | Veris Industries/Schneider Electric SE (State/One-Stop). | Portland, OR | 05/06/16 | 05/05/16 |
| 91783 | Iron Mountain (State/One-Stop) | Cerritos, CA | 05/06/16 | 05/05/16 |
| 91784 | All State Sales and Administrative Services (State/One-Stop). | Syracuse, NY | 05/06/16 | 05/05/16 |
| 91785 | Campbell Global, LLC (State/One-Stop) | Fort Bragg, CA | 05/06/16 | 05/05/16 |
| 91786 | Irathane Systems, Industrial Rubber Applicators (Union). | Hibbing, MN | 05/06/16 | 05/05/16 |
| 91787 | Jersey Shore Steel Company (Company) | Jersey Shore, PA | 05/09/16 | 05/06/16 |
| 91788 | Cyrus Hosiery (State/One-Stop) | Vernon, CA | 05/09/16 | 05/06/16 |
| 91789 | Genpact (State/One-Stop) | Parsippany, NJ | 05/09/16 | 05/09/16 |
| 91790 | Cenntro Motors USA (State/One-Stop) | Sparks, NV | 05/09/16 | 05/05/16 |
| 91791 | Woodard & Curran (State/One-Stop) | Madison, ME | 05/09/16 | 05/06/16 |
| 91792 | Vindex Energy Corporation (State/One-Stop) | Oakland, MD | 05/10/16 | 05/09/16 |
| 91793 | ATI Cast Products (State/One-Stop) | Albany, OR | 05/10/16 | 05/09/16 |
| 91794 | Borets Co LLC (Workers) | Tulsa, OK | 05/10/16 | 04/29/16 |
| 91795 | Johnson Controls Inc. (Union) | Milwaukee, WI | 05/12/16 | 05/11/16 |
| 91796 | Remington Outdoor Company (Workers) | Hickory, KY | 05/12/16 | 05/11/16 |
| 91797 | Toshiba America Information Systems Inc. (State/One-Stop). | Irvine, CA | 05/12/16 | 05/11/16 |
| 91798 | Eaton Corporation (State/One-Stop) | Hutchinson, KS | 05/12/16 | 05/11/16 |
| 91799 | Bushell Ribon Corporation (State/One-Stop) | Santa Fe Springs, CA | 05/12/16 | 05/11/16 |
| 91800 | MBA Health Group (Company) | South Burlington, VT | 05/12/16 | 05/12/16 |
| 91801 | Allegheny Techologies Incorporated (Union) | Latrobe, PA | 05/13/16 | 05/12/16 |
| 91802 | Sage Biopharma—Coopers Surgical Inc. (State/One-Stop). | Pasadena, CA | 05/13/16 | 05/12/16 |
| 91803 | VF Contemporary Brands, Inc. (State/One-Stop) | Vernon, CA | 05/13/16 | 05/12/16 |
| 91804 | American Grass Seed Producers, Inc. (State/One-Stop). | Tangent, OR | 05/13/16 | 05/12/16 |
| 91805 | Green Willow Grains (State/One-Stop) | Tangent, OR | 05/13/16 | 05/12/16 |
| 91806 | Stalford Seed Farm (State/One-Stop) | Tangent, OR | 05/13/16 | 05/12/16 |
| 91807 | Cardone Industries (Company) | Philadelphia, PA | 05/13/16 | 05/12/16 |
| 91808 | Resolute Forest Products (Company) | Augusta, GA | 05/13/16 | 05/12/16 |
| 91809 | Sprint (State/One-Stop) | Overland Park, KS | 05/13/16 | 05/12/16 |
| 91810 | National Oilwell Varco (State/One-Stop) | Houston, TX | 05/16/16 | 05/13/16 |

APPENDIX—Continued

[78 TAA petitions instituted between 4/29/16 and 5/20/16]

| TA–W | Subject firm (petitioners) | Location | Date of institution | Date of petition |
|---|---|---|---|---|
| 91811 | Sykes Enterprises, Incorporated (Company) | Langhorne, PA | 05/16/16 | 05/13/16 |
| 91812 | Trinity Railcar Industries (Workers) | Longview, TX | 05/16/16 | 05/13/16 |
| 91813 | Xerox (State/One-Stop) | Webster, NY | 05/16/16 | 05/13/16 |
| 91814 | Weatherford ALS (Workers) | Longview, TX | 05/16/16 | 05/13/16 |
| 91815 | Verizon Enterprise Services (Verizon Business Network Services, Inc.) (State/One-Stop). | Rochester, NY | 05/16/16 | 05/13/16 |
| 91816 | Nike Foundation (State/One-Stop) | Beaverton, OR | 05/17/16 | 05/16/16 |
| 91817 | Veritas (State/One-Stop) | Springfield, OR | 05/17/16 | 05/16/16 |
| 91818 | Johnson Controls (State/One-Stop) | West Allis, WI | 05/17/16 | 05/16/16 |
| 91819 | Condor Flugdienst GmbH, A division of Thomas Cook Group (State/One-Stop). | Itasca, IL | 05/18/16 | 05/17/16 |
| 91820 | Verizon Conferencing/Verizon Enterprise Solutions (State/One-Stop). | Cedar Rapids, IA | 05/18/16 | 05/17/16 |
| 91821 | Siemens Medical Solutions USA, Inc. (Company) | Wood Dale, IL | 05/19/16 | 05/18/16 |
| 91822 | The Google Store (Retail Store) (State/One-Stop) | Mountain View, CA | 05/19/16 | 05/18/16 |
| 91823 | The News & Observer (Owned by The McClatchy Company) (Workers). | Raleigh, NC | 05/19/16 | 05/18/16 |
| 91824 | Paso Del Norte Publishing, Inc. (Workers) | El Paso, TX | 05/19/16 | 05/18/16 |
| 91825 | Mondelez International (Workers) | East Hanover, NJ | 05/19/16 | 04/25/16 |
| 91826 | US Synthetic Corp & Subs (Workers) | Orem, UT | 05/20/16 | 05/19/16 |
| 91827 | Chandler Industries (State/One-Stop) | Montevideo, MN | 05/20/16 | 05/19/16 |
| 91828 | Waste Management Nat'l Services (Workers) | Phoenix, AZ | 05/20/16 | 05/19/16 |
| 91829 | Jive Software (State/One-Stop) | Portland, OR | 05/20/16 | 05/19/16 |
| 91830 | ADS Alliance Data Systems, Inc./Epsilon Data Mgmt. LLC (State/One-Stop). | Irvine, TX | 05/20/16 | 05/16/16 |
| 91831 | Vesta Corp. (State/One-Stop) | Portland, OR | 05/20/16 | 05/19/16 |

[FR Doc. 2016–13344 Filed 6–6–16; 8:45 am]

BILLING CODE 4510–FN–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–91,132]**

### Century Aluminum of South Carolina, Inc., Including On-Site Leased Workers From MAU Workforce Solutions, Goose Creek, South Carolina, Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 12, 2016, applicable to workers and former workers of Century Aluminum of South Carolina, Inc., Goose Creek, South Carolina (subject firm). The Department's notice of determination was published in the **Federal Register** on January 11, 2016 (81 FR 1231). The workers were engaged in the activities related to the production of primary aluminum.

At the request of a company official, the Department reviewed the certification applicable to workers and former workers of the subject firm.

The company reports that workers leased from MAU Workforce Solutions were employed on-site at the Goose Creek, South Carolina location of Century Aluminum of South Carolina, Inc. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from MAU Workforce Solutions, working on-site at the Goose Creek, South Carolina, location of Century Aluminum of South Carolina, Inc.

The amended notice applicable to TA–W–91,132 is hereby issued as follows:

All workers of Century Aluminum of South Carolina, Inc., including on-site leased workers from MAU Workforce Solutions, Goose Creek, South Carolina, who became totally or partially separated from employment on or after November 11, 2014 through February 12, 2018, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 11th day of May 2016.

**Jeesica Webster,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2016–13345 Filed 6–6–16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Placement Verification and Follow-Up of Job Corps Participants

**AGENCY:** Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''Placement Verification and Follow-up of Job Corps Participants,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 7, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1205-008* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

**Authority:** 44 U.S.C. 3507(a)(1)(D).

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval under the PRA for revisions to the Placement Verification and Follow-up of Job Corps Participants information collection. The collection consists of three primary and two secondary data collection instruments used to collect follow-up data on individuals no longer actively participating in a Job Corps training program. The instruments are comprised of modules that include questions designed to obtain the following information: Re-verification of initial job and/or school placements, employment and educational experiences, job search activities of those who are neither working nor in school, and information about former participants satisfaction with services received. This information collection has been classified as a revision, because the Workforce Innovation and Opportunity Act (WIOA) requires surveying all program participants; the former Workforce Investment Act requirement was to survey only placed graduates and former enrollees. WIOA sections 116(b)(2)(A)(ii) and 159(c)(4) authorize this information collection. *See* 29 U.S.C. 3141(2)(2)(A) and 3209(c)(4).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0426. The current approval is scheduled to expire on May 31, 2019; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 1, 2016 (81 FR 10664).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0426. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL-ETA.

*Title of Collection:* Placement Verification and Follow-up of Job Corps Participants.

*OMB Control Number:* 1205–0426.

*Affected Public:* Individuals or Households; Private Sector—businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 93,400.

*Total Estimated Number of Responses:* 93,400.

*Total Estimated Annual Time Burden:* 21,700 hours.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: June 1, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016–13365 Filed 6–6–16; 8:45 am]

**BILLING CODE 4510–FT–P**

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## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notification of Employee Rights Under Federal Labor Laws

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Labor Management Standards (OLMS) sponsored information collection request (ICR) titled, ''Notification of Employee Rights under Federal Labor Laws,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before July 7, 2016.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201605-1245-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free

numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks to extend PRA authority for the Notification of Employee Rights under Federal Labor Laws information collection. President Barack Obama signed Executive Order 13496 (E.O. 13496) on January 30, 2009, requiring certain Government contractors and subcontractors to post notices informing their employees of their rights as employees under Federal labor laws. Regulations 29 CFR 471.11 provides for DOL to accept a written complaint alleging that a contractor doing business with the Federal government has failed to post the notice required by E.O. 13496. The section establishes that no special complaint form is required; however, a complaint must be in writing. In addition, the complaint must contain certain information, including the name, address, and telephone number of the person submitting the complaint and the name and address of the Federal contractor alleged to have violated the rule. The section also establishes that a written complaint may be submitted to either the Office of Federal Contract Compliance Programs or the OLMS. E.O. 13496 section 3 authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1245–0004.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on July 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on February 11, 2016 (81 FR 7375).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1245–0004. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* DOL-OLMS.

*Title of Collection:* Notification of Employee Rights under Federal Labor Laws.

*OMB Control Number:* 1245–0004.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 10.

*Total Estimated Number of Responses:* 10.

*Total Estimated Annual Time Burden:* 13 hours.

*Total Estimated Annual Other Costs Burden:* $5.

**Authority:** 44 U.S.C. 3507(a)(1)(D).

Dated: June 1, 2016.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2016–13306 Filed 6–6–16; 8:45 am]

**BILLING CODE 4510–CP–P**

## LIBRARY OF CONGRESS

### Copyright Office

**[Docket No. 2016–4]**

### Section 108: Draft Revision of the Library and Archives Exceptions in U.S. Copyright Law

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The United States Copyright Office is inviting interested parties to discuss potential revisions relating to the library and archives exceptions in the Copyright Act, 17 U.S.C. 108, in furtherance of the Copyright Office's policy work in this area over the past ten years and as part of the current copyright review process in Congress. The Copyright Office has led and participated in major discussions on potential changes to section 108 since 2005, with the goal of updating the provisions to better reflect the facts, practices, and principles of the digital age and to provide greater clarity for libraries, archives, and museums. To finalize its legislative recommendation, the Copyright Office seeks further input from the public on several remaining issues, including, especially, provisions concerning copies for users, security measures, public access, and third-party outsourcing. The Copyright Office therefore invites interested parties to schedule meetings in Washington, DC to take place during late June through July 2016, using the meeting request form referenced below.

**DATES:** Written meeting requests must be received no later than 11:59 p.m. Eastern Time on July 7, 2016.

**ADDRESSES:** Please fill out the meeting request form found at *www.copyright.gov/policy/section108,* being sure to indicate which topics you would like to discuss. Meetings will be held at the U.S. Copyright Office, 101 Independence Ave. SE. (Madison Building, Library of Congress),

Washington, DC 20540, or as necessary, by phone.

**FOR FURTHER INFORMATION CONTACT:** Chris Weston, Attorney-Advisor, Office of the General Counsel, *cwes@loc.gov,* 202–707–8380; Emily Lanza, Counsel, Office of Policy and International Affairs, *emla@loc.gov,* 202–707–1027; or Aurelia J. Schultz, Counsel, Office of Policy and International Affairs, *aschu@loc.gov,* 202–707–1027.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Congress enacted section 108 of title 17 in 1976, authorizing libraries and archives to reproduce and distribute certain copyrighted works on a limited basis for the purposes of preservation, replacement, and research, placing these excepted activities outside the scope of exclusive rights set forth in section 106.[1] Before 1976, these institutions relied on a combination of common law and professional practices to help determine the scope of permissible activities under the law, including non-binding agreements between libraries and publishers.[2] As libraries and archives increasingly employed photocopying in the 1950s and 1960s,[3] however, Congress began to explore the need for clearer guidance for all involved. In 1966, the House Judiciary Committee noted that past efforts to come to a reasonable arrangement on library photocopying had failed and urged ''all concerned to resume their efforts to reach an accommodation under which the needs of scholarship and the rights of authors would both be respected.'' [4] Several years later, the Senate Judiciary Committee also noted photocopying's role in the ''evolution in the functioning and services of libraries'' and the need for Congress to respond to these changes in technology with a statutory exception.[5]

Crafting an appropriate statutory exception for libraries and archives was part of a larger revision process undertaken and enacted by Congress as part of the 1976 Copyright Act. A key characteristic of section 108 is that it provides specific exceptions pertaining to frequent library and archives activities, such as preservation copying and making and distributing copies for users, but does not preclude these institutions from relying upon the more general fair use exception of section 107 as well. In fact, Congress enacted an express savings clause for fair use, thereby ensuring that courts could look to both provisions.[6]

As demonstrated by its focus on photocopying, section 108 was designed to address the prevalent use of print-based analog technology occurring at the time of enactment. Despite some minor adjustments in the Digital Millennium Copyright Act of 1998,[7] which partially took account of digital reproduction capabilities, the exceptions in section 108 therefore are stuck in time. They did not anticipate and no longer address the ways in which copyrighted works are created, distributed, preserved, and accessed in the twenty-first century.[8] Additionally, over time the structure and wording of section 108 have proven to be difficult to implement for both lawyer and layperson. Ultimately, section 108 ''embodies some now-outmoded assumptions about technology, behavior, professional practices, and business models'' [9] that require revision and updating.

The key aspects of section 108 and the policy work conducted to date are summarized below.

### *A. Overview of Section 108*

Section 108 applies only to libraries and archives (terms that are not defined) that are either open to the general public or to unaffiliated researchers in the relevant specialized field.[10] Activities covered by the section cannot be undertaken for ''any purpose of direct or indirect commercial advantage,'' [11] and copies must contain the copyright notice as it appears on the source copy, or if there is no such notice, bear a legend stating that the work may be protected by copyright.[12]

Section 108 includes two provisions for libraries and archives to make reproductions in order to maintain the works in their collections; these provisions apply to all categories of copyrighted works. The first such provision allows a library or archives to reproduce three copies of an *unpublished* work in its collections for purposes of preservation, security, or deposit for research in another eligible institution.[13] Digital copies made under this provision cannot be made available to the public outside the premises of the library or archives.[14] The second maintenance exception allows the reproduction of three copies of a *published* work for replacement purposes, but only if the source copy of the work is ''damaged, deteriorating, lost, or stolen'' or the copy is stored in an obsolete format, and the library or archives cannot locate an unused copy of the work at a fair price after a reasonable effort to do so.[15] The replacement exception contains the same restriction prohibiting distribution of digital copies outside the premises of the library or archives.[16]

Section 108 also contains a set of provisions concerning the reproduction and distribution of materials in an eligible institution's collections for users, either upon direct request or as part of interlibrary loan. These exceptions do not apply to musical works; pictorial, graphic, or sculptural works (other than illustrations or similar adjuncts to literary works); and most audiovisual works, including motion pictures.[17] Libraries and archives may reproduce and distribute for a user one copy of an article or contribution to a collection, or a small part of a larger work.[18] They may also reproduce and distribute entire or substantial portions of works for users, but only if a reasonable investigation shows that a copy is not otherwise obtainable at a fair price.[19] Additionally, section 108 states that, in making and distributing copies for users, a library or archives may not

[1] *See* H.R. Rep. No. 94–1476, at 74–79 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5688–92.

[2] *See* Register of Copyrights, Library Reproduction of Copyrighted Works (17 U.S.C. 108) 14 (1983) (discussion of the ''Gentlemen's Agreement'' of 1935, a voluntary agreement negotiated between publishers and libraries that set a standard of acceptable conduct for reproduction of copyrighted materials by libraries).

[3] A 1959 copyright study prepared at the request of Congress noted that the ''various methods of photocopying have become indispensable to persons engaged in research and scholarship, and to libraries that provide research material in their collections to such persons.'' Borge Varmer, U.S. Copyright Office at the Library of Congress, Study No. 15: Photoduplication of Copyright Material by Libraries, at 49 (1959), *reprinted in* Staff of S. Comm. on the Judiciary, 86th Cong., Copyright Law Revision: Studies Prepared for the Subcomm. on Patents, Trademarks, and Copyrights of the Comm. on the Judiciary, United States Senate: Studies 14–16 (Comm. Print 1960).

[4] H.R. Rep. No. 89–2237, at 65 (1966).

[5] S. Rep. No. 93–983, at 123 (1974).

[6] 17 U.S.C. 108(f)(4) (''Nothing in this section . . . in any way affects the right of fair use as provided by section 107 . . .'').

[7] Digital Millennium Copyright Act, Public Law 105–304, 404, 112 Stat. 2860, 2889 (1998) (expanding the number of copies and phonorecords permitted for purposes of preservation and security, for deposit for research use in another library or archives, and for replacement, from one to three; and restricting digital copies and phonorecords to the premises of the library or archives).

[8] Section 108 Study Group, The Section 108 Study Group Report i (2008), *www.section108.gov/docs/Sec108StudyGroupReport.pdf* (''Study Group Report'').

[9] *Id.*

[10] 17 U.S.C. 108(a)(2).

[11] *Id.* at 108(a)(1).

[12] *Id.* at 108(a)(3).

[13] *Id.* at 108(b).

[14] *Id.* at 108(b)(2).

[15] *Id.* at 108(c).

[16] *Id.* at 108(c)(2).

[17] *Id.* at 108(i).

[18] *Id.* at 108(d).

[19] *Id.* at 108(e).

engage in ''related or concerted reproduction or distribution of multiple copies'' of the same material,[20] and that, when making interlibrary loan copies, an institution cannot ''do so in such aggregate quantities as to substitute for a subscription to or purchase of such a work.'' [21]

In addition to its provisions governing internal maintenance copies and reproduction and distribution of copies for users, section 108 also provides libraries and archives with a safe harbor from liability for the unsupervised use of its on-premises reproducing equipment, provided that they post notices stating that making copies may be subject to copyright law.[22] Another provision gives libraries and archives the ability to reproduce, distribute, display, or perform any work in its last 20 years of copyright protection for preservation, scholarship, or research, provided the work is not being commercially exploited by its owner.[23]

Finally, subsection (f)(4) of section 108 contains two provisions that govern the exceptions' overall applicability. It first states that nothing in section 108 ''in any way affects the right of fair use as provided by section 107.'' [24] Subsection (f)(4) also provides that any contractual obligation assumed by a library or archives upon obtaining a work for its collections supersedes the institution's privileges under section 108.[25]

*B. Revision Work to Date*

As Congress has reviewed the copyright law in recent years, the Copyright Office has noted consistently that exceptions and limitations are critical to the digital economy and must be calibrated by Congress as carefully and deliberatively as provisions governing exclusive rights or enforcement. Section 108, in particular, has been a long-standing focus of the Copyright Office because, properly updated, it can provide professionals in libraries, archives, and museums with greater legal certainty regarding the permissibility of certain core activities.

In 2005, the Copyright Office and the National Digital Information Infrastructure and Preservation Program of the Library of Congress sponsored and administered an independent study group charged with producing a report and set of recommendations on potential improvements to section 108. The study group members included distinguished and experienced librarians, copyright owners, archivists, academics, and other memory institution specialists and copyright lawyers.[26] The ''Section 108 Study Group'' [27] made note of a number of ways in which digital technologies have impacted copyright law, including ''(1) opportunities for new revenue sources derived from new distribution methods, (2) increased risks of lost revenue and control from unauthorized copying and distribution, (3) essential changes in the operations of libraries and archives, [and] (4) changing expectations of users and the uses made possible by new technologies.'' [28] Over the course of nearly three years, the Study Group engaged in analysis, review, and discussion of the best ways in which to update section 108 to address the digital age.

The Study Group issued its report in March 2008, calling for an extensive revision to update section 108.[29] The report also pointed out several areas where section 108 required amendment but where the members of the Study Group could not agree on a solution.[30] The Study Group unanimously recommended revising section 108 in nine separate areas, plus a general recommendation for re-organizing the section's provisions. Among the more significant recommendations were to:

- Allow museums to be eligible along with libraries and archives.[31]
- Add new eligibility criteria, such as having a public service mission, employing a professional staff, and providing professional services.[32]
- Allow libraries and archives to outsource some of the activities permitted by section 108 to third parties, under certain conditions.[33]
- Replace the three-copy limits in the preservation, security, deposit for research, and replacement provisions with conceptual limits allowing a limited number of copies as reasonably necessary for the given purpose.[34]
- Revise the prohibition on making digital preservation and replacement copies publicly available off-premises, so that it does not apply when the source and the new copy are in physical formats, such as CDs or DVDs.[35]
- Allow specially qualified institutions to preemptively reproduce publicly disseminated works at special risk of loss for preservation purposes only, with limited access to the copies.[36]
- Create a new provision for the capture, reproduction, and limited re-distribution of ''publicly available online content,'' *e.g.,* Web sites and other works freely available on the internet.[37] Rights-holders would be allowed to opt out of having their content captured or re-distributed.[38]
- Apply the safe harbor from liability for copies made on unsupervised reproduction equipment to user-owned, portable equipment, as well as equipment residing on the library's or archives' premises.[39]

The Study Group also made note of several areas of section 108 that all members agreed required revision, but could not come to a unanimous decision on what the revision should look like.[40] The issues identified by the Study Group in this section of the Report concerned copies made at the request of users, specifically:

- The need to replace the single-copy limit with a ''flexible standard more appropriate to the nature of digital materials.'' [41]
- Explicitly permitting electronic delivery of copies for users under certain conditions.[42]
- Allowing copies for users to be made of musical works; pictorial, graphic, or sculptural works; and motion pictures and other audiovisual

[20] *Id.* at 108(g)(1).

[21] *Id.* at 108(g)(2). Initial guidance as to the practical limits indicated by this phrase was provided by the National Commission on New Technological Uses of Copyrighted Works (CONTU), which in 1976 formulated guidelines for how many copies of a particular article or periodical could be made for interlibrary loan purposes without risking market substitution. H.R. Rep. No. 94–1733, at 72–73 (1976) (Conf. Rep.), *as reprinted in* 1976 U.S.C.C.A.N. 5809, 5813–14. Congress, while incorporating the CONTU guidelines into the Conference Committee Report to the Copyright Act of 1976, cautioned that they would require ''continuous reevaluation and adjustment.'' *Id.* at 71.

[22] 17 U.S.C. 108(f)(1).

[23] *Id.* at 108(h).

[24] *Id.* at 108(f)(4).

[25] *Id.*

[26] *See* Members of the Section 108 Study Group, *http://www.section108.gov/members.html* (last visited May 25, 2016).

[27] Referred to as the Study Group in this notice.

[28] Study Group Report at 28.

[29] *Id.* at iii.

[30] *Id.* at 95–112.

[31] *Id.* at 31–33.

[32] *Id.* at 34–38.

[33] *Id.* at 39–42.

[34] *Id.* at 52–54, 61–65.

[35] *Id.* at 52, 57, 61, 66.

[36] *Id.* at 69–79. The Report also recommended replacing the published/unpublished distinction with the more practical publicly disseminated/not publicly disseminated binary, wherein works made available to the public, but not via distribution of material copies (as is required for publication), would fall into the publicly disseminated category. *See id.* at 47–51.

[37] *Id.* at 80–87.

[38] *Id.* at 85–87.

[39] *Id.* at 91–92.

[40] *Id.* at 95–112. Additionally, a third section of the Report discussed issues that some, but not all, of the Study Group members thought merited statutory revision, including whether to allow certain exceptions to override contrary contractual agreements. *Id.* at 113–124.

[41] *Id.* at 98–101.

[42] *Id.* at 98, 101–103.

works, under conditions that limit the risk of market substitution.[43]

Following the issuance of the Study Group's report, the Copyright Office, led by the then-Register of Copyrights, comprehensively reviewed the underlying analyses of the Study Group and examined a number of questions left unresolved due to lack of consensus amongst disparate Study Group members. On April 5, 2012, the current Register and senior staff met with Study Group members to review the 2008 report and discuss subsequent developments. Most Study Group members agreed that updating section 108 remained a worthwhile goal, and some suggested that the Report did not go far enough, particularly in recommending changes to the provisions regarding copies for users. Additionally, several members described an increasing practice of librarians and archivists more frequently relying upon fair use as the legal basis for their activities, making section 108 more urgent or less urgent as a revision matter, depending on one's perspective.

In February 2013, the Copyright Office co-sponsored with Columbia Law School a public conference on section 108, entitled ''Copyright Exceptions for Libraries in the Digital Age: Section 108 Reform.'' The all-day conference served as a valuable and comprehensive adjunct to the Study Group Report. Among other issues, it addressed such topics as the current landscape of similar exceptions in the United States and internationally, the recommendations of the Study Group, what changes should be made to section 108 in terms of its scope, and whether and how mass digitization by libraries and archives should be permitted.[44]

More recently, section 108, along with the issues of orphan works and mass digitization, was the subject of a hearing on ''Preservation and Reuse of Copyrighted Works'' held by the House Subcommittee on Courts, Intellectual Property, and the Internet on April 2, 2014.[45] At the hearing, there was disagreement among the six witnesses over whether or not section 108 reform is advisable as a legal matter or possible as a practical matter. One librarian-member of the Section 108 Study Group told Congress that the existing framework does not require amendment[46] and anticipated great difficulty in translating the Study Group's (limited) recommendations into effective legislation.[47] However, the co-chair of the Section 108 Study Group, the former general counsel to a book publisher, advocated for revisions, emphasizing the clarity that a ''workable, up-to-date and balanced'' section 108 could bring to both libraries and copyright owners ''in specific situations.''[48] Another witness, an audiovisual conservation expert at the Library of Congress, testified that it is important to ''[m]odernize Sec[tion] 108 so that the Library of Congress can fulfill its mission to preserve audiovisual and other materials,''[49] and recommended specific changes to the preservation, replacement, copies for users, and other provisions.[50]

Most recently, in her April 29, 2015, testimony to the House Judiciary Committee regarding the universe of copyright policy issues, the Register of Copyrights stated that section 108 is among the matters ready for Congressional consideration.[51] ''Based on the entirety of the record to date,'' the Register explained,

> the Office has concluded that Section 108 must be completely overhauled. One enduring complaint is that it is difficult to understand and needlessly convoluted in its organization. The Office agrees that the provisions should be comprehensive and should be related logically to one another, and we are currently preparing a discussion draft. This draft will also introduce several substantive changes, in part based upon the recommendations of the Study Group's 2008 report. It will address museums, preservation exceptions and the importance of ''web harvesting'' activities.[52]

### *C. The International Perspective*

Many other countries have recognized the global significance of copying and preservation exceptions for libraries and archives and are also reviewing their relevant exceptions at this time. As of June 2015, 156 World Intellectual Property Organization (WIPO) member states had at least one statutory library exception, addressing issues such as making copies of works for readers, researchers, and other library users as well as copies for preservation.[53] The most recent WIPO study on copyright limitations and exceptions for libraries and archives observed that ''exceptions for libraries and archives are fundamental to the structure of copyright law throughout the world, and that the exceptions play an important role in facilitating library services and serving the social objective of copyright law.''[54]

Some countries have also recently considered updating and amending their statutory library exceptions to address the digital landscape. For example, Canada in 2012 amended its copyright statute to permit libraries, archives, and museums to provide digital copies of certain works to persons requesting the copies through another institution.[55] Similarly, the European Union has stated that in 2016 it would examine legislative proposals that would allow cultural heritage institutions to use digital technologies for preservation.[56]

For many years, WIPO has considered a treaty proposal on copyright limitations and exceptions for libraries and archives that would mandate a right of preservation for library and archival materials, enabling these institutions to reproduce for preservation purposes as

[43] *Id.* at 106–112.

[44] *See Symposium Issue: Section 108 Reform,* 36 Colum. J.L. & Arts 527 (2013); the program and videos of the program are available at *Section 108 Reform,* Kernochan Ctr. for Law, Media, and the Arts, *http://web.law.columbia.edu/kernochan/symposia/section-108-reform* (last visited May 10, 2016).

[45] *Preservation and Reuse of Copyrighted Works: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary,* 113th Cong. (2014); the official transcript of the hearing is available at *https://judiciary.house.gov/wp-content/uploads/2016/02/113-88-87423.pdf.*

[46] *Id.* at 32 (testimony of James G. Neal, Vice President for Information Services and University Librarian, Columbia University) (''[T]he existing statutory framework, which combines the specific library exceptions in section 108 with the flexible fair use right, works well for libraries and does not require amendment.'').

[47] *Id.* at 42 (statement of James G. Neal, Vice President for Information Services and University Librarian, Columbia University) (noting, for example the difficulty of resolving issues as simple as ''. . . how museums should be defined, and the need to define libraries and archives, currently undefined in Section 108.'').

[48] *Id.* at 30 (statement of Richard S. Rudick, Co-Chair, Section 108 Study Group).

[49] *Id.* at 11 (statement of Gregory Lukow, Chief, Packard Campus for Audio Visual Conservation, Library of Congress).

[50] *Id.* at 15–18 (for example, ''[r]evise subsections 108(b) and (c), which govern the reproduction of unpublished and published works, to allow for the use of current technology and best practices in the preservation of film, video, and sound recordings'').

[51] *Register's Perspective on Copyright Review: Hearing Before the H. Comm. on the Judiciary,* 114th Cong. 5 (2015) (testimony of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office) (''[L]ibrary exceptions or the exceptions for persons who are blind or visually impaired . . . are outdated to the point of being obsolete . . . [; these outdated exceptions] do not serve the public interest, and it is our view that it is untenable to leave them in their current state.'').

[52] *Id.* at 20–21 (statement of Maria A. Pallante, Register of Copyrights and Director, U.S. Copyright Office) (citations omitted).

[53] Kenneth D. Crews, WIPO Study on Copyright Limitations and Exceptions for Libraries and Archives, WIPO Doc. SCCR/30/3, at 6 (June 10, 2015).

[54] *Id.*

[55] Copyright Act, R.S.C. 1985, c C–42, ss. 5.02, 30.2 (Can.).

[56] European Commission Press Release MEMO/15/6262, Making EU copyright rules fit for the digital age — Questions & Answers (Dec. 9, 2015), *http://europa.eu/rapid/press-release_MEMO-15-6262_en.htm.*

many copies of works that are needed in accordance with best professional practices.[57] Advocating a more ''soft law'' approach, the United States government instead has encouraged member states to adopt national statutory library exceptions that are consistent with their current international obligations [58] and that further the broad objectives of preservation and public service.[59]

## II. Revision of Section 108—Current Discussion Draft Proposals

The Copyright Office notes that, since the enactment of the Copyright Act of 1976, the views of the library and archives community regarding section 108 have become less uniform and more complicated, particularly as courts have supported newer applications of the fair use doctrine vis-à-vis a number of digitization and access activities. Indeed, fair use clearly supports a wider range of reproduction activities than it did when section 108 was first codified.[60] The ever-evolving nature of the law is instructive and important. Among other things, it underscores the advisability of allowing section 108 and section 107 to co-exist, while ensuring that each provision is positioned for the future, free from the analog restrictions of a bygone era.

As noted by the Study Group, updating section 108 would provide libraries and archives with a clear and unequivocal basis for their digital preservation, distribution, and other activities, notwithstanding that some of these activities may also be permissible under fair use.[61] Congress specifically drafted section 108 to include a fair use savings clause in acknowledgement of the importance of fair use, noting in the 1976 Act's legislative history that ''[n]o provision of section 108 is intended to take away any rights existing under the fair use doctrine.'' [62] Indeed, almost forty years later, the Chair of the House Judiciary Committee has recognized that a specific, and separate, library exception is still an important supplement to fair use because ''fair use is not always easy to determine, even to those with large legal budgets[, and t]hose with smaller legal budgets or a simple desire to focus their limited resources on preservation may prefer to have better statutory guidance than exists today.'' [63] In fact, there is no reasonable question that the fair use doctrine should or will continue to be available to libraries and archives as an essential provision and planning tool, or that section 108 has proved valuable and should continue to set forth a list of excepted activities for the benefit of library professionals. If there is a lingering debate, it is more accurately about whether these excepted activities should be updated for the digital age or left in their increasingly irrelevant state, a question that is less about the importance of providing clear guidance to library, archives, and museum professionals and more about how sections 108 and 107 will operate together in the future.[64]

As a matter of public policy, the Copyright Office agrees with the House Chairman and the Study Group and observes further that maintaining provisions drafted in, and applicable primarily to, the analog era is antithetical to the purpose of a well-functioning copyright law. More specifically, the Copyright Office agrees in principle with and plans to incorporate many of the Study Group's recommendations, including:

- Adding museums as eligible institutions.
- Expanding the preservation, security, and deposit for research exceptions to include published/publicly disseminated works.
- Creating a new exception to permit the reproduction and distribution of publicly available internet content for preservation and research purposes, with an opt-out provision.
- Allowing the outsourcing of certain section 108 activities to third-party contractors.
- Removing or revising the three-copy limitation for preservation and security, deposit for research, and replacement copies.

Finally, as noted above, it is widely known that section 108 suffers from fundamental problems with organization and clarity, hampering the practical ability of librarians and archivists to utilize the exceptions. In fact, while the Study Group suggested reorganizing section 108 rather than re-drafting it,[65] the Copyright Office believes that redrafting is the better approach.

## III. Subjects of Public Inquiry

The Copyright Office invites interested parties to schedule a time to provide in-person input on the specific subjects below. Note that while the Copyright Office will provide a comprehensive recommendation to Congress, we are only revisiting a select number of discrete issues at this time. A party choosing to respond to this notice of inquiry need not plan to address every subject listed, but the Copyright Office requests that each responding party clearly identify each subject that it plans to discuss.

[57] *See* The Case for a Treaty on Exceptions and Limitations for Libraries and Archives: Background Paper by IFLA, ICA, EIFL and INNOVARTE, WIPO Doc. SCCR/23/3 (Nov. 15, 2011).

[58] Article 9(2) of the Berne Convention for the Protection of Literary and Artistic Works provides that signatory counties may permit the reproduction of works ''in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.'' Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as last revised July 24, 1971, 25 U.S.T. 1341, 828 U.N.T.S. 221. The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty apply the same standard outlined in Article 9(2) of the Berne Convention for all rights granted under those treaties. WIPO Copyright Treaty art. 10(2), Dec. 20, 1996, S. Treaty Doc. No. 105–17, 36 I.L.M. 65 (1997); WIPO Performances and Phonograms Treaty art. 16(2), Dec. 20, 1996, S. Treaty Doc. No. 105–17, 36 I.L.M. 76 (1997).

[59] Objectives and Principles for Exceptions and Limitations for Libraries and Archives, WIPO Doc. SCCR/26/8 (Jan. 10, 2014).

[60] *See, e.g., Authors Guild* v. *Google, Inc.,* 804 F.3d 202 (2d Cir. 2015), *cert. denied,* 136 S.Ct. 1658 (mem.) (2016); *Authors Guild, Inc.* v. *HathiTrust,* 755 F.3d 87 (2d Cir. 2014); *see also* Library Copyright Alliance, Before the House Committee on the Judiciary: Recommendations of the Library Copyright Alliance on Copyright Reform 4 (May 8, 2015), *http://www.librarycopyrightalliance.org/storage/documents/lca-copyright-reform-amendments.pdf* (''[A]s the recent decision in *Authors Guild* v. *HathiTrust* . . . makes clear, fair use supplements Section 108 and thus provides a sufficient mechanism for updating it when necessary.'').

[61] *See* Study Group Report at 21–22; *see also* 17 U.S.C. 108(f)(4); *HathiTrust,* 755 F.3d at 94 n.4 (''[W]e do not construe § 108 as foreclosing our analysis of the libraries' activities under fair use.'').

[62] H.R. Rep. No. 94–1476, at 74 (1976), *as reprinted in* 1976 U.S.C.C.A.N. 5659, 5687–88; *see also S. Rep. No. 91–1219,* at 6 (1970) (''The rights given to the libraries and archives by this provision of the bill are in addition to those granted under the fair-use doctrine.''). Further, the court in *HathiTrust* expressly rejected plaintiffs' argument that fair use did not apply to the activities at issue in the case because section 108 alone governs reproduction of copyrighted works by libraries and archives, finding that because ''section 108 also includes a 'savings clause' . . . . we do not construe § 108 as foreclosing our analysis of the Libraries' activities under fair use . . .'' *HathiTrust,* 755 F.3d at 94 n.4.

[63] *Preservation and Reuse of Copyrighted Works: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary,* 113th Cong. 6 (2014) (statement of Rep. Bob Goodlatte, Chairman, H. Comm. on the Judiciary).

[64] *See, e.g., id.* at 26 (testimony of Richard S. Rudick, Co-Chair, Section 108 Study Group) (noting that ''reliance on section 107 for purposes that go far beyond those originally conceived or imagined invites, as we have seen, expensive litigation with uncertain results.''); *see also The Scope of Fair Use: Hearing Before the Subcomm. on Courts, Intellectual Prop., & the Internet of the H. Comm. on the Judiciary,* 113th Cong. 7 (2014) (testimony of Peter Jaszi, Professor, Faculty Director, Glushko-Samuelson Intellectual Property Clinic, Washington College of Law, American University) (noting that specific exceptions like those found in section 108 can be highly valuable to particular groups of users even in static form because, ''even though never comprehensive and often not up to date,'' they are supplemented by fair use).

[65] Study Group Report at 93–94.

Eligibility

1. The attributes that an institution should possess in order to be eligible for the section 108 exceptions, and how to prescribe and/or regulate them.

Rights Affected

2. Limiting section 108 to reproduction and distribution activities, or extending it to permit public performance and display as well.

Copies for Preservation, Security, Deposit in Another Institution, and Replacement

3. Restricting the number of preservation and security copies of a given work, either with a specific numerical limit, as with the current three-copy rule, or with a conceptual limit, such as the amount reasonably necessary for each permitted purpose.

4. The level of public access that a receiving institution can provide with respect to copies of both publicly disseminated and non-publicly disseminated works deposited with it for research purposes.

Copies for Users

*5.* Conditioning the unambiguous allowance of direct digital distribution of copies of portions of a work or entire works to requesting users, and whether any such conditions should be statutory or arrived at through a rulemaking process.

Preservation of Internet Content

*6.* Conditioning the distribution and making available of publicly available internet content captured and reproduced by an eligible institution.

Relation to Contractual Obligations

7. How privileging some of the section 108 exceptions over conflicting contractual terms would affect business relationships between rights-holders and libraries, archives, and museums.

Outsourcing

8. What activities (*e.g.,* digitization, preservation, interlibrary loan) to allow to be outsourced to third-party contractors, and the conditioning of this outsourcing.

Other

9. Whether the conditions to any of the section 108 exceptions would be better as regulations that are the product of notice-and-comment rulemaking or as statutory text.

10. Whether and how the use of technical protection measures by eligible institutions should apply to section 108 activities.

11. Any pertinent issues not referenced above that the Copyright Office should consider in relation to revising section 108.

Dated: June 2, 2016.

**Karyn A. Temple Claggett,**

*Associate Register of Copyrights and Director of Policy and International Affairs, U.S. Copyright Office.*

[FR Doc. 2016–13426 Filed 6–6–16; 8:45 am]

**BILLING CODE 1410–30–P**

## NATIONAL AERONAUTUICS AND SPACE ADMINISTRATION

**[Notice (16–039)]**

### Notice of Intent To Grant an Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant exclusive license.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Non-Provisional Patent Application, Serial No. 13/573920, titled ''System and Method for Air Launch from a Towed Aircraft,'' NASA Case No. DRC–012–011, and Provisional Patent Application, Serial No. 15/046789, titled ''System and Method for Air Launch from a Towed Aircraft'' NASA Case No. DRC–012–011B and any issued patents or continuations in part resulting therefrom, to Kelly Space & Technology Inc., having its principal place of business in San Bernardino, California. Certain patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S 180–800C, Pasadena, CA 91109, (818) 854–7770 (phone), 818–393–2607 (fax).

**FOR FURTHER INFORMATION CONTACT:** Mark Homer, Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, 4800 Oak Grove Drive, M/S 180–800C, Pasadena, CA 91109, (818) 854–7770 (phone), 818–393–2607 (fax). Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

**Mark P. Dvorscak,**

*Agency Counsel for Intellectual Property.*

[FR Doc. 2016–13429 Filed 6–6–16; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Office of Government Information Services (OGIS)

**[NARA 2016–034]**

### Freedom of Information Act Advisory Committee

**AGENCY:** National Archives and Records Administration.

**ACTION:** Charter Renewal of the Freedom of Information Act Advisory Committee.

SUMMARY: The National Archives and Records Administration (NARA) is renewing the charter for the Freedom of Information Act (FOIA) Advisory Committee, a Federal advisory committee we established to study the current FOIA landscape across the executive branch and to advise NARA's Office of Government Information Services, the Government's FOIA ombudsman, on improvements to the FOIA.

**DATES:** We filed the renewed charter on May 20, 2016. It remains in effect for two years from that date, unless otherwise extended.

**ADDRESSES:** You may access the charter and other information about the FOIA Advisory Committee online at *http://www.ogis.archives.gov/foia-advisory-committee.htm.*

**FOR FURTHER INFORMATION CONTACT:** Kate Gastner by phone at 202–741–5770, by

mail at National Archives and Records Administration; Office of Government Information Services; 8601 Adelphi Road; College Park, MD 20740–6001, or by email at *foia-advisory-committee@nara.gov.*

**SUPPLEMENTARY INFORMATION:** NARA operates the FOIA Advisory Committee in accordance with provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., App. 2) and implementing regulations at 41 CFR 102–3.5, *et seq.* The FACA formalizes a process for establishing, operating, overseeing, and terminating Federal advisory committees, and we review, at least annually, the need to continue each existing advisory committee. In accordance with the Government in the Sunshine Act (5 U.S.C. 552b(c)), the FOIA Advisory Committee meetings are open to the public, and we announce them in the **Federal Register** at least 15 days prior to each meeting.

**Patrice Murray,**

*Committee Management Officer.*

[FR Doc. 2016–13384 Filed 6–6–16; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Modernizing Data Collection for Regulatory Oversight of Credit Unions

**AGENCY:** National Credit Union Administration.

**ACTION:** Notice; Request for Information (RFI).

**SUMMARY:** The National Credit Union Administration (NCUA) is conducting a comprehensive review of two vehicles used to collect information for regulatory oversight of federally insured credit unions (FICUs)—the 5300 Call Report (Call Report) and Form 4501A Profile (Profile). The overarching goal is modernizing content to (i) strengthen on-site examination and off-site monitoring by NCUA and state supervisory authorities, (ii) facilitate richer comparisons of institution and industry trends by other parties, and (iii) minimize the burden on reporting FICUs. NCUA plans a diverse outreach to inform modernization efforts with both general and specific input from all interested stakeholders. This RFI represents the first step.

Specifically, this RFI announces NCUA's desire for assistance in identifying the interrelated considerations and challenges associated with improving the Call Report and Profile. Input with be gathered through an open public review-and-comment process featuring a range of possible forums (such as workshops, focus groups, online surveys, etc.). Target participants include credit unions, leagues, trades, regulators, industry-related persons, and academics.

**DATES:** Comments must be received by 5:00 p.m. Eastern time on August 1, 2016.

**ADDRESSES:** Comments may be submitted using *one* of the methods below (Please do not send comments via multiple methods.). Include ''[Your name and company name (if any)]—Call Report/Profile Content Modernization'' in all correspondence.

- *Mail:* Please direct written comments related to Call Report/Profile content modernization to Mark Vaughan, National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314.
- *Email:* Address to *CallReportMod@ncua.gov.* Any of the following formats is acceptable: HTML, ASCII, Word, RTF, or PDF.

NCUA will post all material received by the deadline on the agency Web site (*www.ncua.gov*) without alteration or redaction, so commenters should not include information they do not wish public (*e.g.,* personal or confidential business information). SPAM or marketing materials will be discarded without publication.

**FOR FURTHER INFORMATION CONTACT:** Mark Vaughan, National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314, telephone (703) 518–6622, email *mvaughan@ncua.gov.* Media inquiries should be directed to the NCUA Office of Public and Congressional Affairs at (703) 518–6671 or *pacamail@ncua.gov.*

**SUPPLEMENTARY INFORMATION:** NCUA uses the Call Report and Profile to collect financial and non-financial information from federally insured credit unions (FICUs). The resulting data are integral to risk supervision at the institution and industry levels, which is central to safeguarding the integrity of the National Credit Union Share Insurance Fund (NCUSIF).

The credit-union industry is dynamic, with FICUs growing larger and more complex every year. To keep pace, NCUA has modernized a variety of regulations, such as those governing member business loans and risk-based capital. The agency is also studying extension of the examination cycle, which would require compensating enhancements in off-site monitoring. In such an environment, NCUA must ensure its data-collection vehicles evolve with industry practices, prudential regulations, and examination/supervision procedures so: (i) All material FICU risk exposures are captured; (ii) data offering little insight into these exposures are no longer solicited; (iii) the reporting burden on supervised institutions—particularly small or non-complex credit unions—is minimized.

This RFI represents an initial NCUA step to collaborate with the public to modernize its systems for collecting, storing, and analyzing regulatory data. NCUA will use information furnished by individuals and organizations to enhance data utility, improve user experiences, and reduce regulatory burden without compromising the agency's ability to safeguard the NCUSIF. In addition to this step, the agency plans to seek clearance from the Office of Management and Budget to form workgroups to help improve vehicles for storing and analyzing data.

NCUA invites credit unions, leagues, trade organizations, financial-data aggregators, academia, insurers, other regulators, and other interested parties to respond.

#### Request for Comment

NCUA is providing questions about major aspects of the Call Report and Profile to target issues the public would like addressed by the modernization effort. These questions are not intended to limit discussion. Indeed, responders may explore any issue relevant to Call Report and Profile content. Information received will not be used for statistical purposes.

Responses containing references to studies, research, or data not widely available to the public should include copies of referenced materials. A description of the commenter's organization and its interest in the Call Report and Profile will help NCUA use the input provided.

#### Call Report/Profile Content Questions

1. What specific areas of the Call Report/Profile forms do you find challenging to complete? Please describe the nature of those challenges.

2. What sections/schedules/items on the Call Report/Profile could be made optional for small or non-complex credit unions without complicating assessments of risk?

3. What specific items would you like to see added to the Call Report/Profile to enhance analysis of local, regional and national performance trends or improve comparisons of individual credit unions with peer institutions?

4. Are current Call Report account categories (database fields) reasonably aligned with your internal accounting? If not, what changes would improve the alignment?

5. Are the Call Report and Profile instructions adequate? If not, what improvements (overall and peculiar to specific items/schedules) would improve clarity and reduce reporting burden?

6. Could re-organization of the Call Report or Profile reduce reporting burden? If so, please describe the needed changes. Does the Call Report contain elements that should be moved to the Profile? If so, please detail these elements. Does the Profile contain element that should be moved to the Call Report? If so, please detail these elements.

7. Do you have any concerns or ideas about NCUA schedules/forms for collecting financial and non-financial information not addressed above?

Dated: June 1, 2016.

**Gerard S. Poliquin,**

*Secretary of the Board.*

[FR Doc. 2016–13332 Filed 6–6–16; 8:45 am]

**BILLING CODE 7535–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0096]**

## Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; opportunity to comment, request a hearing, and petition for leave to intervene; order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of five amendment requests. The amendment requests are for Palisades Nuclear Plant (PNP); Donald C. Cook Nuclear Plant, Units 1 and 2; Fort Calhoun Station, Unit No. 1; Diablo Canyon Nuclear Power Plant, Units 1 and 2; and Hope Creek Generating Station. For each amendment request, the NRC proposes to determine that they involve no significant hazards consideration. In addition, each amendment request contains sensitive unclassified non-safeguards information (SUNSI).

**DATES:** Comments must be filed by July 7, 2016. A request for a hearing must be filed by August 8, 2016. Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must request document access by June 17, 2016.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Janet Burkhardt, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1384, email: *Janet.Burkhardt@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2016–0096 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0096.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2016–0096, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

**III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

*A. Opportunity to Request a Hearing and Petition for Leave to Intervene*

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii). If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition

should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 8, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 8, 2016.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding U.S. government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant (PNP), Van Buren County, Michigan

*Date of amendment request:* March 3, 2016. A publicly-available version is in ADAMS under Accession No. ML16075A103.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the PNP Technical Specifications (TS), Section 5.5.8, ''Steam Generator (SG) Program,'' and Section 5.6.8, ''Steam Generator Tube Inspection Report.'' Specifically, the licensee requested to implement an alternate repair criteria (ARC), that invokes a C-Star inspection length (C*), on a permanent basis for the cold-leg side of the SGs' tubesheet.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Previously evaluated accidents are initiated by the failure of plant structures, systems, or components. The proposed change alters the SG cold leg repair criteria by limiting tube inspections length in the cold leg tubesheet, to the safety significant section, C* length, and, as such, does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. Therefore, the proposed change has no significant effect upon previously evaluated accident probabilities or consequences.

The proposed amendment to revise the PNP SG tube repair criteria in TS 5.5.8c, does not involve a significant increase in the probability of an accident previously evaluated. Alternate repair criteria are being proposed for the cold leg side of the SGs that duplicate the current alternate repair criteria for the hot leg side of the SGs, in TS 5.5.8c.1. The proposed SG tube inspection length maintains the existing design limits of the SGs and therefore does not increase the probability or consequences of an accident involving a tube rupture or primary to secondary accident-induced leakage, as previously evaluated in the PNP Updated Final Safety Analysis Report (UFSAR). Also, the Nuclear Energy Institute (NEI) *Steam Generator Program Guidelines* (NEI 97–06) [(ADAMS Accession No. ML111310708)] performance criteria for structural integrity and accident-induced leakage, which are incorporated in PNP TS 5.5.8, would continue to be satisfied.

Implementing an alternate repair criteria would allow SG tubes with flaws below the C* length to remain in service. The potential consequences to leaving these flawed tubes inservice are tube burst, tube pullout, and accident induced tube leakage. Tube burst is prevented for a tube with defects within the tubesheet region because of the constraint provided by the tubesheet. Tube pullout could result from the axial forces induced by primary to secondary differential pressures that occur during the bounding event of the main steam line break. A joint industry test program report, WCAP–16208–P, *NDE Inspection Length for CE Steam Generator Tubesheet Region Explosive Expansions,* Revision 1, May 2005 [(Non-proprietary version under ADAMS Accession No. ML051520417)], has defined the non-degraded tube to tubesheet joint length (C*) required to preclude tube pullout and maintain acceptable primary to secondary accident-induced leakage, conservatively assuming a 360 degree circumferential through wall crack exists immediately below this C* length.

The PNP UFSAR Sections 14.14, *Steam Line Rupture Incident,* 14.15, *Steam Generator Tube Rupture with a Loss of Offsite Power,* and 14.16, *Control Rod Ejection,* primary coolant system leakage limit is 0.3 gallon per minute (gpm) (432 gallons per day) in the unaffected SG. For the tube rupture accident, this 0.3 gpm leakage is in addition to the break flow rate associated with the rupture of a single SG tube. The WCAP–16208–P report used a primary to secondary accident-induced leakage criteria value of 0.1 gpm to derive the C* length. Use of 0.1 gpm ensures that the PNP TS limiting accident-induced leakage of 0.3 gpm is met.

For PNP, the derived C* length for the cold leg side of the SGs is 12.5 inches, which is the same C* length, as the current TS, for the hot leg side of the SGs. Any degradation below the C* length is shown by test results and analysis to meet the NEI 97–06 performance criteria, thereby precluding an increased probability of a tube rupture event or an increase in the consequences of a steam line rupture incident or control rod ejection accident.

Therefore, the C* lengths for the SG hot and cold legs provide assurance that the NEI 97–06 requirements for tube burst and leakage are met and that they conservatively derived maximum combined leakage from both tubesheet joints (hot and cold legs) is less than 0.2 gpm at accident conditions. This combined leakage criterion of 0.2 gpm in the faulted loop retains margin against the PNP TS allowable accident-induced leakage of 0.3 gpm per SG.

In summary, the proposed changes to the PNP TS maintain existing design limits, meet the performance criteria of NEI 97–06 and Regulatory Guide 1.121 [ADAMS Accession No. ML003739366], and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the UFSAR.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment provides for an alternate repair criteria that excludes the lower portion of the steam generator cold leg tubes from inspection below a C* length by implementing an alternate repair criteria. It does not affect the design of the SGs or their method of operation. It does not impact any other plant system or component. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in the accident analysis.

The proposed amendment does not introduce any new equipment, change existing equipment, create any new failure modes for existing equipment, nor introduce any new malfunctions resulting from tube degradation. SG tube integrity is shown to be maintained for all plant conditions upon implementation of the proposed alternate repair criteria for the SG cold leg tubesheet region.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously

evaluated because SG tube leakage limits and structural integrity would continue to be maintained during all plant conditions upon implementation of the proposed alternate repair criteria to the PNP TSs. The alternate repair criteria does not introduce any new mechanisms that might result in a different kind of accident from those previously evaluated. Even with the limiting circumstances of a complete circumferential separation (360 degree through wall crack) of a tube below the C* length, tube pullout is precluded and leakage is predicted to be maintained with the TS and accident analysis limits during all plant conditions.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change provides an alternate repair criteria for the SG cold leg that invokes a C* inspection length criteria. The proposed amendment does not involve a significant reduction in a margin of safety since design SG primary to secondary leakage limits have been analyzed to continue to be met. This will ensure that the SG cold legs tubes continue to function as a primary coolant system boundary by maintaining their integrity. Tube integrity includes both structural and leakage integrity. The proposed cold leg tubesheet inspection C* depth, of 12.5 inches below the bottom of the cold-leg expansion transition or top of the cold-leg tubesheet, which is lower, would ensure tube integrity is maintained during normal and accident conditions because any degradation below C* is shown by test results and analyses to be acceptable.

Operation with potential tube degradation below the proposed C* cold leg inspection length within the tubesheet region of the SG tubing meets the recommendation of NEI 97–06 SG program guidelines. Additionally, the proposed changes also maintain the structural and accident-induced leakage integrity as required by NEI 97–06.

The total leakage from an undetected flaw population below the C* inspection length for the cold leg tubesheet under postulated accident conditions is accounted for, in order to assure it is within the bounds of the accident analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mrs. Jeanne Cho, Senior Counsel, Entergy Services, Inc., 440 Hamilton Ave., White Plains, New York 10601.

*NRC Branch Chief:* David J. Wrona.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant (CNP), Units 1 and 2, Berrien County, Michigan

*Date of amendment request:* March 14, 2016. A publicly-available version is in ADAMS under Accession No. ML16077A029.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise the operating license to extend the completion date for full implementation of the CNP Cyber Security Plan (CSP).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

*Response:* No.

The amendment proposes a change to the CNP Unit 1 and Unit 2 CSPs Milestone 8 full implementation date as set forth in the CNP CSP Implementation Schedule. The revision of the full implementation date for the CNP CSP does not involve modifications to any safety-related structures, systems or components (SSCs). Rather, the implementation schedule provides a timetable for fully implementing the CNP CSP. The CSP describes how the requirements of 10 CFR 73.54 are to be implemented to identify, evaluate, and mitigate cyber attacks up to and including the design basis cyber attack threat, thereby achieving high assurance that the facility's digital computer and communications systems and networks are adequately protected from cyber attacks. The revision of the CNP CSP Implementation Schedule will not alter previously evaluated design basis accident analysis assumptions, add any accident initiators, modify the function of the plant safety-related SSCs, or affect how any plant safety-related SSCs are operated, maintained, modified, tested, or inspected.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

A revision to the CSP Implementation Schedule does not require any plant modifications. The proposed revision to the CSP Implementation Schedule does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or affect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected. Revision of the CNP CSP Implementation Schedule does not introduce new equipment that could create a new or different kind of accident, and no new equipment failure modes are created. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed amendment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Plant safety margins are established through limiting conditions for operation, limiting safety system settings, and safety limits specified in the technical specifications. The proposed amendment does not alter the way any safety-related SSC functions and does not alter the way the plant is operated. The CSP, as implemented by milestones 1–7, provides assurance that safety-related SSCs are protected from cyber attacks. The proposed amendment does not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment has no effect on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Robert B. Haemer, Senior Nuclear Counsel, One Cook Place, Bridgman, Michigan 49106.

*NRC Branch Chief:* David J. Wrona.

Omaha Public Power District (OPPD), Docket No. 50–285, Fort Calhoun Station, Unit No. 1 (FCS), Washington County, Nebraska

*Date of amendment request:* April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16103A348.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendment would modify License Condition D, Fire Protection Program. License Amendment No. 275, issued June 16, 2014 (ADAMS Accession No. ML14098A092), implemented the licensee's transition to a risk-informed, performance-based fire protection program based on National Fire Protection Association Standard (NFPA) 805, ''Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001

Edition.'' As part of the Transition License Conditions included in Amendment No. 275, the licensee committed to implement certain plant modifications as stated in Paragraph 3.D.(3)(b) of Renewed Facility Operating License No. DPR–40. Based on updated fire modeling assumptions, the licensee is proposing to withdraw the commitments in REC–119 and REC–120 due to the fact that they are not necessary to meet the performance requirements of the risk-informed fire protection standard.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Updated Safety Analysis Report (USAR) documents the analyses of design basis accidents (DBA) at FCS. The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility and does not adversely affect the ability of structures, systems, or components (SSCs) to perform their design functions. SSCs required to safely shutdown the reactor and to maintain it in a safe shutdown condition will remain capable of performing their design functions.

The proposed amendment makes no physical changes to the plant and does not change the manner in which plant systems are controlled. Therefore, the implementation of the proposed amendment does not increase the probability of any accident previously evaluated.

Equipment required to mitigate an accident remains capable of performing the assumed function. The proposed amendment will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. The applicable radiological dose criteria will continue to be met. Therefore, the consequences of any accident previously evaluated are not increased with the implementation of the proposed amendment.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Operation of FCS in accordance with the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Any scenario or previously analyzed accident with off-site dose was included in the evaluation of DBAs documented in the USAR. The proposed change does not alter the requirements or function for systems required during accident conditions. Implementation of the proposed amendment will not change the previous conclusion that the fire protection licensing basis which complies with the requirements of 10 CFR 50.48(a) and (c) and the guidance in [Regulatory Guide (RG)] 1.205, Revision 0 [Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants, May 2006, available under ADAMS Accession No. ML061100174], will not result in new or different accidents.

The proposed amendment does not adversely affect accident initiators nor alter design assumptions, conditions, or configurations of the facility. The proposed amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shutdown the reactor and maintain it in a safe shutdown condition remain capable of performing their design functions.

The purpose of the proposed amendment is to modify a commitment made as a licensing condition under Amendment No. 275 which implemented OPPD's transition to NFPA 805. The proposed amendment is not intended to reduce or, in any way, adversely affect compliance with NFPA 805 and is supported by engineering analyses that continue to demonstrate compliance with 10 CFR 50.48(a) and (c) and the guidance in RG 1.205, Revision 0.

The requirements of NFPA 805 address only fire protection and the impacts of fire on the plant that have previously been evaluated. Based on this, the implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any kind of accident previously evaluated. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety related system as a result of this amendment. Therefore, the possibility of a new or different kind of accident from any kind of accident previously evaluated is not created with the implementation of this amendment.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Operation of FCS in accordance with the proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed amendment does not adversely affect existing plant safety margins or the reliability of equipment assumed to mitigate accidents in the USAR. This amendment does not adversely affect the ability of SSCs to perform their design function. SSCs required to safely shutdown the reactor and to maintain it in a safe shutdown condition remain capable of performing their design functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

*NRC Branch Chief:* Robert J. Pascarelli.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2 (DCPP), San Luis Obispo County, California

*Date of amendment request:* October 26, 2011, as supplemented by letters dated December 20, 2011; April 2, April 30, June 6, August 2, September 11, November 27, and December 5, 2012; March 7, March 25, April 30, May 9, May 30, and September 17, 2013; April 24 and April 30, 2014; February 2 and June 22, 2015; and January 25 and February 11, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML113070457, ML113610541, ML12094A072, ML12131A513, ML121700592, ML122220135, ML12256A308, ML130040687, ML12342A149, ML13267A127, ML130930344, ML13121A089, ML13130A059, ML131540159, ML13261A354, ML14205A031, ML14121A002, ML15062A386, ML15173A469, ML16049A006, and ML16061A481, respectively.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The amendments would revise the facility operating licenses to allow the permanent replacement of the current DCPP Eagle 21 digital process protection system (PPS) with a new digital PPS that is based on the Invensys Operations Management Tricon Programmable Logic Controller (PLC), Version 10, and the CS Innovations, LLC (a Westinghouse Electric Company), Advanced Logic System. The amendments would also incorporate a revised definition of Channel Operational Test in Technical Specification (TS) 1.1, ''Definitions.''

The license amendment request was originally noticed in the **Federal Register** on June 5, 2012 (77 FR 33243). The notice is being reissued in its entirety to include a revised description of the amendment request (change to TS 1.1).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change would allow Pacific Gas and Electric Company to permanently replace the Diablo Canyon Power Plant Eagle 21 digital process protection system with a new digital process protection system that is based on the Invensys Operations Management Tricon Programmable Logic Controller, Version 10, and the CS Innovations Advanced Logic System. The process protection system replacement is designed to applicable codes and standards for safety-grade protection systems for nuclear power plants and incorporates additional redundancy and diversity features and therefore, does not result in an increase in the probability of inadvertent actuation or probability of failure to initiate a protective function. The process protection system replacement does not introduce any new credible failure mechanisms or malfunctions that cause an accident. The process protection system replacement design will continue to perform the reactor trip system and engineered safety features actuation system functions assumed in the Final Safety Analysis Report within the response time assumed in the Final Safety Analysis Report Chapter 6 and 15 accident analyses.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

*Response:* No.

The proposed change is to permanently replace the current Diablo Canyon Power Plant Eagle 21 digital process protection system with a new digital process protection system. The process protection system performs the process protection functions for the reactor protection system that monitors selected plant parameters and initiates protective action as required. Accidents that may occur due to inadvertent actuation of the process protection system, such as an inadvertent safety injection actuation, are considered in the Final Safety Analysis Report accident analyses.

The protection system is designed with redundancy such that a single failure to generate an initiation signal in the process protection system will not cause failure to trip the reactor nor failure to actuate the engineered safeguard features when required. Neither will such a single failure cause spurious or inadvertent reactor trips [n]or engineered safeguard features actuations because coincidence of two or more initiation signals is required for the solid state protection system to generate a trip or actuation command. If an inadvertent actuation occurs for any reason, existing control room alarms and indications will notify the operator to take corrective action.

The process protection system replacement design includes enhanced diversity features compared to the current process protection system to provide additional assurance that the protection system actions credited with automatic operation in the Final Safety Analysis Report accident analyses will be performed automatically when required should a common cause failure occur concurrently with a design basis event.

The process protection system replacement does not result in any new credible failure mechanisms or malfunctions. The current Eagle 21 process protection system utilizes digital technology and therefore the use of digital technology in the process protection system replacement does not introduce a new type of failure mechanism. Although extremely unlikely, the current Eagle 21 process protection system is susceptible to a credible common-cause software failure that could adversely affect automatic performance of the protection function. The process protection system replacement contains new, additional diversity features that prevent a common-cause software failure from completely disabling the process protection system.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The reactor protection system is fundamental to plant safety and performs reactor trip system and engineered safety features actuation system functions to limit the consequences of Condition II (faults of moderate frequency), Condition III (infrequent faults), and Condition IV (limiting faults) events. This is accomplished by sensing selected plant parameters and determining whether predetermined instrument settings are being exceeded. If predetermined instrument settings are exceeded, the reactor protection system sends actuation signals to trip the reactor and actuate those components that mitigate the severity of the accident.

The process protection system replacement design will continue to perform the reactor trip system and engineered safety features actuation functions assumed in the Final Safety Analysis Report within the response time assumed Final Safety Analysis Report Chapter 6 and 15 accident analyses. The use of the process protection system replacement does not result in a design basis or safety limit being exceeded or changed. The change to the process protection system has no impact on the reactor fuel, reactor vessel, or containment fission product barriers. The reliability and availability of the reactor protection system is improved with the process protection system replacement, and the reactor protection system will continue to effectively perform its function of sensing plant parameters to initiate protective actions to limit or mitigate events.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Jennifer Post, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

*NRC Branch Chief:* Robert J. Pascarelli.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

*Date of amendment request:* September 21, 2015, as supplemented by letter dated November 19, 2015. Publicly-available versions are in ADAMS under Accession Nos. ML15265A223 and ML15323A268, respectively.

*Description of amendment request:* This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would allow for the replacement and upgrade of the existing analog Average Power Range Monitor (APRM) sub-system of the Neutron Monitoring System with General Electric-Hitachi digital Nuclear Measurement Analysis and Control (NUMAC) Power Range Neutron Monitoring (PRNM) system. The PRNM upgrade also includes Oscillation Power Range Monitor (OPRM) capability and will allow full APRM, Rod Block Monitor (RBM), Technical Specification Improvement Program implementation, and will include application of Technical Specification Task Force Traveler-493, ''Clarify Application of Setpoint Methodology for LSSS [Limiting Safety System Setting] Functions,'' to affected PRNM functions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The probability of accidents occurring is not affected by the PRNM system, as the PRNM system is not the initiator of any accident and does not interact with equipment whose failure could cause an accident. The transition from flow-biased to power-biased RBM does not increase the probability of an accident; the RBM is not involved in the initiation of any accident. The regulatory criteria established for the APRM, OPRM, and RBM systems will be maintained with the installation of the upgraded PRNM system. Therefore, the

proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of accidents are not affected by the PRNM system, as the setpoints in the PRNM system will be established so that all analytical limits are met. The unavailability of the new system will be equal to or less than the existing system and, as a result, the scram reliability will be equal to or better than the existing system. No new challenges to safety-related equipment will result from the PRNM system modification. The change to power biased RBM allows for Rod Withdrawal Error (RWE) analyses performed for each future reload to take credit for rod blocks during the rod withdrawal transients. The results of the RWE event analysis will be used in establishing the cycle specific operating limits for the fuel. The proposed change will also replace the currently installed and NRC approved Asea Brown Boveri (ABB) OPRM Option III long-term stability solution with an NRC approved General Electric-Hitachi (GEH) Detect and Suppress Solution—Confirmation Density (DSS–CD) stability solution (reviewed and approved by the NRC in Reference 2, Licensing Topical Report). The OPRM meets the GDC [General Design Criteria] 10, ''Reactor Design,'' and 12, ''Suppression of Reactor Power Oscillations,'' requirements by automatically detecting and suppressing design basis thermal hydraulic oscillations to protect specified fuel design limits. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The components of the PRNM system will be supplied to equivalent or better design and qualification criteria than is currently required for the plant. Equipment that could be affected by [the] PRNM system has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or system interaction mode was identified. Therefore, the upgraded PRNM system will not adversely affect plant equipment.

The new PRNM system uses digital equipment that has software controlled digital processing points and software controlled digital processing compared to the existing PRNM system that uses mostly analog and discrete component processing (excluding the existing OPRM). Specific failures of hardware and potential software common cause failures are different from the existing system. The effects of potential software common cause failure are mitigated by specific hardware design and system architecture as discussed in Section 6.0 of the NUMAC PRNM LTR [Licensing Topical Report], and supported by a plant specific evaluation. The transition from a flow-biased RBM to a power dependent RBM does not change its function to provide a control rod block when specified setpoints are reached. The change does not introduce a sequence of events or introduce a new failure mode that would create a new or different type of accident. Failure(s) of the system have the same overall effect as the present design. No new or different kind of accident is introduced. Therefore, the PRNM system will not adversely affect plant equipment.

The currently installed APRM System is replaced with a NUMAC PRNM system that performs the existing power range monitoring functions and adds an OPRM to react automatically to potential reactor thermal-hydraulic instabilities.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed TS changes associated with the NUMAC PRNM system implement the constraints of the NUMAC PRNM system design and related stability analyses. The NUMAC PRNM system change does not impact reactor operating parameters or the functional requirements of the PRNM system. The replacement equipment continues to provide information, enforce control rod blocks, and initiate reactor scrams under appropriate specified conditions. The power dependent RBM will continue to prevent rod withdrawal when the power-dependent RBM rod block setpoint is reached. The MCPR [Minimum Critical Power Ratio] and Linear Heat Generation Rate (LHGR) thermal limits will be developed on a cycle specific basis to ensure that fuel thermal mechanical design bases remain within the licensing limits during a control rod withdrawal error event and to ensure that the MCPR SL [Safety Limit] will not be violated as a result of a control rod withdrawal error event.

The proposed change does not reduce safety margins. The replacement PRNM equipment has improved channel trip accuracy compared to the current analog system, and meets or exceeds system requirements previously assumed in setpoint analysis. The power dependent RBM will support cycle specific RWE analysis ensuring fuel limits are not exceeded. Thus, the ability of the new equipment to enforce compliance with margins of safety equals or exceeds the ability of the equipment which it replaces.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, New Jersey 08038.

*NRC Branch Chief:* Douglas A. Broaddus.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Entergy Nuclear Operations, Inc., Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1]

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these

The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated at Rockville, Maryland, this 19th day of May, 2016.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

## ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

| Day | Event/Activity |
|---|---|
| 0 | Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+ 25 Answers to petition for intervention; + 7 petitioner/requestor reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |

procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

| Day | Event/Activity |
|---|---|
| 25 | If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt + 30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt + 25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt + 7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2016–12484 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0001]**

### Sunshine Act Meeting Notice

**DATES:** June, 6, 13, 20, 27, July 4, 11, 2016.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of June 6, 2016**

There are no meetings scheduled for the week of June 6, 2016.

**Week of June 13, 2016—Tentative**

There are no meetings scheduled for the week of June 13, 2016.

**Week of June 20, 2016—Tentative**

*Monday, June 20, 2016*

9:00 a.m. Meeting with Department of Energy Office of Nuclear Energy (Public Meeting); (Contact: Albert Wong: 301–415–3081).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

*Thursday, June 23, 2016*

9:00 a.m. Discussion of Security Issues (Closed Ex. 3).

**Week of June 27, 2016—Tentative**

*Tuesday, June 28, 2016*

9:30 a.m. Briefing on Human Capital and Equal Opportunity Employment (Public Meeting); (Contact: Kristin Davis: 301–287–0707).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

**Week of July 4, 2016—Tentative**

*Thursday, July 7, 2016*

9:30 a.m. Strategic Programmatic Overview of the Reactors Operating Business Line (Public Meeting); (Contact: Trent Wertz: 301–415–1568).

**Week of July 11, 2016—Tentative**

There are no meetings scheduled for the week of July 11, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 2, 2016.

**Denise L. McGovern,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2016–13563 Filed 6–3–16; 4:15 pm]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0097]**

### Consequential SGTR Analysis for Westinghouse and Combustion Engineering Plants With Thermally-Treated Alloy 600 and 690 Steam Generator Tubes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft NUREG; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2195, "Consequential SGTR Analysis for Westinghouse and Combustion Engineering Plants with Thermally Treated Alloy 600 and 690 Steam Generator Tubes." This report summarizes severe accident-induced consequential steam generator tube rupture (C–SGTR) analyses recently

performed by the NRC's Office of Nuclear Regulatory Research. The analyses described in this report include risk assessment, thermal-hydraulic analyses, and materials behavior analyses.

**DATES:** Submit comments by August 8, 2016. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0097. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Selim Sancaktar, Office of Nuclear Regulatory Research; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2391; email: *Selim.Sancaktar@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2016–0097 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0097.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft NUREG–2195 can be found in ADAMS under at Accession No. ML16134A029.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2016–0097 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

## II. Discussion

This report summarizes severe accident-induced consequential steam generator tube rupture (C–SGTR) analyses recently performed by the NRC's Office of Nuclear Regulatory Research. The C–SGTRs are potentially risk-significant events because thermally-induced steam generator (SG) tube failures caused by hot gases from a damaged reactor core can result in a containment bypass event and a large release of fission products to the environment. The main accident scenarios of interest are those that lead to core damage with high reactor pressure, dry SG, and low SG pressure (high-dry-low) conditions. A typical example of such an accident scenario is a station blackout with loss of auxiliary feedwater. The analyses described in this report include risk assessment, thermal-hydraulic analyses, and materials behavior analyses. This work builds on, and updates, previous NRC work.

The current analyses evaluate replacement SGs with thermally-treated Alloy 600 and Alloy 690 heat exchange tubes and use the latest tube flaw data available in the 2010 time frame. A main focus of this work was to compare C–SGTR results for the different SG geometries associated with Westinghouse and Combustion Engineering plant designs. It has been previously understood that the geometry of the SG reactor coolant inlet plenum region and the hot-leg (HL) influences the temperature of the gases reaching the steam generator tubes during closed-loop-seal natural circulation conditions. Hotter gases reaching the SG tube reduce the time before tube failure, which increases the likelihood of containment bypass. However, if a thermally-induced failure sufficient to depressurize the reactor coolant system (RCS) develops in another location, fission product release through failed SG tubes may be prevented or minimized. Therefore, the possibility of an earlier failure of other RCS components (such as the reactor coolant HL) is also considered. Pressure-induced steam generator tube rupture (SGTR) scenarios, which also may lead to tube failure and subsequent containment bypass, were also studied, but are deemed to be of lesser potential impact on overall plant risk.

The methods developed were intended to address the contribution of thermally-induced SGTR during severe accidents and pressure-induced SGTR during a number of design-basis accidents. The methods and the pilot applications were developed in a manner that can establish the framework to perform a more comprehensive Probabilistic Risk Assessment that can address the C–SGTR at a level of detail suitable for other NRC needs.

Dated at Rockville, Maryland, this 26th day of May 2016.

For the Nuclear Regulatory Commission.

**Kevin Coyne,**

*Branch Chief, Probabilistic Risk Assessment Branch, Division of Risk Analysis, Office of Nuclear Regulatory Research.*

[FR Doc. 2016–13387 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0108]**

## Changes to Aging Management Guidance for Various Steam Generator Components

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft license renewal interim staff guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on the draft License Renewal Interim Staff Guidance (LR–ISG), LR–ISG–2016–01, ''Changes to Aging Management Guidance for Various Steam Generator Components.'' The draft LR–ISG describes changes to the aging management guidance for steam generator components in NUREG–1801, ''Generic Aging Lessons Learned (GALL) Report,'' Revision 2, and NUREG–1800, ''Standard Review Plan for Review of License Renewal Applications for Nuclear Power Plants'' (SRP–LR), Revision 2. This draft LR–ISG includes changes to GALL Report aging management program (AMP) XI.M19, ''Steam Generators,'' and the aging management review (AMR) items in the GALL Report and SRP–LR for the steam generator components.

**DATES:** Submit comments by July 7, 2016. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0108. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Dr. Seung Min, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2045; email: *Seung.Min@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2016–0108 when contacting the NRC about the availability of information regarding this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0108.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Draft LR–ISG–2016–01 is available in ADAMS under Accession No. ML16102A268. The GALL Report, NUREG–1801, Revision 2 (December 2010), and the SRP–LR, NUREG–1800, Revision 2 (December 2010), are available in ADAMS under Accession Nos. ML103490041 and ML103490036, respectively. The draft GALL Report for Subsequent License Renewal (GALL–SLR), NUREG–2191 (December 2015), Volumes 1 and 2, and draft Standard Review Plan for Subsequent License Renewal (SRP–SLR), NUREG–2192 (December 2015), are available in ADAMS under Accession Nos. ML15348A111, ML15348A153, and ML15348A265, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- NRC's License Renewal Guidance Web site: Guidance for license renewal documents are also available online at *http://www.nrc.gov/reactors/operating/licensing/renewal/guidance.html.*

*B. Submitting Comments*

Please include Docket ID NRC–2016–0108 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Background

This draft LR–ISG describes changes to the aging management guidance for steam generator components in NUREG–1801 (GALL Report), Revision 2, and NUREG–1800 (SRP–LR), Revision 2. The draft LR–ISG revises GALL Report AMP XI.M19, ''Steam Generators,'' and SRP–LR Sections 3.1.2.2.11 and 3.1.3.2.11, ''Cracking Due to Primary Water Stress Corrosion Cracking.'' Specifically, this LR–ISG addresses the changes to aging management guidance for managing: (a) cracking due to primary water stress corrosion cracking in divider plate assemblies and tube-to-tubesheet welds, and (b) loss of material due to boric acid corrosion in steam generator heads and tubesheets. In addition, changes are made to the associated AMR items in the GALL Report and SRP–LR. This draft LR–ISG also revises the Final Safety Analysis Report supplement for the AMP that is documented in Table 3.0–1, ''FSAR Supplement for Aging Management of Applicable Systems'' of the SRP–LR.

These changes provide one acceptable approach for managing the associated aging effects for steam generator components within the scope of the license renewal rule (part 54 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants''). A licensee may cite LR–ISG–2016–01 in its license renewal application until the guidance in this LR–ISG is incorporated into the license renewal guidance documents (*i.e.,* GALL Report and SRP–LR).

The NRC issues LR–ISGs to communicate insights and lessons learned and to address emergent issues not covered in license renewal guidance documents, such as the GALL Report

and SRP–LR. In this way, the NRC staff and stakeholders may use the guidance in an LR–ISG document before it is incorporated into a formal license renewal guidance document revision. The NRC staff issues LR–ISGs in accordance with the LR–ISG Process, Revision 2 (ADAMS Accession No. ML100920158), for which a notice of availability was published in the **Federal Register** on June 22, 2010 (75 FR 35510).

The NRC also plans to consider the information in this LR–ISG and make corresponding changes when finalizing the draft aging management guidance for the subsequent license renewal period (*i.e.,* up to 80 years of operation), which is documented in draft NUREG–2191, ''Generic Aging Lessons Learned for Subsequent License Renewal (GALL–SLR) Report,'' and draft NUREG–2192, ''Standard Review Plan for Review of Subsequent License Renewal Applications for Nuclear Power Plants,'' if it is practicable to do so in terms of the guidance development schedule.

## III. Proposed Action

By this action, the NRC is requesting public comments on draft LR–ISG–2016–01. This LR–ISG proposes certain revisions to NRC guidance on implementation of the requirements in 10 CFR part 54. The NRC staff will make a final determination regarding issuance of the LR–ISG after it considers any public comments received in response to this request.

## IV. Backfitting

Issuance of this LR–ISG in final form would not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule). As discussed in the ''Backfitting'' section of draft LR–ISG–2016–01, the LR–ISG is directed to holders of operating licenses who are currently in the license renewal process. The LR–ISG is not directed to holders of operating licenses or combined licenses until they apply for license renewal. The LR–ISG also is not directed to licensees who already hold renewed operating licenses. However, the NRC could also use the LR–ISG in evaluating voluntary, licensee-initiated changes to previously-approved AMPs.

Dated at Rockville, Maryland, this 31st day of May, 2016.

For the Nuclear Regulatory Commission.

**Dennis C. Morey,**

*Acting Deputy Director, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. 2016–13388 Filed 6–6–16; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2016–0107]**

## Biweekly Notice, Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Biweekly notice.

**SUMMARY:** Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 10, 2016, to May 23, 2016. The last biweekly notice was published on May 24, 2016 (81 FR 32800).

**DATES:** Comments must be filed by July 7, 2016. A request for a hearing must be filed by August 8, 2016.

**ADDRESSES:** You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0107. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Kay Goldstein, Office of Nuclear Reactor Regulation, telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov* and Lynn Ronewicz, Office of Nuclear Reactor Regulation, telephone: 301–415–1927, email: *Lynn.Ronewicz@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2016–0107 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0107.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

### *B. Submitting Comments*

Please include Docket ID NRC–2016–0107, facility name, unit number(s), application date, and subject in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that

they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in § 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### *A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies and procedures.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii). If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission

finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by August 8, 2016. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that under § 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish, or is not qualified, to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by August 8, 2016.

Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or

expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

*DTE Electric Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan*

*Date of amendment request:* March 22, 2016. A publicly-available version is in ADAMS under Accession No. ML16082A309.

*Description of amendment request:* The proposed amendment would allow for permanent extension of the Type A primary containment integrated leak rate test interval to 15 years and extension of the Type C test interval up to 75 months. The amendment also proposes two administrative changes to remove text that is no longer applicable. The first change revises technical specification (TS) 5.5.12 to remove a one-time extension of the Type A test frequency. The second change would revise the Fermi 2 Operating License, Section D, to remove a reference to an exemption regarding Appendix J testing of containment air locks.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment to the TS involves the extension of Fermi 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The current Type A test interval of 10 years would be extended on a permanent basis to no longer than 15 years from the last Type A test. The current Type C test interval of 60 months for selected components would be extended on a performance basis to no longer than 75 months. Extensions of up to nine months (total maximum interval of 84 months for Type C tests) are permissible only for non-routine emergent conditions. The proposed amendment does not involve either a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment and the testing requirements invoked to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve any accident precursors or initiators. RG [Regulatory Guide] 1.174 [sic] [ADAMS Accession No. ML023240437] provides guidance for determining the risk impact of plant-specific changes to the licensing basis. RG 1.174 defines very small changes in risk as resulting in increases of CDF [core damage frequency] below 1.0E–06/yr and increases in LERF [large early release frequency] below 1.0E–07/yr. Since the ILRT [integrated leak rate test] does not impact CDF, the relevant criterion is LERF. The increase in LERF resulting from a change in the Type A ILRT test interval from three in ten years to one in fifteen years is very conservatively estimated as 1.27E–08/yr using the EPRI [Electric Power Research Institute] guidance as written. As such, the estimated change in LERF is determined to be ''very small'' using the acceptance guidelines of RG 1.174.

RG 1.174 also states that when the calculated increase in LERF is in the range of 1.0E–06 per reactor year to 1.0E–07 per reactor year, applications will be considered only if it can be reasonably shown that the total LERF is less than 1.0E–05 per reactor year. An additional assessment of the impact from external events was also made. In this case, the total LERF increase was conservatively estimated (with an external event multiplier of 15) as 1.90E–07 for Fermi 2 (the baseline total LERF for this case is 7.88E- 06/yr). This is well below the RG 1.174 acceptance criteria for total LERF of 1.0E–05.

The change in Type A test frequency to once per 15 years, measured as an increase to the total integrated plant risk for those accident sequences influenced by Type A testing, is 1.14E–4 person-rem/yr (a 0.00184% increase). EPRI Report No. 1009325, Revision 2–A, states that a very small population dose is defined as an increase of ≤1.0 person-rem per year or ≤1% of the total population dose, whichever is less restrictive for the risk impact assessment of the extended ILRT intervals. Moreover, the risk impact when compared to other severe accident risks is negligible.

The increase in the CCFP [conditional containment failure probability] from the three in 10 year [sic] interval to one in 15 year interval is 0.73%. EPRI Report No. 1009325, Revision 2–A, states that increases in CCFP of less than or equal to 1.5 percentage points are very small. Therefore, this increase judged to be very small.

The other two changes, to TS 5.5.12, item a, and Operating License, Provision D, are administrative in nature to remove old text that is no longer applicable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment to the TS involves the extension of the Fermi 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months. The containment and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*e.g.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

The other two changes to TS 5.5.12, item a, and Operating License, Provision D, are administrative in nature to remove old text that is no longer needed. Therefore, these changes have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment to TS 5.5.12 involves the extension of the Fermi 2 Type A containment test interval to 15 years and the extension of the Type C test interval to 75 months for selected components. This amendment does not alter the manner in which safety limits, limiting safety system set points, or limiting conditions for operation are determined. The specific requirements and conditions of the TS Containment Leak Rate Testing Program exist to ensure that the

degree of containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leak rate limit specified by TS is maintained.

The proposed surveillance interval extension is bounded by the 15 year ILRT interval and the 75 month Type C test interval currently authorized within NEI 94–01, Revision 3–A. Industry experience supports the conclusion that Type B and Type C testing detects a large percentage of containment leakage paths and the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections preformed in accordance with ASME [American Society of Mechanical Engineers] Section XI, Maintenance Rule, and TS serve to provide a high degree of assurance that the containment would not degrade in a manner that is detectable only by Type A testing. The combination of these factors ensures that the margin of safety in the plant safety analysis is maintained. The design, operation, testing methods, and acceptance criteria for Type A, Type B, and Type C containment leakage tests specified in applicable codes and standards would continue to be met with the acceptance of this proposed change since these are not affected by the changes to the Type A and Type C test intervals.

The other two changes to TS 5.5.12, item a, and Operating License, Provision D, are administrative in nature to remove old text that is no longer needed. Therefore, these changes have no impact on the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jon P. Christinidis, DTE Energy, Expert Attorney—Regulatory, 688 WCB, One Energy Plaza, Detroit, MI 48226–1279.

*NRC Branch Chief:* David J. Wrona.

*Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina*

*Date of amendment request:* March 24, 2016. A publicly available version is in ADAMS under Accession No. ML16089A228.

*Description of amendment request:* The amendments would modify Technical Specification 3.6.13, ''Ice Condenser Doors,'' to revise Condition B for an ice condenser lower inlet door invalid open alarm to preclude plant shutdown caused by an invalid ''OPEN'' alarm from the ''Inlet Door Position Monitoring System.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

*Response:* No.

The proposed change will not increase the probability of accident previously evaluated. The Ice Condenser performs an entirely mitigative function. The proposed change does not result in any physical change to the plant which would affect any accident initiators. No structures, systems, or components (SSCs) involved in the initiation of postulated accidents will be operated in any different manner. The probability of occurrence of a previously evaluated accident will not be significantly increased. The proposed change involves use of an alternate method of verifying that the lower inlet doors to the ice condenser are closed. This proposed change has no effect on the ability of the ice condenser to perform its function.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter the design function or operation of any SSC that may be involved in the initiation of an accident. The Ice Condenser will not become the source of a new type of accident. No new accident causal mechanisms will be created. The proposed change does not create new failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

*Response:* No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their intended functions. These barriers include the fuel cladding, the reactor coolant system pressure boundary, and the containment barriers. The proposed change involves use of a method to verify the lower inlet doors to the ice condenser are closed when an invalid alarm is providing indication of an open door. This proposed change has no effect on the ability of the ice condenser to perform its function. Hence, the proposed change will not affect containment barriers. Nor does the proposed change have any effect on fuel cladding or the reactor coolant pressure boundary.

Therefore, existing safety margins will be preserved, and the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

*Duke Energy Progress, Inc., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina*

*Date of amendment request:* April 13, 2016. A publicly-available version is in ADAMS under Accession No. ML16111B203.

*Description of amendment request:* The amendments would revise the Allowable Values (AVs) of Surveillance Requirements (SRs) contained in Technical Specification 3.3.8.2, ''RPS Electric Power Monitoring,'' by amending the Reactor Protection System electric power monitoring assembly AVs for overvoltage and undervoltage contained within SRs 3.3.8.2.2 and 3.3.8.2.3.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No

The proposed change to the Allowable Values of Surveillance Requirements contained in Technical Specifications 3.3.8.2 does not impact the physical function of plant structures, systems, or components (SSC) or the manner in which SCCs [sic] perform their design function. The proposed change does not authorize the addition of any new plant equipment or systems, nor does it alter the assumptions of any accident analyses. The Electrical Protection Assemblies are not accident initiators. They operate in response to off-normal voltage conditions on Class 1E buses to protect the connected loads. The proposed change does not adversely affect accident initiators or precursors, nor does it alter the design assumptions, conditions, and configuration or the manner in which the plant is operated and maintained.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No

The proposed change to the Allowable Values of Surveillance Requirements contained in Technical Specifications 3.3.8.2 does not require any modification to the plant (*i.e.,* other than the setpoint changes) or change equipment operation or testing. The proposed change will not introduce failure modes that could result in a new accident, and the change does not alter assumptions made in the safety analysis. The proposed change will not alter the design configuration, or method of operation of plant equipment beyond its normal functional capabilities. The proposed change does not create any new credible failure mechanisms, malfunctions, or accident initiators.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from those that have been previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No

The proposed change to the Allowable Values of Surveillance Requirements contained in Technical Specifications 3.3.8.2 does not alter or exceed a design basis or safety limit. There is no change being made to safety analysis assumptions or the safety limits that would adversely affect plant safety as a result of the proposed change. Margins of safety are unaffected by the proposed change and the applicable requirements of 10 CFR 50.36(c)(2)(ii) and 10 CFR 50, Appendix A will continue to be met.

Therefore, the proposed change does not involve any reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Kathryn B. Nolan, Deputy General Counsel, 550 South Tryon Street, M/C DEC45A, Charlotte NC 28202.

*NRC Branch Chief:* Benjamin G. Beasley.

Entergy Operations, Inc. (Entergy), Docket No. 50–368, Arkansas Nuclear One, Unit No. 2 (ANO–2), Pope County, Arkansas

*Date of amendment request:* March 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16088A186.

*Description of amendment request:* The amendment will revise the Technical Specifications (TSs) to eliminate TS 6.5.8, ''Inservice Testing Program.'' A new defined term, ''Inservice Testing [IST] Program,'' will be added to TS 1.0, ''Definitions,'' section. The licensee has noted that while the request is consistent with TS Task Force (TSTF)–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing,'' there are various deviations from the TSTF–545, Revision 3. ANO–2 TSs are of an older standard version and have not been converted to the improved standard TSs (ISTSs) based on NUREG 1432, ''Standard Technical Specifications—Combustion Engineering Plants,'' Revision 4. As such, Entergy stated there are several administrative-type variations (TS numbering, wording, etc.) but these variations do not result in any technical conflict with the intent of TSTF–545, Revision 3 or the associated model safety evaluation.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, with NRC edits in [brackets], which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change revises TS Chapter 6, ''Administrative Controls,'' Section 6.5, ''Programs and Manuals,'' by eliminating the ''Inservice Testing Program'' specification. Most requirements in the IST Program are removed, as they are duplicative of requirements in the ASME [American Society of Mechanical Engineers] OM Code [ASME Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 6.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS Surveillance Requirement (SR) 4.0.3 (referenced as SR 3.0.3 in the ISTS) allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

*NRC Branch Chief:* Meena K. Khanna.

*Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas*

*Date of amendment request:* March 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16088A181.

*Description of amendment request:* The amendment would revise the Technical Specifications (TSs) to eliminate TS Section 5.5.8, ''Inservice Testing [IST] Program.'' A new defined term, ''Inservice Testing Program,'' will be added to TS 1.1, ''Definitions.'' This amendment request is consistent with TS Task Force (TSTF)–545, Revision 3, ''TS Inservice Testing Program Removal & Clarify SR [Surveillance Requirement] Usage Rule Application to Section 5.5 Testing,'' under the consolidated line item improvement process.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, with NRC edits in [brackets], which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change revises TS Chapter 5, ''Administrative Controls,'' Section 5.5, ''Programs and Manuals,'' by eliminating the ''Inservice Testing Program'' specification. Most requirements in the IST Program are removed, as they are duplicative of requirements in the ASME [American Society of Mechanical Engineers] OM Code [ASME Code for Operation and Maintenance of Nuclear Power Plants], as clarified by Code Case OMN–20, ''Inservice Test Frequency.'' The remaining requirements in the Section 5.5 IST Program are eliminated because the NRC has determined their inclusion in the TS is contrary to regulations. A new defined term, ''Inservice Testing Program,'' is added to the TS, which references the requirements of 10 CFR 50.55a(f).

Performance of inservice testing is not an initiator to any accident previously evaluated. As a result, the probability of occurrence of an accident is not significantly affected by the proposed change. Inservice test frequencies under Code Case OMN–20 are equivalent to the current testing period allowed by the TS with the exception that testing frequencies greater than 2 years may be extended by up to 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to mitigate any accident previously evaluated as the components are required to be operable during the testing period extension. Performance of inservice tests utilizing the allowances in OMN–20 will not significantly affect the reliability of the tested components. As a result, the availability of the affected components, as well as their ability to mitigate the consequences of accidents previously evaluated, is not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change does not alter the design or configuration of the plant. The proposed change does not involve a physical alteration of the plant; no new or different kind of equipment will be installed. The proposed change does not alter the types of inservice testing performed. In most cases, the frequency of inservice testing is unchanged. However, the frequency of testing would not result in a new or different kind of accident from any previously evaluated since the testing methods are not altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change eliminates some requirements from the TS in lieu of requirements in the ASME Code, as modified by use of Code Case OMN–20. Compliance with the ASME Code is required by 10 CFR 50.55a. The proposed change also allows inservice tests with frequencies greater than 2 years to be extended by 6 months to facilitate test scheduling and consideration of plant operating conditions that may not be suitable for performance of the required testing. The testing frequency extension will not affect the ability of the components to respond to an accident as the components are required to be operable during the testing period extension. The proposed change will eliminate the existing TS Surveillance Requirement (SR) 3.0.3 allowance to defer performance of missed inservice tests up to the duration of the specified testing frequency, and instead will require an assessment of the missed test on equipment operability. This assessment will consider the effect on a margin of safety (equipment operability). Should the component be inoperable, the Technical Specifications provide actions to ensure that the margin of safety is protected. The proposed change also eliminates a statement that nothing in the ASME Code should be construed to supersede the requirements of any TS. The NRC has determined that statement to be incorrect. However, elimination of the statement will have no effect on plant operation or safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

*NRC Branch Chief:* Meena K. Khanna.

*Exelon Generation Company, LLC and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania*

*Date of amendment request:* March 24, 2016, as supplemented by letter dated May 11, 2016. A publicly-available version is in ADAMS under Accession Nos. ML16084A567 and ML16132A440.

*Description of amendment request:* The amendments would revise the frequency for cycling of the recirculation pump discharge valves as specified in Technical Specification (TS) Surveillance Requirement (SR) 3.5.1.5. Specifically, SR 3.5.1.5 requires verification that each recirculation pump discharge valve cycles through one complete cycle of full travel or is de-energized in the closed position. Currently, this SR needs to be performed once each plant startup prior to exceeding 23 percent rated thermal power (RTP), if the SR had not been performed within the previous 31 days. The amendments would change the frequency for the SR such that it is performed in accordance with the Inservice Testing Program.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change revises the frequency for cycling the recirculation pump discharge valves from ''Once each startup prior to exceeding 23% RTP,'' as modified by a Note stating, ''Not required to be performed if performed within the previous 31 days'' to ''In accordance with the Inservice Testing Program''. Testing of the recirculation pump discharge valves is not an initiator of any accident previously evaluated. As the recirculation pump discharge valves are still required to be Operable, the ability to mitigate any accident previously evaluated is not affected. The proposed change does not adversely affect the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function.

Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change revises the frequency for cycling the recirculation pump discharge valves from ''Once each startup prior to exceeding 23% RTP,'' as modified by a Note stating, ''Not required to be performed if performed within the previous 31 days'' to ''In accordance with the Inservice Testing Program''. This revision will not impact the accident analysis. The change will not alter the methods of operation of the recirculation pump discharge valves. No new or different accidents result. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The change does not alter assumptions made in the safety analysis.

Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change revises the frequency for cycling the recirculation pump discharge valves from ''Once each startup prior to exceeding 23% RTP,'' as modified by a Note stating, ''Not required to be performed if performed within the previous 31 days'' to ''In accordance with the Inservice Testing Program.'' The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The frequency of testing the recirculation pump discharge valves will be consistent with the frequency of testing other valves in the Emergency Core Cooling System.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Rd., Warrenville, IL 60555.

*NRC Branch Chief:* Douglas A. Broaddus.

*Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No.1, DeWitt County, Illinois*

*Date of amendment request:* April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16095A285.

*Description of amendment request:* The proposed changes would revise technical specification (TS) limiting condition for operation (LCO) 3.10.1, and the associated Bases, to expand its scope to include provisions for temperature excursions greater than 200 degrees Fahrenheit as a consequence of in-service leak and hydrostatic testing, and as a consequence of scram time testing initiated in conjunction with an in-service leak or hydrostatic test, while considering operational conditions to be in Mode 4.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Technical Specifications currently allow for operation at greater than 200 degrees F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

Technical Specifications currently allow for operation at greater than 200 degrees F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. No new operational conditions beyond those currently allowed by LCO 3.10.1 are introduced. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Technical Specifications currently allow for operation at greater than 200 degrees F while imposing MODE 4 requirements in addition to the secondary containment requirements required to be met. Extending the activities that can apply this allowance will not adversely impact any margin of safety. Allowing completion of inspections and testing and supporting completion of scram time testing initiated in conjunction with an in-service leak or hydrostatic test prior to power operation results in enhanced safe operations by eliminating unnecessary maneuvers to control reactor temperature and pressure. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* G. Ed Miller (Acting)

*Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania*

*Date of amendment request:* April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16095A275.

*Description of amendment request:* The amendments would revise the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC)

system actuation instrumentation Technical Specification (TS) requirements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes involve the addition of clarifying footnotes to the HPCI and RCIC actuation instrumentation TS to reflect the as-built plant design and operability requirements of HPCI and RCIC instrumentation as described in the LGS Updated Final Safety Analysis Report (UFSAR).

HPCI and RCIC are not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not increased. In addition, the automatic start of HPCI on high drywell pressure, and the manual initiation of HPCI and RCIC, are not credited to mitigate the consequences of design basis accidents, transients or special events within the current LGS design and licensing basis.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes do not alter the protection system design, create new failure modes, or change any modes of operation. The proposed changes do not involve a physical alteration of the plant, and no new or different kind of equipment will be installed. Consequently, there are no new initiators that could result in a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes have no adverse effect on plant operation. The plant response to the design basis accidents does not change. The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analyses.

There is no change being made to safety analysis assumptions, safety limits or limiting safety system settings that would adversely affect plant safety as a result of the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Acting Branch Chief:* Andrew Hon.

*Florida Power & Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida*

*Date of amendment request:* April 29, 2016. A publicly-available version is in ADAMS under Accession No. ML16125A253.

*Description of amendment request:* The amendments would revise Appendix B (Environmental Protection Plan (EPP)) of the Unit 1 and Unit 2 Operating Licenses to incorporate the revised Section 8.4, ''Terms and Conditions'' of the currently applicable Biological Opinion issued by the National Marine Fisheries Service (NMFS) on March 24, 2016. In addition, the amendments would clarify in the EPP that the licensee must adhere to the currently applicable Biological Opinion. This clarification would preclude the need for a new license amendment in the event that NMFS issues a new Biological Opinion.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the Facility in Accordance With the Proposed Amendments Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The changes are administrative in nature and would in no way affect the initial conditions, assumptions, or conclusions of the St. Lucie Unit 1 or Unit 2 accident analyses. In addition, the proposed changes would not affect the operation or performance of any equipment assumed in the accident analyses. Based on the above information, we conclude that the proposed changes would not significantly increase the probability or consequences of an accident previously evaluated.

2. Use of the Modified Specification Would Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The changes are administrative in nature and would in no way impact or alter the configuration or operation of the facilities and would create no new modes of operation. We conclude that the proposed changes would not create the possibility of a new or different kind of accident.

3. Use of the Modified Specification Would Not Involve a Significant Reduction in a Margin of Safety

The changes are administrative in nature and would in no way affect plant or equipment operation or the accident analysis. We conclude that the proposed changes would not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William S. Blair, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Boulevard, MS LAW/JB, Juno Beach, FL 33408–0420.

*NRC Branch Chief:* Benjamin G. Beasley.

*Northern States Power Company—Minnesota (NSPM), Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota*

*Date of amendment request:* April 4, 2016. A publicly-available version is in ADAMS under Accession No. ML16099A097.

*Description of amendment request:* The proposed amendment would revise technical specification (TS) 3.8.4, ''DC Sources—Operating,'' Surveillance Requirement (SR) 3.8.4.2 to increase the required 125 Volt (V) Direct Current (DC) subsystems battery charger output current and to remove the second method specified to perform the surveillance. The first proposed change is to increase the required 125 Volt VDC battery charger output current specified as the first option under SR 3.8.4.2 to resolve a non-conservative TS condition. The second proposed change is to remove from SR 3.8.4.2 an alternative option for meeting the surveillance requirement. This alternative requires verifying each battery charger can recharge the battery to the fully charged state within the required time period, 24 hours for the 250 VDC and 8 hours for the 125 VDC subsystems, respectively, while supplying the largest combined continuous steady state loads, after a battery discharge to the bounding design basis event discharge state.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed TS changes revise the battery charger surveillance requirements in SR 3.8.4.2. The DC electrical power system, including associated battery chargers, is not an initiator of any accident sequence analyzed in the Updated Safety Analysis Report (USAR). Rather, the DC electrical power system supports operation of equipment used to mitigate accidents. Operation in accordance with the proposed TS continues to ensure that the DC electrical power system is capable of performing its specified safety functions as described in the USAR. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis.

Accidents are initiated by the malfunction of plant equipment, or the catastrophic failure of plant structures, systems, or components (SSCs). Performance of battery testing is not a precursor to any accident previously evaluated, nor does it change the manner in which the batteries and battery chargers are operated. The proposed testing requirements will not contribute to the failure of the batteries nor any plant SSC. NSPM has determined that the proposed TS changes provide an equivalent level of assurance that the batteries and battery chargers are capable of performing their intended safety functions. Thus, the proposed changes do not affect the probability of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The DC electrical power system, including the associated battery chargers, is not an initiator of any accident sequence analyzed in the USAR. The proposed TS changes do not involve operation of the DC electrical power system in a manner or configuration different from those previously evaluated. Performance of battery testing is not a precursor to any accident previously evaluated. NSPM has determined that the proposed TS changes provide an equivalent level of assurance that the batteries and battery chargers are capable of performing their intended safety functions. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed in the safety analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The margin of safety is established through the equipment design, the operating parameters, and the setpoints at which automatic actions are initiated. The equipment margins will be maintained in accordance with the plant-specific design bases as a result of the proposed changes. The proposed changes do not adversely affect operation of plant equipment. The proposed TS changes do not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment continues to be ensured. The equipment fed by the DC electrical sources will continue to provide adequate power to safety-related loads in accordance with safety analysis assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

*NRC Branch Chief:* David J. Wrona.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina*

*Date of amendment request:* April 7, 2016. A publicly-available version is in ADAMS under Accession No. ML16104A027.

*Description of amendment request:* The amendment would revise the Emergency Feedwater System pump performance testing requirements in Technical Specification (TS) 3/4.7.1.2, ''Emergency Feedwater System,'' Surveillance Requirements 4.7.1.2.a.1 and 4.7.1.2.a.2.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below with NRC staff edits in square brackets:

1. Do the proposed changes [sic] involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change deletes an allowed outage time that is no longer applicable and revises the Surveillance Requirements (SRs) that confirm the Emergency Feedwater (EFW) pump performance to be more consistent with the STS [Standard Technical Specifications—Westinghouse Plants]. The change has been determined not to adversely affect the safe operation of the plant. The affected TS requirements are not initiating conditions for any accident previously evaluated. In addition, changes that are consistent with the STS have been previously evaluated by plants adopting the STS and found not to adversely affect the safe operation of Westinghouse NSSS [Nuclear Steam Supply System] plants. Based on the conclusions of the plant specific evaluation associated with the change and the evaluations performed in developing the STS, the proposed change does not result in operating conditions that will significantly increase the probability of initiating an analyzed event. The proposed change was also evaluated to assure that it does not alter the safety analysis assumptions relative to mitigation of an accident or transient event and that the resulting TS requirements continue to ensure the necessary equipment is operable consistent with the safety analyses or that the plant is placed in an operating Mode where the system is no longer required operable. As such the proposed change also does not result in operating conditions that will significantly increase the consequences of an analyzed event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change includes the deletion of an expired allowed outage time extension and the revision of the SRs that confirm the EFW pump performance to be more consistent with the corresponding STS SR. Consistent with the STS SR, the proposed change would remove the specific pump head and flow values from the current SRs and require that the SR be performed in accordance with the Inservice Testing Program. The removal of the specific pump head and flow values from the SR is necessary to support the implementation of a plant modification that would change the current EFW pump head and flow values in the SR. The plant modification is being performed under the provisions of 10CFR50.59. The proposed TS change does not involve a change in the methods governing normal plant operation. The proposed change also does not change any system functions nor does the proposed TS change affect any safety analysis or design basis requirements. The proposed TS change will continue to ensure the EFW System is operable in a similar manner as before. As such, the proposed change does not create new failure modes or mechanisms that are not identifiable during testing, and no new accident precursors are generated.

Therefore, the proposed changes do [sic] not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this [proposed] change involve a significant reduction in a margin of safety?

*Response:* No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change does not physically alter safety-related systems, nor does it affect the way in which safety related systems perform their functions. The setpoints at which protective actions are initiated are not altered by the proposed change. Therefore, in a similar manner as before, sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. The proposed change results in TS requirements that are consistent with the plant safety analyses. As such, the change does not result in operating conditions that significantly reduce any margin of safety.

Therefore, the proposed changes do [sic] not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* J. Hagood Hamilton, Jr., South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

*NRC Branch Chief:* Michael T. Markley.

*Southern Nuclear Operating Company, Inc.; Georgia Power Company; Oglethorpe Power Corporation; Municipal Electric Authority of Georgia; City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County, Georgia*

*Date of amendment request:* August 11, 2015, as supplemented by letters dated March 16, 2014, and April 4, 2016. Publicly-available versions are in ADAMS under Accession Nos. ML15226A276, ML16076A453, and ML16095A373, respectively.

*Description of amendment request:* The amendments would revise the technical specification (TS) requirements related to direct current (DC) electrical systems in TS Limiting Condition for Operation (LCO) 3.8.4, ''DC Sources—Operating''; LCO 3.8.5, ''DC Sources—Shutdown''; and LCO 3.8.6, ''Battery Cell Parameters.'' A new battery monitoring and maintenance program is being proposed for Section 5.5, ''Administrative Controls—Programs and Manuals.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

*Response:* No.

The proposed changes restructure the Technical Specifications (TS) for the direct current (DC) electrical power system and are consistent with TSTF–500, Revision 2. The proposed changes modify TS Actions relating to battery and battery charger inoperability. The DC electrical power system, including associated battery chargers, is not an initiator of any accident sequence analyzed in the Final Safety Analysis Report (FSAR). Rather, the DC electrical power system supports equipment used to mitigate accidents. The proposed changes to restructure TS and change surveillances for batteries and chargers to incorporate the updates included in TSTF–500, Revision 2, will maintain the same level of equipment performance required for mitigating accidents assumed in the FSAR. Operation in accordance with the proposed TS would ensure that the DC electrical power system is capable of performing its specified safety function as described in the FSAR. Therefore, the mitigating functions supported by the DC electrical power system will continue to provide the protection assumed by the analysis.

The relocation of preventive maintenance surveillances, and certain operating limits and actions, to a licensee-controlled Battery Monitoring and Maintenance Program will not challenge the ability of the DC electrical power system to perform its design function. Appropriate monitoring and maintenance that are consistent with industry standards will continue to be performed. In addition, the DC electrical power system is within the scope of 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' which will ensure the control of maintenance activities associated with the DC electrical power system.

The integrity of fission product barriers, plant configuration, and operating procedures as described in the FSAR will not be affected by the proposed changes. Therefore, the consequences of previously analyzed accidents will not increase by implementing these changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

*Response:* No.

The proposed changes involve restructuring the TS for the DC electrical power system. The DC electrical power system, including associated battery chargers, is not an initiator to any accident sequence analyzed in the FSAR. Rather, the DC electrical power system supports equipment used to mitigate accidents. The proposed changes to restructure the TS and change surveillances for batteries and chargers to incorporate the updates included in TSTF–500, Revision 2, will maintain the same level of equipment performance required for mitigating accidents assumed in the FSAR. Administrative and mechanical controls are in place to ensure the design and operation of the DC systems continues to meet the plant design basis described in the FSAR.

Therefore, operation of the facility in accordance with this proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

*Response:* No.

The margin of safety is established through equipment design, operating parameters, and the setpoints at which automatic actions are initiated. The equipment margins will be maintained in accordance with the plant-specific design bases as a result of the proposed changes. The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new Battery Monitoring and Maintenance Program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical sources will continue to provide adequate power to safety-related loads in accordance with analysis assumptions.

TS changes made in accordance with TSTF–500, Revision 2, maintain the same level of equipment performance stated in the FSAR and the current TSs. Therefore, the proposed changes do not involve a significant reduction of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, Inc., 40 Iverness Center Parkway, Birmingham, AL 35242.

*NRC Branch Chief:* Michael T. Markley.

*Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama*

*Date of amendment request:* April 25, 2016. A publicly-available version is in ADAMS under Accession No. ML16120A294.

*Description of amendment request:* The license proposed three changes to

modifications specified in the March 10, 2015, NFPA [National Environmental Policy Act]–805 amendment, Attachment S, Table S–2, ''Plant Modifications Committed.'' The three proposed modifications are: (1) Delete Fire Area 1–041 information from Table S–2, (2) add information on item 11, Pyro Panel modification, and, (3) change cable 2VCHAL07P to cable 2VCFARK2P.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The licensee's analysis is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment updates Attachments M, S, and W of the previously approved NFPA–805 LAR [license amendment request] submittal for FNP. The attachment revisions are based on the three changes to Table S–2 proposed in this LAR. One of the changes is justified based on negligible risk impact to Core Damage Frequency or Large Early Release Frequency associated with not performing the committed modification. The other two changes have no impact on accident analysis as they are clarifying or administrative in nature.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not increase the probability or consequence of an accident as verified by the risk analysis performed.

Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously identified.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed amendment updates Attachments M, S, and W of the previously approved NFPA–805 LAR submittal for FNP. The attachment revisions are based on the three changes to Table S–2 proposed in this LAR. One of the changes is justified based on negligible risk impact to Core Damage Frequency or Large Early Release Frequency associated with not performing the committed modification. The other two changes have no impact on accident analysis as they are clarifying or administrative in nature. The proposed change relates to the availability of fire PRA [probabilistic risk analysis] credited component in given fire scenarios.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment updates Attachments M, S, and W of the previously approved NFPA–805 LAR submittal for FNP. The attachment revisions are based on the three changes to Table S–2 proposed in this LAR. One of the changes is justified based on negligible risk impact to Core Damage Frequency or Large Early Release Frequency associated with not performing the committed modification. The other two changes have no impact on accident analysis as they are clarifying or administrative in nature.

The proposed change does not increase the probability or consequence of an accident and does not reduce the margin of safety as verified by the risk analysis performed.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jennifer M. Buettner, Associate General Counsel, Southern Nuclear Operating Company, 40 Iverness Center Parkway, Birmingham, AL 35201.

*NRC Branch Chief:* Michael T. Markley.

## III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* June 29, 2015.

*Brief description of amendment:* The amendment approved a change to the Waterford Steam Electric Station, Unit 3, Cyber Security Plan Implementation Schedule Milestone 8 full implementation date and a related change to the existing operating license physical protection license condition.

*Date of issuance:* May 10, 2016.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment No.:* 247. A publicly-available version is in ADAMS under Accession No. ML16077A270; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Facility Operating License No. NPF–38:* The amendment revised the facility operating license.

*Date of initial notice in **Federal Register**:* September 1, 2015 (80 FR 52805).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 10, 2016.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois*

*Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois*

*Date of application for amendments:* August 18, 2015, as supplemented by letter dated April 14, 2016.

*Brief description of amendments:* The amendments revised the reactor steam dome pressure specified in the technical specification safety limits.

*Date of issuance:* May 11, 2016.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment Nos.:* 209, 250, 243, 262, and 257. A publicly-available versions is in ADAMS under Accession No. ML16111A104. Documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License Nos.* : NPF–62, DPR–19, DPR–25, DPR–29, and DPR–30. Amendments revised the Facility Operating Licenses and Technical Specifications.

*Date of initial notice in **Federal Register**:* October 27, 2015 (80 FR 65812). The supplemental letter dated April 14, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a safety evaluation dated May 11, 2016.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* September 16, 2015.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 3.4.1, ''RCS [Reactor Coolant System] Pressure, Temperature, and Flow Departure from Nucleate Boiling (DNB) Limits,'' to delete current Tables 3.4.1–1, ''Reduction in Percent RATED THERMAL POWER for Reduced RCS Flow Rate, Unit 1,'' and 3.4.1–2, ''Reduction in Percent RATED THERMAL POWER for Reduced RCS Flow Rate, Unit 2,'' and add RCS thermal design flow (TDF) values to the requirements of TS 3.4.1. The change also relocates the RCS minimum measured flow (MMF) values to the DCPP, Units 1 and 2, core operating limits reports (COLR) with a reference to the MMF values in TS 3.4.1 and Surveillance Requirements 3.4.1.3 and 3.4.1.4. Figure 2.1.1–1, ''Reactor Core Safety Limit,'' has been revised to delete a footnote with references to Tables 3.4.1–1 and 3.4.1–2. The change is consistent with NUREG–1431, Volume 1, Revision 4.0, ''Standard Technical Specifications, Westinghouse Plants,'' April 2012; NRC-approved Technical Specification Task Force (TSTF) Change Traveler 339–A, Revision 2, ''Relocate TS Parameters to COLR,'' dated June 13, 2000; and NRC-approved WCAP–14483–A, ''Generic Methodology for Expanded Core Operating Limits Report,'' January 1999.

The change is necessary to correct a non-conservative TS 3.4.1 total RCS flow rate value for DCPP, Unit 1. The change also ensures that the TS stays conservative, if the cycle-specific minimum RCS flow is higher than the minimum TDF.

*Date of issuance:* May 19, 2016.

*Effective date:* As of its date of issuance and shall be implemented within 120 days from the date of issuance.

*Amendment Nos.:* Unit 1—226; Unit 2—228. A publicly-available version is in ADAMS under Accession No. ML16117A252; documents related to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments revised the Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* November 10, 2015 (80 FR 69714).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2016.

*No significant hazards consideration comments received:* No.

*South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina*

*Date of amendment request:* August 27, 2014, as supplemented by letters dated October 31, 2014; February 12, May 12, September 10, and November 5, 2015; and January 14 and March 4, 2016.

*Brief description of amendment:* The amendment approved a change to the Virgil C. Summer Nuclear Station licensing basis to incorporate a supplemental analysis for the steam generator tube rupture accident.

*Date of issuance:* May 16, 2016.

*Effective date:* As of the date of issuance and shall be implemented within120 days of issuance.

*Amendment No.:* 205. A publicly-available version is in ADAMS under Accession No. ML15231A605; documents related to this amendment are listed in the Safety Evaluation enclosed with the amendment.

*Facility Operating License No. NPF–12:* Amendment revised the Facility Operating License.

*Date of initial notice in **Federal Register**:* October 14, 2014 (79 FR 61661). The supplemental letters dated October 31, 2014; February 12, May 12, September 10, and November 5, 2015; and January 14 and March 4, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 2016.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama*

*Date of amendment request:* August 31, 2015, as supplemented by letters dated January 28, 2016, and March 11, 2016.

*Brief description of amendments:* The amendments revised Technical Specification (TS) 3.4.14, ''RCS Pressure Isolation Valve (PIV) Leakage,'' to eliminate the requirements for the residual heat removal system suction valve auto closure interlock function.

*Date of issuance:* May 17, 2016.

*Effective date:* As of the date of issuance and shall be implemented as follows: Unit 1—prior to the first entry into Mode 4, following the end-of-cycle refueling outage 27 (scheduled for fall 2016), and Unit 2—prior to the first entry into Mode 4, following the end-of-cycle refueling outage 25 (scheduled for fall 2017).

*Amendment Nos.:* 201 (Unit 1) and 197 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16083A265; documents related

to these amendments are listed in the Safety Evaluation enclosed with the amendments.

*Facility Operating License Nos. NPF–2 and NPF–8:* The amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* October 27, 2015 (80 FR 65815). The supplemental letters dated January 28, 2016, and March 11, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2016.

*No significant hazards consideration comments received:* No.

*Susquehanna Nuclear, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station (SSES), Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request:* October 27, 2014, as supplemented by letters dated July 2, 2015; September 21, 2015; November 11, 2015; and January 29, 2016.

*Brief description of amendments:* The amendments modified the SSES technical specifications (TSs). Specifically, the amendments modified the TSs by relocating specific surveillance frequencies to a licensee-controlled program, the Surveillance Frequency Control Program, with implementation of Nuclear Energy Institute (NEI) 04–10, Revision 1, ''Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies.'' The changes are consistent with NRC-approved Technical Specification Task Force Improved Standard Technical Specifications Change Traveler (TSTF)–425, Revision 3, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF Initiative 5b.'' The **Federal Register** notice published on July 6, 2009 (74 FR 31996), announced the availability of this TSTF improvement and included a model no significant hazards consideration and safety evaluation (SE).

This license amendment request was submitted by PPL Susquehanna, LLC; however, on June 1, 2015, the NRC staff issued an amendment changing the name on the SSES license from PPL Susquehanna, LLC to Susquehanna Nuclear, LLC (ADAMS Accession No. ML15054A066). These amendments were issued subsequent to an order issued on April 10, 2015, to SSES, approving an indirect license transfer of the SSES license to Talen Energy Corporation (ADAMS Accession No. ML15058A073).

*Date of issuance:* May 20, 2016.

*Effective date:* As of the date of issuance and shall be implemented within 180 days of issuance.

*Amendment Nos.:* 266 (Unit 1) and 247 (Unit 2). A publicly-available version is in ADAMS under Accession No. ML16005A234; documents related to these amendments are listed in the SE enclosed with the amendments.

*Renewed Facility Operating License Nos. NPF–14 and NPF–22:* Amendments revised the Renewed Facility Operating Licenses and TSs.

*Date of initial notice in **Federal Register**:* March 3, 2015 (80 FR 11479). The supplemental letters dated July 2, 2015; September 21, 2015; November 11, 2015; and January 29, 2016, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in an SE dated May 20, 2016.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 27th day of May, 2016.

For the Nuclear Regulatory Commission.

**Anne T. Boland,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2016–13255 Filed 6–6–16; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2016–149 and CP2016–188; Order No. 3335]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning the addition of Global Expedited Package Services 6 Contracts to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 8, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

### I. Introduction

On May 31, 2016, the Postal Service filed notice that it has entered into a Global Expedited Package Services 6 (GEPS 6) negotiated service agreement (Agreement).[1]

To support its Request, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

### II. Notice of Commission Action

The Commission establishes Docket Nos. MC2016–149 and CP2016–188 for consideration of matters raised by the Request.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 8, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2016–149 and CP2016–188 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 8, 2016.

[1] Request of the United States Postal Service to Add Global Expedited Package Services 6 Contracts to the Competitive Product List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, May 31, 2016 (Request).

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016–13336 Filed 6–6–16; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2016–189; Order No. 3334]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing concerning an additional Global Expedited Package Services 6 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* June 8, 2016.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

### I. Introduction

On May 31, 2016, the Postal Service filed notice that it has entered into an additional Global Expedited Package Services 6 (GEPS 6) negotiated service agreement (Agreement).[1]

To support its Notice, the Postal Service filed a copy of the Agreement, a copy of the Governors' Decision authorizing the product, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 6 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, May 31, 2016 (Notice).

### II. Notice of Commission Action

The Commission establishes Docket No. CP2016–189 for consideration of matters raised by the Notice.

The Commission invites comments on whether the Postal Service's filing is consistent with 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 8, 2016. The public portions of the filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Curtis E. Kidd to serve as Public Representative in this docket.

### III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2016–189 for consideration of the matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission to represent the interests of the general public in this proceeding (Public Representative).

3. Comments are due no later than June 8, 2016.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2016–13335 Filed 6–6–16; 8:45 am]

BILLING CODE 7710–FW–P

## POSTAL SERVICE

## Sunshine Act Meeting; Temporary Emergency Committee of the Board of Governors

**TIME AND DATE:** Tuesday, June 21, 2016, at 1 p.m.

**PLACE:** Las Vegas, Nevada, and via Teleconference.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Tuesday, June 21, 2016, at 1 p.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Executive Session—Discussion of prior agenda items.

*General Counsel Certification:* The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone: (202) 268–4800.

**Julie S. Moore.**

*Secretary.*

[FR Doc. 2016–13488 Filed 6–3–16; 11:15 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77958; File No. SR–BatsBZX–2016–01]**

## Self-Regulatory Organizations; BatsBZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To List and Trade Under BZX Rule 14.11(c)(4) Shares of the Following Series of Market Vectors ETF Trust: Market Vectors 6–8 Year Municipal Index ETF; Market Vectors 8–12 Year Municipal Index ETF; and Market Vectors 12–17 Year Municipal Index ETF

June 1, 2016.

On March 29, 2016, Bats BZX Exchange, Inc. (''BZX'') 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 list and trade under BZX Rule 14.11(c)(4) the shares of the Market Vectors 6–8 Year Municipal Index ETF; Market Vectors 8–12 Year Municipal Index ETF; and Market Vectors 12–17 Year Municipal Index ETF. The proposed rule change was published for comment in the **Federal Register** on April 18, 2016.[3] The Commission received one comment on the proposed rule change.[4]

Section 19(b)(2) of the Act[5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77596 (April 18, 2016), 81 FR 22681 (''Notice'').

[4] *See* Letter from Anonymous dated May 3, 2016, available at: *http://www.sec.gov/comments/sr-batsbzx-2016-01/batsbzx201601-1.htm.*

[5] 15 U.S.C. 78s(b)(2).

disapproved. The 45th day after publication of the notice for this proposed rule change is June 2, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[6] designates July 15, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–BatsBZX–2016–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13315 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77963; File No. SR–FINRA–2016–017]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports)

June 1, 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 May 24, 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.

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 2242 (Debt Research Analysts and Debt Research Reports) to clarify the application of the rule in four respects: (1) The consent requirement for institutional debt research reports distributed to non-U.S. investors by non-U.S. affiliates of members; (2) the consent requirement for institutional debt research reports distributed to specified persons for informational purposes unrelated to investing in debt securities; (3) the scope of the institutional debt research report exemption when distributing third-party debt research reports to eligible institutional investors; and (4) the disclosure requirements for debt research analysts in public appearances.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2240. CONFLICTS OF INTEREST

* * * * *

2242. Debt Research Analysts and Debt Research Reports

(a) through (i) No Change.

(j) Exemption for Debt Research Reports Provided to Institutional Investors

(1) Except as provided in paragraph*s* (j)(2) *and (j)(3)* of this Rule, the provisions of this Rule shall not apply to the distribution of a debt research report to:

(A) through (B) No Change.

(2) Notwithstanding paragraph (j)(1) of this Rule, a member must establish, maintain and enforce written policies and procedures reasonably designed to identify and effectively manage conflicts of interest described in paragraphs (b)(2)(A)(i), (b)(2)(H) (with respect to pressuring), (b)(2)(I), (b)(2)(K), (b)(2)(L), (b)(2)(M), (b)(2)(N) and Supplementary Material .02(a) of this Rule.

*(3) Notwithstanding paragraph (j)(1) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must establish, maintain and enforce written policies and procedures reasonably designed to comply with paragraphs (g)(1), (g)(2), (g)(4) and (g)(6) of this Rule.*

[(3)] *(4)* Debt research reports provided to institutional investors pursuant to this exemption (''institutional debt research'') must disclose prominently on the first page that:

(A) ''This document is intended for institutional investors and is not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors.''

(B) If applicable, ''The views expressed in this report may differ from the views offered in [Firm's] debt research reports prepared for retail investors.''

(C) If applicable, ''This report may not be independent of [Firm's] proprietary interests. [Firm] trades the securities covered in this report for its own account and on a discretionary basis on behalf of certain clients. Such trading interests may be contrary to the recommendation(s) offered in this report.''

*(5) Notwithstanding paragraph (j)(4) of this Rule, a member that distributes third-party debt research reports to institutional investors pursuant to this exemption must disclose prominently the disclosures required by paragraphs (j)(4)(A) and (j)(4)(C) of this Rule.*

[(4)] *(6)* A member must establish, maintain and enforce written policies and procedures reasonably designed to ensure that institutional debt research is made available only to eligible institutional investors. A member may not rely on this exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor.

[(5)] *(7)* This paragraph (j) does not relieve a member of its obligations to comply with the antifraud provisions of the federal securities laws and FINRA rules.

(k) No Change.

• • • *Supplementary Material:*

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.01 through .11 No Change.

*.12 Distribution of Institutional Debt Research to Non-U.S. Investors. The requirements of paragraphs (j)(1)(A) and (B) of this Rule shall not apply to the distribution of an institutional debt research report by a non-U.S. affiliate of a member to a non-U.S. investor, provided that:*

*(a) The non-U.S. investor is not a customer of the member;*

*(b) The non-U.S. investor is a customer of the non-U.S. affiliate of the member; and*

*(c) The non-U.S. affiliate of the member has a reasonable basis to believe that the customer meets the definition of ''institutional account'' in Rule 4512(c).*

*.13 Distribution of Institutional Debt Research for Informational Purposes*

*(a) A member may distribute institutional debt research reports to the persons described in paragraph (c) of this Supplementary Material .13 for informational purposes unrelated to*

*investing in debt securities, provided that the member does not distribute the reports prior to their publication and the member has disclosed that:*

*(1) The member may provide the recipient debt research reports that were prepared for institutional investors and are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors; and*

*(2) The institutional debt research reports would be provided only for informational purposes and not for the purpose of making an investment decision related to debt securities.*

*(b) If the person receiving institutional debt research pursuant to this Supplementary Material .13 does not contact the member to request that such institutional debt research not be provided, the member may reasonably conclude that the person has consented to receiving debt institutional research according to the terms of this Supplementary Material .13.*

*(c) Institutional debt research may be distributed for informational purposes unrelated to investing in debt securities pursuant to this Supplementary Material .13 to:*

*(1) Regulators for regulatory purposes;*

*(2) Academics for academic purposes;*

*(3) Issuers for the purpose of enhancing knowledge of their industry and competitors and market and economic factors; and*

*(4) Media organizations for news gathering purposes.*

*.14 Public Appearances by Research Analysts. A member or debt research analyst will not be required to make a disclosure required by paragraph (d) of this Rule where attendance at the public appearance is limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Members must maintain records of public appearances by debt research analysts sufficient to demonstrate that attendance at the public appearance was limited to institutional investors eligible to receive institutional debt research pursuant to paragraph (j) of this Rule. Such records must be maintained for at least three years from the date of the public appearance.*

* * * * *

## 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 November 14, 2014, FINRA filed SR–FINRA–2014–048 to adopt new Rule 2242 to address conflicts of interest relating to the publication and distribution of debt research reports.[4] On February 19, 2015, FINRA filed Amendment No. 1 responding to the comments received to the proposal as well as to propose amendments in response to these comments.[5] The proposed rule change, as modified by Amendment No. 1 thereto, was approved by the Commission on July 16, 2015.[6]

Consistent with the proposed rule change, FINRA announced an effective date for Rule 2242 of February 22, 2016 in a *Regulatory Notice* published on August 26, 2015.[7] FINRA subsequently delayed implementation of the Rule until July 16, 2016 to give members additional time to implement the requirements of the Rule, including incorporating some guidance published by FINRA in some Frequently Asked Questions.[8]

Distribution to Non-U.S. Investors by Non-U.S. Affiliates of Members

Rule 2242(j) exempts debt research reports distributed solely to eligible institutional investors from most of the provisions regarding supervision, coverage determinations, budget and compensation determinations, and all of the disclosure requirements applicable to debt research reports distributed to retail investors. Rule 2242(j)(2) sets out the provisions of the Rule to which institutional debt research remains subject, and Rule 2242(j)(3) specifies a ''health warning'' that must be prominently disclosed on the first page of institutional debt research, alerting recipients that, among other things, the research report is not subject to all of the protections of retail debt research. Rule 2242(j)(1) requires either negative or affirmative written consent for eligible institutional investors to receive institutional debt research pursuant to the exemption.

FINRA is proposing to clarify the application of Rule 2242(j) to non-U.S. investors that are customers of a member's U.S. affiliate but not customers of the member. Specifically, FINRA is proposing to amend Rule 2242 to include Supplementary Material providing that the requirements of paragraphs (j)(1)(A) and (B) of the Rule[9] shall not apply to the distribution of an institutional debt research report by a non-U.S. affiliate of a member to a non-U.S. investor, provided that: (a) The non-U.S. investor is not a customer of the member; (b) the non-U.S. investor is a customer of the non-U.S. affiliate of the member; and (c) the non-U.S. affiliate of the member has a reasonable basis to believe that the customer meets the definition of ''institutional account'' in Rule 4512(c). A member's research reports, including globally branded research reports, may be distributed by a non-U.S. affiliate of the member to its non-U.S. customers pursuant to proposed Supplementary Material .12.

FINRA drafted the institutional debt research exemption with U.S. customers in mind. FINRA is concerned that, absent the proposed amendment, the exemption may be impractical for some U.S. member firms with global operations. These firms typically have non-U.S. affiliates that distribute the member research to those affiliates' non-U.S. customers. In many cases, the U.S. member and its non-U.S. affiliates will produce a single globally branded research product, which the non-U.S.

[4] *See* Securities Exchange Act Release No. 73623 (November 18, 2014), 79 FR 69905 (November 24, 2014) (Notice of Filing of File No. SR–FINRA–2014–048).

[5] *See* Securities Exchange Act Release No. 74490 (March 12, 2015), 80 FR 14198 (March 18, 2015) (Notice of Filing of Amendment No. 1 to File No. SR–FINRA–2014–048).

[6] *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[7] *See Regulatory Notice* 15–31 (August 2015).

[8] *See* Securities Exchange Act Release No. 77158 (February 17, 2016), 81 FR 9065 (February 23, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–008). *See also* Securities Exchange Act Release No. 77726 (April 27, 2016), 81 FR 26593 (May 3, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2016–013).

[9] Rule 2242(j)(1)(A) allows distribution of institutional debt research via negative written consent to a person who meets the definition of a qualified institutional buyer (QIB) and where, pursuant to FINRA Rule 2111(b): (1) The member or associated person has a reasonable basis to believe that the QIB is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a debt security or debt securities; and (2) the QIB has affirmatively indicated that it is exercising independent judgment in evaluating the member's recommendations pursuant to FINRA Rule 2111 and such affirmation is broad enough to encompass transactions in debt securities. Rule 2242(j)(1)(B) allows distribution of institutional debt research via affirmative written consent to a person who meets the definition of ''institutional account'' in FINRA Rule 4512(c).

affiliates will distribute to their own customers. Rule 2242(j)(4) states that a member may not rely on the institutional debt research exemption with respect to a debt research report that the member has reason to believe will be redistributed to a retail investor. Thus, to the extent these member firms with global research operations cannot obtain the required consents from all non-U.S. customers of their non-U.S. affiliates, they would lose the ability to use the exemption with respect to institutional debt research distributed to their U.S. customers—the intended purpose of the Rule. Alternatively, the non-U.S. affiliates would be required to cut off distribution of such research to non-U.S. customers that could not or would not give the required consent,[10] notwithstanding that receipt of the research is permitted and subject to applicable regulations in the home jurisdiction. Under these circumstances, FINRA believes where these customers are not also customers of the U.S. broker-dealers, the regulatory concerns addressed by the consent requirements of the exemption are far more attenuated.

Importantly, the proposed rule change would have no investor protection impact on either U.S. institutional investors or non-U.S. customers of the U.S. broker-dealer, as the consent requirements would continue to apply under those circumstances. Moreover, FINRA believes the proposed rule change would have minimal investor protection impact on the non-U.S. institutional investors, as the institutional debt research they would receive would still be subject to all other aspects of Rule 2242(j), including notably the ''health warning'' that identifies the intended institutional audience and highlights the key conflicts associated with the research report.

Distribution to Persons for Informational Purposes

The requirements of Rule 2242 are premised on the idea that debt research reports are distributed to investors that may base their investment decisions on the debt research reports or may incorporate elements of the debt research reports into their investment decisions. FINRA is aware that some members make their research reports available to some persons for specific informational purposes unrelated to investing in debt securities. The institutional exemption in Rule 2242(j) does not currently expressly contemplate distributing institutional debt research reports to these ''non-investors.'' FINRA believes that it is appropriate to permit members to distribute institutional debt research reports to these persons, provided that the persons negatively consent to receiving institutional debt research with the understanding that the research is not being provided for investment purposes.

The proposed rule change would amend Rule 2242 to include Supplementary Material .13 permitting a member to distribute institutional debt research reports to specified persons for informational purposes unrelated to investing in debt securities, provided that the member does not distribute the reports prior to their publication and the member has disclosed that: (1) The member may provide to institutional investors debt research reports that are not subject to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors; and (2) the debt research reports would be provided only for informational purposes and not for the purpose of making an investment decision related to debt securities. The proposed Supplementary Material would also provide that, if the person receiving institutional debt research does not contact the member to request that such institutional debt research reports not be provided, the member may reasonably conclude that the person has consented to receiving debt institutional research reports according to the terms of the Supplementary Material.

The proposed Supplementary Material sets out the circumstances where institutional debt research may be distributed for informational purposes unrelated to investing in debt securities: (1) Regulators for regulatory purposes; (2) academics for academic purposes; (3) issuers for the purpose of enhancing knowledge of their industry and competitors and market and economic factors; and (4) media organizations for news gathering purposes.

FINRA believes that permitting the provision of institutional debt research to these persons for the specified informational purposes serves the public interest without investor protection implications.

Distribution of Third-Party Debt Research Reports to Institutional Investors

FINRA previously stated that the institutional exemption in Rule 2242(j) applies to the content and disclosure requirements for third-party debt research reports.[11] FINRA is proposing to amend Rule 2242 to clarify the requirements applicable to the distribution of third-party debt research reports pursuant to the institutional debt research exemption.

The proposed rule change would amend Rule 2242 to clarify that a member that distributes third-party debt research reports to institutional investors pursuant to the exemption must establish, maintain and enforce written policies and procedures reasonably designed to comply with paragraphs (g)(1), (g)(2), (g)(4) and (g)(6) of the Rule.[12] The review requirements in paragraphs (g)(2) and (g)(4) for third-party debt research reports and independent third-party debt research reports, respectively, would apply to reports distributed to retail investors or to institutional investors. Accordingly, third-party debt research reports distributed pursuant to the exemption would be subject to the same review requirements as third-party debt research reports distributed to retail investors.[13]

With respect to disclosures, the proposed rule change would clarify that third-party debt research reports distributed pursuant to the institutional exemption are not required to carry the specific disclosures applicable to retail debt research set forth in paragraph (g)(3) of the Rule. FINRA believes that it is consistent with the exemption not to require specific disclosures when distributing third-party research reports, but instead to require a ''health warning.'' Accordingly, the proposed rule change would amend Rule 2242 to clarify that third-party debt research reports distributed to institutional investors must disclose prominently: (A) ''This document is intended for institutional investors and is not subject

[10] FINRA understands that firms have had difficulty obtaining consents from non-U.S. entities for several reasons, including the absence of the QIB standard in other jurisdictions and confusion from the customer as to why it must provide affirmative written consent under a U.S.-based rule regime to continue to receive a valued product from the non-U.S. affiliate of which it is a customer.

[11] *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[12] *See* proposed Rule 2242(j)(3).

[13] FINRA notes that, consistent with FINRA Rule 2210(b)(3) (Communications with the Public), third-party debt research reports that are subject to review under Rule 2242(g)(2) (*i.e.,* non-independent third-party debt research reports) do not require a registered principal to approve the communication prior to distribution, provided that the firm establishes and implements written procedures for the supervision and review of such communications. *See* FINRA Rule 2210 Questions and Answers at *http://www.finra.org/industry/finra-rule-2210-questions-and-answers.*

to all of the independence and disclosure standards applicable to debt research reports prepared for retail investors''; and (B) if applicable, ''This report may not be independent of [Firm's] proprietary interests. [Firm] trades the securities covered in this report for its own account and on a discretionary basis on behalf of certain clients. Such trading interests may be contrary to the recommendation(s) offered in this report.'' [14]

FINRA has not proposed requiring that third-party debt research reports distributed to institutional investors disclose prominently the disclosure required by paragraph (j)(4)(B) of the Rule.[15] FINRA intended the disclosure in paragraph (j)(4)(B) of the Rule to apply only when the research report was produced by the member.[16] FINRA notes that the Rule does not require similar disclosure for third-party research reports distributed to retail investors, nor is there such a requirement in Rule 2241 with respect to third-party equity research reports. FINRA believes that it is commonly understood that the views in third-party research reports may differ from the views of the member or from other third-party research reports. For these reasons, FINRA believes that it is appropriate not to require third-party debt research reports distributed to institutional investors to disclose prominently the disclosure required by paragraph (j)(4)(B) of the Rule.

In addition, FINRA has not proposed to include paragraph (g)(5) of the Rule in the list of applicable paragraphs of the Rule set forth in proposed paragraph (j)(3). Paragraph (g)(5) of the Rule dictates the circumstances in which paragraph (g)(3) of the Rule does not apply to third-party research reports.[17] Because FINRA is proposing not to require the specific disclosures set forth in paragraph (g)(3) of the Rule when distributing third-party research reports, but instead to require a ''health warning,'' FINRA believes that paragraph (g)(5) of the Rule should not apply to third-party debt research reports distributed via the exemption to institutional investors.

Public Appearances by Debt Research Analysts

Rule 2242(d) requires disclosures from debt research analysts in public appearances, including debt research analysts that only prepare debt research reports pursuant to the institutional debt research exemption. FINRA has previously stated that it would be inconsistent with the rationale of the institutional exemption—*i.e.,* that all recipients of debt research have sufficient sophistication to understand the conflicts of interest without the specific disclosures and other protections afforded retail debt research—to allow debt research analysts to make public appearances before an audience that could include retail investors.[18]

However, based on the same rationale, FINRA believes that it is consistent with the institutional exemption in paragraph (j) of the Rule to exempt public appearances by debt research analysts from the disclosure requirements in paragraph (d) of the Rule where attendance is limited to institutional investors eligible to receive institutional debt research reports. Accordingly, FINRA is proposing new Supplementary Material .14 to clarify that the public appearance disclosure requirements do not apply in those circumstances. The proposed rule change would require that the member maintain records sufficient to demonstrate that attendance at the public appearance was limited to institutional investors eligible to receive institutional debt research. The proposed rule change would require that the records be maintained for at least three years from the date of the public appearance.

The disclosure requirements of paragraph (d) of the Rule would apply where attendance at the public appearance was not limited to institutional investors eligible to receive institutional debt research reports.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be July 16, 2016.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] 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 is consistent with the Act in that it clarifies the requirements of Rule 2242, which addresses conflicts of interest relating to the publication and distribution of debt research reports. Specifically, FINRA believes the proposed rule change is consistent with the Act in that it clarifies: (1) The consent requirement for institutional debt research reports distributed to non-U.S. investors by non-U.S. affiliates of members; (2) the consent requirement for institutional debt research reports distributed to specified persons for informational purposes unrelated to investing in debt securities; (3) the scope of the exemption for third-party debt research reports distributed via the exemption to institutional investors and the applicable requirements; and (4) the disclosure requirements for debt research analysts in public appearances. FINRA further believes that the proposed rule change would facilitate the flow of valued information to sophisticated U.S. investors, while maintaining the investor protections intended by the Rule for those investors.

*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. The clarifications in the proposed rule change will result in reduced burdens for members to comply with the requirements of Rule 2242. The proposed rule change does not impose any material new obligations on members.

*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.

[14] *See* proposed Rule 2242(j)(5).

[15] Rule 2242(j)(4)(B) requires that debt research reports provided to institutional investors pursuant to the exemption disclose prominently on the first page, if applicable, that ''[t]he views expressed in this report may differ from the views offered in [Firm's] debt research reports prepared for retail investors.''

[16] FINRA has previously stated that the disclosure is required only if the member produces both retail and institutional debt research reports that sometimes differ in their views. *See* Securities Exchange Act Release No. 75472 (July 16, 2015), 80 FR 43528 (July 22, 2015) (Order Approving File No. SR–FINRA–2014–048).

[17] Rule 2242(g)(5) states that ''[a] member shall not be considered to have distributed a third-party debt research report for the purposes of paragraph (g)(3) where the research is an independent third-party debt research report and made available by a member (a) upon request; (b) through a member-maintained Web site; or (c) to a customer in connection with a solicited order in which the registered representative has informed the customer, during the solicitation, of the availability of independent debt research on the solicited debt security and the customer requests such independent debt research.''

[18] *See* FINRA Research Rules Frequently Asked Questions at *https://www.finra.org/industry/faq-research-rules-frequently-asked-questions-faq.*

[19] 15 U.S.C. 78*o*–3(b)(6).

### 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 [20] and Rule 19b–4(f)(6) thereunder.[21]

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–2016–017 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–FINRA–2016–017. 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–2016–017, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13318 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77960; File No. SR–BatsBZX–2016–20]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 14.13, Company Listing Fees

June 1, 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 May 20, 2016, Bats BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the 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 the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,[5] which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products (''ETPs'') [6] on the Exchange,[7] which it subsequently modified again on June 4, 2014.[8] On October 16, 2014, the Exchange modified Rule 14.13, entitled ''Company Listing Fees'' to eliminate the annual fees for ETPs not participating in the Exchange's Competitive Liquidity Provider Program pursuant to Rule 11.8, Interpretation and Policy .02 (the ''CLP

[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] *See* Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[6] As defined in Rule 11.8(e)(1)(A), the term ''ETP'' means any security listed pursuant to Exchange Rule 14.11.

[7] *See* Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR–BATS–2012–010).

[8] *See* Securities Exchange Act Release No. 72377 (June 12, 2014), 79 FR 34822 (June 18, 2014) (SR–BATS–2014–024).

Program'').[9] On May 22, 2015, the Exchange further modified Rule 14.13 to eliminate the $5,000 application fee for ETPs, effectively eliminating any compulsory fees for both new ETP issues and transfer listings in ETPs on the Exchange [10] and on September 30, 2015, the Exchange began offering an incentive payment to ETPs that are listed on the Exchange based on the consolidated average daily volume (the ''CADV'') of the ETP (the ''Issuer Incentive Program'').[11]

The Exchange is now proposing to make an administrative change to the Issuer Incentive Program such that an ETP must be enrolled by completing the Issuer Incentive Program Enrollment Form with the Exchange in order to receive payment under the Issuer Incentive Program. Practically, the Exchange cannot provide payment to an ETP that is eligible to receive payment under the Issuer Incentive Program without certain bank information from the issuer and the ETP cannot accept payments from the Exchange without confirming that there are no issuer- and fund-specific issues that are created through receipt of the payment. All ETPs will be eligible for enrollment in the Issuer Incentive Program and, as noted above, this proposed change is only an administrative change. As part of this proposal, the Exchange also notes that where an ETP is not enrolled with the Exchange on the last day of a quarter for which the ETP is eligible to receive payments under the Issuer Incentive Program, any such payment is forfeited by the ETP.

The Exchange proposes to implement the amendments to Rule 14.13(b)(2)(C) effective immediately.

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 of the Act.[12] Specifically, the Exchange believes that the proposed rule change is consistent with section 6(b)(4) and 6(b)(5) of the Act,[13] in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that requiring enrollment with the Exchange in order to receive payment under the Issuer Incentive Program is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because, as noted above, the Exchange cannot provide payment to an ETP that is eligible to receive payment under the Issuer Incentive Program without bank information from the issuer and the ETP cannot receive payments from the Exchange without confirming that there are no issuer- and fund-specific issues that are created through receipt of the payment. Thus, the proposal will provide a mechanism to ensure that both the Exchange and the ETP are prepared to provide and receive the payment, respectively. Additionally, such requirement will apply equally to all ETPs eligible for payment under the Issuer Incentive Program.

Similarly, the Exchange believes that requiring an ETP to be enrolled with the Exchange on at least the last day of the quarter for which the ETP is eligible to receive payments under the Issuer Incentive Program in order to receive the payment is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because an ETP can be enrolled as part of the application process prior to the ETP even listing on the Exchange and even where the ETP is enrolled after listing on the Exchange, the process is very simple and involves only standard bank account information. Further, to the extent that an ETP is not enrolled on the last day of the quarter but would otherwise be eligible to receive payment, the Exchange believes that it is reasonable, fair and equitable, and not unfairly discriminatory for the ETP to forfeit such payment because, as noted above, the ETP can be enrolled as part of the application process prior to listing on the Exchange and the forfeiture of such payments (rather than allowing the payments to carry over for multiple quarters) provides the Exchange with financial certainty about the costs associated with the Issuer Incentive Program and will allow the Exchange to better approximate its operational costs.

Based on the foregoing, the Exchange believes that the proposed amendment to Rule 14.13(b)(2)(C) to implement the Issuer Incentive Program is a reasonable, equitable, and non-discriminatory allocation of fees to issuers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange does not believe that the proposed change burdens competition, but instead, enhances competition, as it is intended to increase the competitiveness of the Exchange's listings program by making clear the requirements for the Exchange to provide ETPs with quarterly payments based on the CADV of the ETP. As such, the proposal is a competitive proposal that is intended to further clarify the Issuer Incentive Program and attract additional ETP listings, which will, in turn, benefit the Exchange and all other BZX-listed ETPs.

*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 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 [14] and paragraph (f) of Rule 19b–4 thereunder.[15] 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–BatsBZX–2016–20 on the subject line.

[9] *See* Securities Exchange Act Release No. 73414 (October 23, 2014), 79 FR 64434 (October 29, 2014) (SR–BATS–2014–050).

[10] *See* Securities Exchange Act Release No. 75085 (June 1, 2015), 80 FR 32190 (June 5, 2015) (SR–BATS–2015–39).

[11] *See* Securities Exchange Act Release No. 76113 (October 8, 2015), 80 FR 62142 (October 15, 2015) (SR–BATS–2015–80).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

*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–BatsBZX–2016–20. 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–BatsBZX–2016–20, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13314 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

*Extension:* Form F–1, SEC File No. 270–249, OMB Control No. 3235–0258

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form F–1 (17 CFR 239.31) is used by certain foreign private issuers to register securities pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form F–1 takes approximately 1,709 hours per response and is filed by approximately 63 respondents. We estimate that 25% of the 1,709 hours per response (427.25 hours) is prepared by the registrant for a total annual reporting burden of 26,917 hours (427.25 hours per response × 63 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 1, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13320 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

*Extension:* Form S–1, SEC File No. 270–058, OMB Control No. 3235–0065

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–1 (17 CFR 239.11) is used by domestic issuers who are not eligible to use other forms to register a public offering of their securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. Form S–1 takes approximately 667 hours per response and is filed by approximately 901 respondents. We estimate that 25% of the 667 hours per response (166.75 hours) is prepared by the registrant for a total annual reporting burden of 150,242 hours (166.75 hours per response × 901 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 1, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13321 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77957; File No. SR–MIAX–2016–12]**

## Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 506

June 1, 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 May 24, 2016, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 506, Collection and Dissemination of Quotations.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Exchange Rule 506, Collection and Dissemination of Quotations, to state that the Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer, when the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a designated percentage of the previously disseminated bid (offer) size (the ''percentage size increase'').

Current Rule 506(b) states that the Exchange shall disseminate an updated bid and offer price, together with the size associated with such bid and offer when: (i) The Exchange's disseminated bid or offer price increases or decreases; (ii) the size associated with the Exchange's disseminated bid or offer decreases; or (iii) the size associated with the Exchange's bid (offer) increases by an amount greater than or equal to a percentage of the size associated with the previously disseminated bid (offer). Such percentage, which shall never exceed 20%, shall be determined on a class-by-class basis by the Exchange and announced to the Membership through a Regulatory Circular.[3]

Current Rule 506(b)(1)(iii) does not include a minimum percentage size increase that must be equaled or exceeded before the Exchange's System [4] will update the Exchange's disseminated bid and offer when the bid or offer price remains the same.[5] The Exchange is proposing to add a minimum percentage size increase to Rule 506(b)(1)(iii) that must be met in order for the System to update the Exchange's disseminated quotation. Specifically, the Rule would state that such percentage shall never be less than 10% or greater than the current 20%. Thus, under the proposed Rule, the percentage size increase must be at least 10% before the System will update the Exchange's disseminated quotation at the same price, and the Exchange may never establish a percentage size increase that is greater than 20%.

The Exchange will continue to determine the level of the required percentage size increase on a class-by-class basis and announce this to the Membership through a Regulatory Circular. As stated in the current Rule, the percentage size increase shall never exceed 20%, meaning that in all cases where the Exchange's disseminated size at the same price increases by 20% or more, the System will update the Exchange's disseminated bid and offer.

The purpose of the proposed rule change is to mitigate quote traffic by establishing a minimum percentage size increase at the same price which must be met before the System will disseminate an updated bid and offer. In order for the System to update the size of the disseminated bid and offer at the previously disseminated price, the size of the bid or offer must increase by at least 10%, or no update will occur.

The Exchange currently lists 318,280 option series overlying 2,390 underlying securities [6] for which it must publish the highest bid, lowest offer, and the aggregate quotation size available for each, under Rule 602 of Regulation NMS.[7] Given the number of series and the number of quote updates submitted by Members on a continual basis throughout the trading day, the Exchange believes there is a benefit in establishing a minimum percentage size increase at the same price that must be met before the Exchange will disseminate an updated quotation. The minimum percentage size will ensure that only quotations at the same price with a meaningful percentage size increase are disseminated by the System.

The Exchange believes that the proposed minimum percentage size increase required for the System to update the Exchange's disseminated bid and offer at the previously disseminated price will reduce the dissemination of quotations that do not represent a material change in size from the previously disseminated quotation, thus making the System and the marketplace as a whole more efficient. Further, the Exchange believes the proposed rule change will alleviate the potential burden on quotation vendors in handling excessive quote updates that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Rule 506(b)(1).

[4] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[5] The System automatically disseminates an updated bid and offer price, together with the size associated with such bid and offer each time the Exchange's disseminated bid or offer price increases or decreases, and when the size associated with the Exchange's disseminated bid or offer decreases. *See* Exchange Rules 506(b)(1)(i) and (ii). The instant proposed rule change addresses only the circumstance where the Exchange's disseminated size increases at the same price as the prior disseminated price.

[6] Data as of May 2, 2016.

[7] 17 CFR 242.602.

provide minimal value due to relatively small incremental changes in the aggregate size of bids and offers available on the Exchange.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with section 6(b) of the Act [8] in general, and furthers the objectives of section 6(b)(5) of the Act [9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The proposed rule change is designed to remove impediments to and perfect the mechanisms of a free and open national market system by reducing the frequency and number of extraneous quotation updates disseminated by the System. This would enable quotation vendors to who the Exchange disseminates quotations to operate more efficiently, which in turn would allow the national market system to operate more efficiently.

Further, the proposed rule change is designed to protect investors and the public interest and to promote just and equitable principles of trade by ensuring only quotation updates that represent a meaningful increase in the aggregate size available on the Exchange are disseminated, thereby reducing the frequency and number of quotation updates that are disseminated by the System, that quotation vendors must handle, making the market as a whole more efficient.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will not impose any burden on intra-market competition because it applies to all MIAX participants equally, thus placing all MIAX participants on an equal playing field.

*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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–MIAX–2016–12 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–MIAX–2016–12 and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13313 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736

*Extension:* Rules 7a–15 thru 7a–37, SEC File No. 270–115, OMB Control No. 3235–0132

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission

(''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rules 7a–15 through 7a–37 (17 CFR 260.7a–15–260.7a–37) under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) set forth the general requirements as to form and content of applications, statements and reports that must be filed under the Trust Indenture Act. The respondents are persons and entities subject to requirements of the Trust Indenture Act. Trust Indenture Act Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The rules are assigned only one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 1, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13329 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77956; File No. SR–CFE–2016–001]**

## Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Proposed Rule Change Regarding the Reporting Time for Exchange of Contract for Related Position Transactions and Block Trades That Involve Trade at Settlement Transactions

June 1, 2016.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 12, 2016 CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [2] on May 12, 2016.

### I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE Rule 404A (Trade at Settlement Transactions) defines a TAS transaction as a transaction in a CFE contract at a price equal to the daily settlement price, or a specified differential above or below the daily settlement price, for the contract on a trading day. The actual amount is determined subsequent to the transaction based upon the daily settlement price of the contract.

CFE is submitting this amendment in conjunction with CFE's submission of a separate rule certification to the CFTC to change the end of trading hours for TAS transactions in CBOE Volatility Index (''VX'') futures from three minutes prior to the close of regular trading hours at the end of a business day to two minutes prior to the close of regular trading hours at the end of a business day.[3] This change to TAS trading hours in VX futures means that the trading hours for TAS transactions in VX futures will end at 3:13 p.m.[4] instead of 3:12 p.m.

CFE currently permits TAS transactions only in VX futures. Extending the TAS trading hours in VX futures by one minute will provide market participants that engage in TAS transactions toward the end of TAS trading hours a better sense of the likely daily settlement price and how many contracts need to be traded utilizing TAS transactions in order to execute hedging and roll strategies.

As a result of the change in TAS trading hours described above, the Exchange proposes a corollary change to amend its rules related to the reporting time for Exchange of Contract for Related Position (''ECRP'') transactions and Block Trades that involve TAS transactions. The scope of this filing is limited solely to the application of the rule amendments to security futures that may be traded on CFE. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE 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. CFE 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

As previously mentioned, he Exchange has submitted a rule filing certification to the CFTC to extend the trading hours for TAS transactions in VX futures from 3:12 p.m. to 3:13 p.m. As such, the Exchange is proposing to amend CFE Rules 414 and 415, which set forth the reporting requirements for ECRP transactions and Block Trades that involve TAS transactions, in order to align the reporting time frames with the revised trading hours for VX TAS transactions. Although the revisions to these reporting time frames are being made as a result of the change in trading hours for VX TAS transactions, the revised reporting time frames in the

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] *See* CFE Rule Certification Submission Number CFE–2016–006 submitted to the CFTC on May 12, 2016.

[4] All times referenced are Chicago time.

proposed rule change would apply to any product listed on CFE, including a security future, in the event that CFE were to amend its rules to permit TAS transactions in that product.

Reporting Time Frame for ECRP Transactions That Involve TAS Transactions

Paragraph (i) of CFE Rule 414 (Exchange of Contract for Related Position) currently provides (i) that the CFE legs of TAS ECRP transactions which are reported to CFE after 3:12 p.m. Monday through Thursday will be submitted for clearing for the next business day and (ii) that TAS ECRP transactions may not be reported after 3:12 p.m. on Friday. The proposed rule change changes the references in Rule 414(i) from 3:12 p.m. to 3:13 p.m. to be consistent with the change in TAS trading hours.

CFE believes this extension is justified because it will allow CFE to align its ECRP transaction reporting requirements with the revised trading hours for VX TAS transactions.

Reporting Time Frame for Block Trades That Involve TAS Transactions

Paragraph (g) of CFE Rule 415 (Block Trades) currently provides (i) that TAS Block Trades which are reported to CFE after 3:12 p.m. Monday through Thursday will be submitted for clearing for the next business day and (ii) that TAS Block Trades may not be reported after 3:12 p.m. on Friday. The proposed rule change changes the references in Rule 415(g) from 3:12 p.m. to 3:13 p.m. to be consistent with the change in TAS trading hours.

CFE believes this extension is justified because it will allow CFE to align its Block Trade reporting requirements with the revised trading hours for VX TAS transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(5)[6] and 6(b)(7)[7] in particular in that it is designed:

- To foster coordination of the Exchange's reporting provisions relating to TAS ECRP and Block Trades with the revised trading hours for VX TAS transactions; and
- to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would benefit market participants because it would provide them with additional time to report ECRP transactions and Block Trades that involve TAS transactions that market participants wish to have cleared on the same business day as the calendar day of the transaction to align with the revised trading hours for TAS transactions in VX futures.

In addition, the proposed rule change benefits market participants by allowing the reporting of ECRP transactions and Block Trades that involve TAS transactions on Fridays to be done during the entire time period that TAS transactions in VX futures are permitted in order to be consistent with the change in TAS trading hours for VX futures.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CFE 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. Specifically, the Exchange believes that the proposed rule change will not burden competition because the new reporting time provisions for ECRP transactions and Block Trades that involve TAS transactions will align with the revised trading hours for VX TAS transactions and will apply to equally all market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were 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 proposed rule change will become effective on or after May 26, 2016, on a date to be announced by the Exchange through the issuance of a circular. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[8]

## 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–CFE–2016–001 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CFE–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 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–CFE–2016–001, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13312 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(7).

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 200.30–3(a)(73).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77961; File No. SR–C2–2016–005]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Senior Management Authority

June 1, 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 May 23, 2016, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Bylaws and Rules with respect to delegations of certain authorities to senior management. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

**[FOURTH] *FIFTH* AMENDED AND RESTATED**

**BYLAWS OF**

**C2 OPTIONS EXCHANGE, INCORPORATED**

* * * * *

**ARTICLE VI Advisory Board**

Section 6.1. Advisory Board.

The Board will establish an Advisory Board which shall advise the Board and [the Office of the Chairman] *management* regarding matters of interest to Trading Permit Holders. It shall consist of such number of members as set by the Board from time to time, including at least two members who are Trading Permit Holders or persons associated with Trading Permit Holders. The Chief Executive Officer, or his or her designee, shall be the Chairman of the Advisory Board. The members of the Advisory Board shall be recommended by the Nominating and Governance Committee for approval by the Board. There shall be a Trading Permit Holders Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Trading Permit Holders or persons associated with Trading Permit Holders, which shall act as the Representative Director Nominating Body if and to the extent required by these Bylaws.

* * * * *

**C2 Options Exchange, Incorporated**

Rules

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**Table of Contents**

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Chapter 16 Summary Suspension [by Chairman of the Board or Vice Chairman of the Board]

* * * * *

**Rule 6.33. Authority to Take Action Under Emergency Conditions**

The [Chairman of the Board] *Chief Executive Officer,* the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, natural disaster, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. The person taking the action shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Bylaws and Rules as it relates to certain references to senior management. The Exchange notes that historically, the C2 Chairman of the Board also held the title of Chief Executive Officer (''CEO''). Currently, however, the roles of Chairman of the Board, CEO, and President are now occupied by three different individuals. As such, the Exchange has conducted a review of its rules relating to the authorities delegated to senior management and seeks to make changes to its rules to more accurately reflect its senior management structure.

First, the Exchange proposes to amend section 6.1. (Advisory Board), of the Exchange's Bylaws. Section 6.1 currently provides that the Board will establish an Advisory Board which shall advise the Board and the Office of the Chairman regarding matters of interest to Trading Permit Holders (''TPHs''). The Exchange notes that the Advisory Board's Charter however, provides that the Advisory Board shall advise the Board and ''management'' regarding matters of interest to TPHs. In order to conform the language in section 6.1 to the Advisory Board Charter, the Exchange proposes to replace the reference to ''Office of the Chairman'' with ''management''. The Exchange believes the proposed change would alleviate confusion and maintain consistency between the Exchange's governance documents. Additionally, the title of the Bylaws would be changed to Fifth Amended and Restated Bylaws of C2.

Next, the Exchange proposes to amend the title of chapter 16 in the C2 Rule's Table of Contents. Currently, the title of chapter 16 is ''Summary Suspension by Chairman of the Board or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Vice Chairman of the Board.'' The Exchange notes that rules contained within CBOE chapter XVI are incorporated into C2's chapter 16. CBOE Chapter 16 currently provides that the Chairman of the Board or President may summarily suspend a TPH and limit or prohibit any person with respect to access to services offered by the Exchange. The Exchange notes however, that CBOE is concurrently proposing to amend its rules to provide that the CEO (rather than Chairman) or President may summarily suspend a TPH.[3] Additionally, the Exchange notes that it no longer maintains the role of Vice Chairman of the Board. As such, the Exchange proposes to amend the chapter 16 title to simply state ''Summary Suspension'' to avoid confusion and maintain clarity in the rules.

Lastly, the Exchange proposes to amend Rule 6.33 (Authority to Take Action Under Emergency Conditions). Rule 6.33 currently provides that the Chairman of the Board, the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances. The Exchange notes that the CEO's responsibility is that of general charge and supervision of the business of the Corporation,[4] whereas the Chairman of the Board's responsibility is that of the presiding officer at all meetings of the Board and stockholders, as well as of other powers and duties as are delegated to him or her by the Board.[5] The Exchange believes the responsibilities currently delegated to the Chairman of the Board under Rule 6.33 pertains to the general charge and supervision of the Exchange's business and therefor fall within the scope of the CEO's stated responsibilities, instead of the Chairman's. Accordingly, the Exchange proposes to eliminate the reference to ''Chairman of the Board'' and replace with ''Chief Executive Officer.''

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule changes will more accurately reflect the current management structure and ensure that rules relating to senior management authority are clear and transparent, which reduces confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants.

In particular, the Exchange believes the proposed change to section 6.1 of C2's Bylaws eliminates an outdated and potentially confusing term (*i.e.,* Office of the Chairman) and conforms the language to the C2 Advisory Board Charter, thereby reducing confusion, which removes impediments to, and perfects the mechanism for a free and open market and a national market system, and, in general, protects investors and the public interest of market participants. The Exchange believes the proposal to transfer the authorities under Rule 6.33 from the Chairman of the Board to the CEO is appropriate and protects investors and the public interest of market participant [sic] as those authorities relate to the general charge and supervision of the Exchange business, which responsibility is delegated to the CEO. Additionally, the Exchange notes that while delegation of the authority is being modified, the substantive practices of the Exchange will remain the same. The Exchange believes renaming the chapter 16 title alleviates confusion in light of CBOE's concurrent proposed rule change to chapter 16 and also in light of the fact that it currently references a role no longer used (*i.e.,* Vice Chairman).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change imposes any burden on intramarket competition because it applies to all TPHs and is not designed to address any competitive issues. Additionally, as noted above, while the delegation of authority is being modified, the substantive practices of the Exchange will remain the same. C2 does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely relates to the delegation of authorities to senior management and only affects C2.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

## 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.

[3] *See* SR–CBOE–2016–047.

[4] *See* Section 5.2 of the Bylaws.

[5] *See* Section 3.6 of the Bylaws.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

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–C2–2016–005 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–C2–2016–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–005, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13316 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 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 a closed meeting on Thursday, June 9, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Piwowar, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting will be:

Settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters;

Opinion; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551–5400.

Dated: June 2, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13478 Filed 6–3–16; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77962; File No. SR–CBOE–2016–047]**

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Senior Management Authority

June 1, 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 May 23, 2016, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange seeks to amend its Bylaws and Rules with respect to delegations of certain authorities to senior management. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

**[SIXTH] SEVENTH AMENDED AND RESTATED**

**BYLAWS OF**

**CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

* * * * *

**ARTICLE VI Advisory Board**

Section 6.1. Advisory Board.

The Board will establish an Advisory Board which shall advise the Board and [the Office of the Chairman] *management* regarding matters of interest to Trading Permit Holders. It shall consist of such number of members as set by the Board from time to time, including at least two members who are Trading Permit Holders or persons associated with Trading Permit Holders. The Chief Executive Officer, or his or her designee, shall be the Chairman of the Advisory Board. The members of the Advisory Board shall be recommended by the Nominating and Governance Committee for approval by the Board. There shall be a Trading Permit Holders Subcommittee of the Advisory Board consisting of all members of the Advisory Board who are Trading Permit Holders or persons associated with Trading Permit Holders, which shall act as the Representative Director Nominating Body if and to the extent required by these Bylaws.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**Chicago Board Options Exchange, Incorporated**

**Rules**

* * * * *

**Rule 2.15. Divisions of Exchange**

The divisions of the Exchange shall include any such divisions as the [Chairman of the Board] *Chief Executive Officer,* with the approval of the Board, may establish. The [Chairman of the Board] *Chief Executive Officer* shall appoint a head of every division, provided that the [Chairman of the Board] *Chief Executive Officer* shall be the head of the Executive Division. Any official action taken by the [Chairman of the Board] *Chief Executive Officer* or the President shall, for purposes of the hearing and review provided for in Chapter XIX, be deemed to be action of the Executive Division.

* * * * *

**Rule 4.10. Other Restrictions on Trading Permit Holders**

(a) In General. Whenever the [Chairman] *Chief Executive Officer* or President shall find, on the basis of a report of the Department of Compliance or otherwise, that a Trading Permit Holder has failed to perform his contracts or is insolvent or is in such financial or operational condition or is otherwise conducting his business in such a manner that he cannot be permitted to continue in business with safety to his customers or creditors or the Exchange, the [Chairman] *Chief Executive Officer* or the President may summarily suspend the Trading Permit Holder in accordance with Chapter XVI or may impose such conditions and restrictions upon his being a Trading Permit Holder as he considers reasonably necessary for the protection of the Exchange and the customers of such Trading Permit Holder.

(b) Firms Clearing Market-Maker Trades.

* * * * *

(2) A proposed SBT of a Trading Permit Holder as enumerated in subsection (b)(1)(i) through (iii) is subject to the prior approval of the [Exchange's Office of the Chairman (''OOC'')] *Chief Executive Officer or President,* when the Trading Permit Holder's Market-Maker clearance activities exceed, or would exceed as a result of the proposed SBT, any of the following parameters:

(i) 15% of cleared Exchange Market-Maker contract volume for the most recent three (3) months;

(ii) an average of 15% of the number of Exchange registered Market-Makers as of each month and for the most recent three (3) months, or

(iii) 25% of Market-Maker gross deductions (haircuts) defined by SEC Rule 15c3–1 (a)(6) or (c)(2)(x) carried by the Clearing Trading Permit Holder(s) in relation to the aggregate of such haircuts carried by all other Market-Maker clearing organizations for any month end within the most recent three (3) months.

The Exchange shall notify in writing each Trading Permit Holder that clears Market-Maker trades within ten (10) business days from the close of each month of that Trading Permit Holder's proportion of the market making clearing business, whether or not such business exceeds the parameters described in (i), (ii), and (iii) of this subsection (b)(2). Trading Permit Holders subject to this subsection (b)(2) must provide thirty (30) calendar days notice of the proposed SBT, as enumerated in subsection (b)(1)(i) through (iii), to the President or his designee. The [OOC] *Chief Executive Officer or President* may disapprove a Trading Permit Holder's proposed SBT, or approve such SBT subject to certain conditions, within the thirty (30) day period. The [OOC] *Chief Executive Officer or President* may disapprove or condition a Trading Permit Holder's SBT within the thirty (30) day period if the [OOC] *Chief Executive Officer or President* determines that such SBT has the potential to threaten the financial or operational integrity of Exchange Market-Maker transactions.

(3) In addition, at any time, the [OOC] *Chief Executive Officer or President* may impose additional financial and/or operational requirements on a Trading Permit Holder that clears Market-Maker trades when the [OOC] *Chief Executive Officer or President* determines that the Trading Permit Holder's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange Market-Maker transactions.

* * * * *

(6) In considering a proposed SBT, the [OOC] *Chief Executive Officer or President* may consider, among other relevant matters, the following criteria:

* * * * *

(7) In the event the [OOC] *Chief Executive Officer or President* determines, prior to the expiration of the thirty (30) day period set forth in subsection (1) hereof, that a proposed SBT may be approved without conditions, the [OOC] *Chief Executive Officer or President* shall promptly so advise the Trading Permit Holder. All [OOC] *Chief Executive Officer or President* decisions to disapprove or condition a proposed SBT pursuant to subsection (b)(2) hereof or to impose extraordinary requirements pursuant to subsection (b)(3) hereof shall be in writing, shall include a statement setting forth the grounds for the [OOC's] *Chief Executive Officer or President's* decision, and shall be served on the Trading Permit Holder. Notwithstanding any other provisions of the Rules of the Exchange, the Trading Permit Holder may appeal such decision directly to the Board of Directors of the Exchange by filing an application for review with the Secretary of the Exchange within fifteen (15) days of the date of service of the decision. The application for review shall be in the form prescribed by Rule 19.5(a), and the Board's review shall be conducted in the manner prescribed by Rule 19.5(b), except that the Trading Permit Holder may waive the making of a record. Review by the Board shall be the exclusive method of reviewing a decision of the [OOC] *Chief Executive Officer or President* pursuant to this subsection (b). The appeal to the Board of a decision of the [OOC] *Chief Executive Officer or President* shall not operate as a stay of that decision during the pendency of the appeal. The Exchange shall file notice with the SEC in accordance with the provisions of Section 19(d)(1) of the Securities Exchange Act of all final decisions to disapprove or condition a proposed SBT pursuant to subsection (b)(2) hereof, or to impose extraordinary requirements pursuant to subsection (b)(3) hereof.

* * * * *

(9) The [OOC] *Chief Executive Officer or President* may exempt a Trading Permit Holder from the requirements of subsection (b)(1) hereof, either generally or in respect of specific types of transactions, based on the limited proportion of Market-Maker trades on the Exchange that are cleared by the Trading Permit Holder or on the limited importance that the clearing of Market-Maker trades bears to the total business of the Trading Permit Holder.

* * * * *

**Rule 4.14. Liquidation of Positions**

Whenever the President *or his designee* shall find, on the basis of a report of the Department of Market Regulation or otherwise, that a person or group of persons acting in concert holds or controls, or is obligated in respect of, an aggregate position (whether long or short) in all option contracts of one or more classes or series dealt in on the Exchange in excess of the applicable position limit established pursuant to Rule 4.11, he *or his designee* may order

all Trading Permit Holders carrying a position in option contracts of such classes or series for such person or persons to liquidate such position as expeditiously as possible consistent with the maintenance of an orderly market. Whenever such an order is given by the President *or his designee,* no Trading Permit Holder shall accept any order to purchase, sell or exercise any option contract for the account of the person or persons named in the order, unless and until the President *or his designee* expressly approves such person or persons for options transactions.

* * * * *

**Rule 6.17. Authority To Take Action Under Emergency Conditions**

The [Chairman of the Board] *Chief Executive Officer,* the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances, such as (1) actual or threatened physical danger, severe climatic conditions, natural disaster, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, or (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. The person taking the action shall notify the Board of actions taken pursuant to this Rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

* * * * *

**Rule 6.20. Admission to and Conduct on the Trading Floor; Trading Permit Holder Education**

(a) *Admission to Trading Floor.* Unless otherwise provided in the Rules, no one but a Trading Permit Holder, an Order Book Official designated by the Exchange pursuant to Rule 7.3, or PAR Official designated by the Exchange pursuant to Rule 7.12 shall make any transaction on the floor of the Exchange. Admission to the floor shall be limited to Trading Permit Holders, employees of the Exchange, clerks employed by Trading Permit Holders and registered with the Exchange, service personnel and Exchange visitors authorized admission to the floor pursuant to Exchange policy, and such other persons permitted admission to the floor by the President of the Exchange *or his designee.*

* * * * *

**Rule 10.2. Contracts of Suspended Trading Permit Holders**

When a Trading Permit Holder, other than a Clearing Trading Permit Holder, is suspended pursuant to Chapter XVI of these Rules, all open short positions of the suspended Trading Permit Holder in option contracts and all open positions resulting from exercise of option contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the Rules of the Clearing Corporation, shall be closed without unnecessary delay by all TPH organizations carrying such positions for the account of the suspended Trading Permit Holder; provided that the [Chairman] *Chief Executive Officer* or President may cause the foregoing requirement to be temporarily waived for such period as he may determine if he shall deem such temporary waiver to be in the interest of the public or the other Trading Permit Holder. No temporary waiver hereunder by the [Chairman] *Chief Executive Officer* or President shall relieve the suspended Trading Permit Holder of its obligations or of damages, nor shall it waive the close out requirements of any other Rule. When a Clearing Trading Permit Holder is suspended pursuant to Chapter XVI of these Rules, the positions of such Clearing Trading Permit Holder shall be closed out in accordance with the Rules of the Clearing Corporation.

* * * * *

**Rule 16.1. Imposition of Suspension**

A Trading Permit Holder or person associated with a Trading Permit Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a Trading Permit Holder of any self-regulatory organization, or a Trading Permit Holder which is in such financial or operating difficulty that the [Chairman of the Board] *Chief Executive Officer* or the President determines that the Trading Permit Holder cannot be permitted to continue to do business as a Trading Permit Holder with safety to investors, creditors, other Trading Permit Holders, or the Exchange, may be summarily suspended by the [Chairman of the Board] *Chief Executive Officer* or the President. In addition, the [Chairman of the Board] *Chief Executive Officer* or the President may limit or prohibit any person with respect to access to services offered by the Exchange if any of the criteria or the foregoing sentence is applicable to such person or, in the case of a person who is not a Trading Permit Holder, if the [Chairman of the Board] *Chief Executive Officer* or the President determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Trading Permit Holders, or the Exchange. In the event a determination is made to take summary action, as described above, notice thereof will be sent to the Securities and Exchange Commission. Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by the Exchange in accordance with the provisions of Chapter XIX. In addition, the Securities and Exchange Commission may on its own motion order or such a person may apply to the Securities and Exchange Commission for a stay of such summary action pending the results of a hearing pursuant to Chapter XIX.

* * * * *

**Rule 18.31. Awards**

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(g) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If such a motion has been filed, either party may request the [Office of the Chairman] *Chief Executive Officer or President* to direct that the award be paid to an escrow account maintained by the Exchange. Such request shall be filed with the Secretary of the Exchange within thirty-five days of receipt of such award.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Bylaws and Rules as it relates to references to senior management. The Exchange notes that historically, the CBOE Chairman of the Board also held the title of Chief Executive Officer (''CEO''). Currently, however, the roles of Chairman of the Board, CEO, and President are now occupied by three different individuals. As such, the Exchange has conducted a review of its rules relating to the authorities delegated to senior management and seeks to make conforming changes to its rules to more accurately reflect its senior management structure.

First, the Exchange proposes to amend Rule 2.15 (Divisions of Exchange), Rule 4.10 (Other Restrictions on Trading Permit Holders), Rule 6.17 (Authority to Take Action Under Emergency Conditions), Rule 10.2 (Contracts of Suspended Trading Permit Holders) and Rule 16.1 (Imposition of Suspension) to eliminate references to ''Chairman of the Board'' and replace those references with ''Chief Executive Officer.'' By way of background, Rule 2.15 currently provides that the Chairman of the Board, with the approval of the Board, may establish divisions of the Exchange and shall appoint a head of every division, provided that the Chairman of the Board is to be the head of the Executive Division. Additionally, Rule 2.15 provides that any official action taken by the Chairman of the Board or the President shall, for purposes of the hearing and review provided for in Chapter XIX, be deemed to be action of the Executive Division. Rule 4.10 currently provides that the Chairman of the Board or President may summarily suspend a Trading Permit Holder (''TPH'') or impose conditions and restrictions upon a TPH being a TPH if the Chairman of the Board or President considers it reasonably necessary for the protection of the Exchange and the customers of the TPH based upon certain findings made by the Department of Compliance. Rule 6.17 currently provides that the Chairman of the Board, the President or such other person or persons as may be designated by the Board shall have the power to halt or suspend trading in some or all securities traded on the Exchange, to close some or all Exchange facilities, to determine the duration of any such halt, suspension or closing, to take one or more of the actions permitted to be taken by any person or body of the Exchange under Exchange rules, or to take any other action deemed to be necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors, or otherwise in the public interest, due to emergency conditions or extraordinary circumstances. Rule 10.2 provides the Chairman of the Board or President may waive the requirement that a TPH Organization that carries short positions for the account of a TPH that is subject to a summary suspension close those positions. Finally Rule 16.1 provides that the Chairman of the Board or President may summarily suspend a TPH and limit or prohibit any person with respect to access to services offered by the Exchange.

The Exchange notes that the CEO's responsibility is that of general charge and supervision of the business of the Corporation,[3] whereas the Chairman of the Board's responsibility is that of the presiding officer at all meetings of the Board and stockholders, as well as of other powers and duties as are delegated to him or her by the Board.[4] The Exchange believes the responsibilities currently delegated to the Chairman of the Board under Rules 2.15, 4.10, 6.17, 10.2 and 16.1 pertain to the general charge and supervision of the Exchange's business and therefor fall within the scope of the CEO's stated responsibilities, instead of the Chairman's. Accordingly, the Exchange proposes to eliminate the references to ''Chairman of the Board'' in the abovementioned [sic] rules and replace those references with ''Chief Executive Officer.''

Next, the Exchange proposes to eliminate the terms ''Office of the Chairman'' (''OOC'') [sic] in Rule 4.10 (Other Restrictions on Trading Permit Holders) and Rule 18.31 (Awards) and replace these references with ''Chief Executive Officer or President.'' Under Rule 4.10, the OOC (*i.e.,* Office of the Chairman) is delegated certain authority relating to proposed Significant Business Transactions (''SBTs'') including, among other things, approving or disapproving a SBT. Under Rule 18.31, a party to an Arbitration may request the OOC to direct that an award be paid into an escrow account maintained by the Exchange in the event a motion to vacate has been filed. The Exchange notes that historically, the OOC was considered to be the management committee of the Exchange and consisted of the Chairman (who at the time was also the CEO), the Vice-Chairman (which role no longer exists) and the President. Given the Exchange's current management structure, the Exchange believes the term is antiquated and seeks to eliminate the reference to it in its rules. In its place, the Exchange seeks to provide that the powers and responsibilities delegated to the OOC as a whole, now be delegated to either the CEO or President. Although the Chairman will no longer possess the authorities delineated in Rules 4.10 and 18.31, the Exchange believes those authorities fall more squarely within the scope of the CEO's or President's roles and responsibilities.[5] The Exchange believes the proposed rule change will also provide clarity as to who going forward has certain authority under the rules.

Similarly, the Exchange proposes to eliminate the reference to the Office of the Chairman in Section 6.1 (Advisory Board) of the Exchange's Bylaws. Section 6.1 currently provides that the Board will establish an Advisory Board which shall advise the Board and the Office of the Chairman regarding matters of interest to TPHs. The Exchange notes that the Advisory Board's Charter however, provides that the Advisory board shall advise the Board and ''management'' regarding matters of interest to TPHs. As the term Office of the Chairman is outdated, as described above, and in order to conform the language in Section 6.1 to the Advisory Board Charter, the Exchange proposes to replace the reference to ''Office of the Chairman'' with ''management.'' The Exchange also notes that the proposed change would alleviate confusion and maintain consistency between the Exchange's governance documents. Additionally, the title of the Bylaws would be changed to Seventh Amended and Restated Bylaws of CBOE.

The Exchange lastly proposes to amend Rules 4.14 (Liquidation of Positions) and 6.20 (Admission to and Conduct on the Trading Floor; Trading Permit Holder Education) to provide that in addition to the President, a designee of the President may act in accordance with the authority delegated by the Rule. Rule 4.14 provides authority to the President to order the liquidation of positions and Rule 6.20

[3] *See* Section 5.2 of the Bylaws.

[4] *See* Section 3.6 of the Bylaws.

[5] *See* Sections 5.2 and 5.3 of the Bylaws, respectively.

allows the President to permit admission to the floor of persons other than those expressly allowed by rule. Providing that such authorities may also be delegated to a designee provides the President and the Exchange additional flexibility (*e.g.,* if the President were unavailable, the authorities provided by rule could still be carried out, need be, by an alternative Exchange official). The proposed change is consistent with other Exchange rules and policies that permit the President to delegate certain authority upon a designee.[6]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the proposed rule changes will more accurately reflect the current management structure and ensure that rules relating to senior management authority are clear and transparent, which reduces confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest of market participants.

More specifically, the Exchange believes the authorities being transferred from the Chairman of the Board to the CEO are appropriate as they relate to the general charge and supervision of the Exchange business, which responsibility is currently delegated to the CEO.

The Exchange believes the proposal to transfer the powers and responsibilities currently delegated to the Office of the Chairman as a whole to the CEO or President is appropriate as it is more aligned with the scope of the CEO's and President's roles than the Chairman's. The Exchange believes it also reduces confusion as the term ''Office of the Chairman'' (and ''OOC'') incorporate a no-longer valid role (''Vice-Chairman'') and is not widely used anymore. The proposed change also clarifies which officers are being referenced, which is not currently clear or explicit. Additionally, the Exchange notes that while delegation of authority is being modified, the substantive practices of the Exchange will remain the same. Similarly, the Exchange believes the proposed change to Section 6.1 of CBOE's Bylaws also eliminates an outdated and potentially confusing term (*i.e.,* Office of the Chairman) and also conforms the language to the CBOE Advisory Board Charter.

Lastly, the Exchange believes allowing the President to delegate the authorities under Rules 4.14 and 6.20 upon a designee protects investors and [sic] public interest by providing additional flexibility to the President and Exchange (*e.g.,* if the President were unavailable, the authorities provided by rule could still be carried out, need be, by an alternative Exchange official). Additionally, the proposed change is consistent with other Exchange rules and policies that permit the President to delegate certain authority upon a designee.[9]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change imposes any burden on intramarket competition because it applies to all TPHs and is not designed to address any competitive issue. Additionally, as noted above, while certain delegation of authority is being modified, the substantive practices of the Exchange will remain the same. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely relates to the delegation of authorities to senior management and only affects CBOE.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–047 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–CBOE–2016–047. 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

[6] *See e.g.,* CBOE Rules 4.11, 4.12, 4.16.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See e.g.,* CBOE Rules 4.11, 4.12, 4.16.

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–CBOE–2016–047, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13317 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77970; File No. SR–Phlx–2016–60]**

## Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 1000A(b)(8)

June 1, 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 May 24, 2016, NASDAQ PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend section (b)(8) of Rule 1000A, Applicability and Definitions. The rule applies to index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is amending Rule 1000A(b)(8) which defines the term ''closing index value'' to provide greater clarity. Currently Rule 1000A(b)(8) defines ''closing index value'' to mean the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise (P.M.-settled), unless the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.-settled).

Accordingly, the definition of ''closing index value'' applicable to P.M.-settled options—the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise—clearly does not apply to options where the settlement value of the index is based on the opening price of each component issue on the primary market (A.M.-settled).

It is understood that the ''closing index value'' for such options is to be ''the settlement value of the index based on the opening price of each component issue on the primary market,'' but the Exchange believes the provision could be more tightly drafted and less awkward. Therefore, the Exchange proposes to redefine ''closing index value'' separately for P.M.-settled options and A.M.-settled options as (a) with respect to P.M.-settled options, the current index value calculated at the close of business on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise, or (b) with respect to A.M.-settled options, the opening price of each component issue on the primary market on the day of exercise, or, if the day of exercise is not a trading day, on the last trading day before exercise. The rule amendment is intended to improve readability and provide greater clarity. No substantive change is intended.

Additionally, the Commentary to Rule 1009A(b)(8) [sic] is proposed to be updated. Currently, the Commentary recites that for any series of index options first opened after March 30, 1987, the Exchange may, in its discretion, provide that the calculation of the final index settlement value of any index on which options are traded at the Exchange will be determined by reference to the prices of the constituent stocks at a time other than the close of trading on the last trading day before expiration. The Exchange is deleting the words ''first opened after March 30, 1987'' as archaic and no longer necessary.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[3] in general, and furthers the objectives of section 6(b)(5) of the Act,[4] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by improving the readability and clarity of its definition of closing index value and the related commentary. The change benefits members by providing better access to clear rules.

*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 because the rule merely clarifies the defined term ''closing index value'' which is not a substantive change, and removes archaic language from the Rule 1009A(b)(8) [sic] Commentary. Neither proposed change has an impact on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

### 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)(iii) of the Act [5] and subparagraph (f)(6) of Rule 19b–4 thereunder.[6]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–60 on the subject line.

*Paper comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–60. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–60, and should be submitted on or before June 28, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–13319 Filed 6–6–16; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(3)(a)(iii).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 9588]**

### Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d), and in compliance with section 36(f), of the Arms Export Control Act.

**DATES:** As shown on each of the 19 letters.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lisa V. Aguirre, Directorate of Defense Trade Controls, Department of State, telephone (202) 663–2830; email *DDTCResponseTeam@state.gov.* ATTN: Congressional Notification of Licenses.

**SUPPLEMENTARY INFORMATION:** Section 36(f) of the Arms Export Control Act (22 U.S.C. 2778) mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Following are such notifications to the Congress:

February 8, 2016

Honorable Joseph R. Biden, *President of the Senate.*

Dear Mr. President: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the design, development, and production of T–50 Advanced Pilot Trainer aircraft, the development and manufacture of A–50 Lead-in Fighter Trainer aircraft, and the F–50 Light Attack aircraft for end-use by the Government of Iraq.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–050.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to Egypt, Bahrain, Qatar, and the United Arab Emirates for the maintenance and upgrade of turbojet engines for end use by the Government of Egypt.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the

applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–061.

February 24, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Government of Saudi Arabia, related to the evaluation, qualification, integration, operation, repair, overhaul, maintenance, modification, logistics, test, and quality control support of the UTAS VVR–3/S Laser Detecting Set for end use on tracked and wheeled armored combat vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–086.

March 31, 2026

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea to support the integration, installation, operation, training, testing, and maintenance of the E–737 Airborne Early Warning and Control (AEW&C) System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–088.

February 26, 2016

Honorable Paul Ryan, *Speaker of the House of Representative.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 9mm semi-automatic pistols and .45 caliber semi-automatic pistols for resale to authorized law enforcement and military end-users in Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–100.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56x45 NATO caliber rifles, M4 Commando Rifles, and accessories to the Bahrain Defense Forces for the national defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–103.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the design, development, integration, training, assembly, disassembly, testing, performance, qualification, failure analysis, modification, operation, repair, and demonstration of the Talon Laser Guided Rocket, Unguided Rocket, and Smart Interfaced Launcher.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–107.

March 30, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the integration, installation, operation, training, testing, maintenance, and repair of the DB–110 Reconnaissance System for use on F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–113.

February 2, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts, and

components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of MAG58 (7.62x51) fully automatic machine guns and barrels to Government of the Netherlands.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–120.

February 4, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more

The transaction contained in the attached certification involves the export of machine guns and grenade launchers to the Government of Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–122.

February 16, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles to the United Arab Emirates for Paveway II Plus Laser Guided Bomb (LGB) Guidance Kits.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–123.

March 4, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of defense articles, including technical data, and defense services in the amount of 50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the United Arab Emirates to support the integration, installation, operation, training, testing, maintenance, and repair of SNIPER Advanced Targeting Pods for end use on the F–16 Block 60 Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–124.

March 29, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of technical data, defense services, and manufacturing know-how to Japan to support the manufacture and repair of the AN/APX–68 Transponder Set and Control Box.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–128.

February 2, 2016

Honorable Paul Ryan, *Speaker for the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of various rifles and pistols to Canada for commercial resale.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–129.

February 2, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M–134 7.62x51mm machine guns to the Army of Pakistan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–130.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting certification of a proposed license amendment for the export of defense articles, including technical data, and defense services for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense

articles, including technical data, and defense services and manufacturing know-how to Japan to support the manufacture and repair of the AN/TPX–46(v) Identification Friend or Foe (IFF) Interrogator.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Acting Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–133.

February 26, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of upper receiver assemblies to the Government of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–134.

March 30, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M16A4 rifles 5.56x45mm NATO, barrels, upper receiver and barrel assemblies, and accessories to the Government of Brunei.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–136.

March 31, 2016

Honorable Paul Ryan, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting certification of a proposed license for the export of firearms, parts and components abroad controlled under Category I of the United States Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of Aero Survival rifles and barrel assemblies to Canada for commercial resale.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Julia Frifield,

*Assistant Secretary Legislative Affairs.*

Enclosure: Transmittal No. DDTC 15–148.

Dated: May 12, 2016.

**Lisa V. Aguirre,**

*Managing Director, Directorate of Defense Trade Controls, U.S. Department of State.*

[FR Doc. 2016–13453 Filed 6–6–16; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. FAA–2016–4000]**

### Recommendations for Facilities Realignments To Support Transition to NextGen as Part of Section 804 of the FAA Modernization and Reform Act of 2012—Part 2; Request for Comments

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** This document announces the availability of the FAA National Facilities Realignment and Consolidation Report, Part 2. The report was developed in response to Section 804 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). The report and recommendations contained therein have been developed collaboratively with the National Air Traffic Controllers Association (NATCA) and the Professional Aviation Safety Specialists (PASS) labor unions and with input from stakeholders. The FAA seeks comments on this report.

**DATES:** Send comments on or before July 22, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2016–4000 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:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or visit 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:** Jim Pasto, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *Section804-Public-Comments@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 804 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95) requires the FAA to develop a plan for realigning and consolidating facilities in an effort to support the transition to NextGen and reduce costs where such cost reductions can be implemented without adversely affecting safety. To address Section 804 requirements, the FAA formed a collaborative workgroup of representatives from the FAA and NATCA and PASS labor unions to develop a comprehensive process to analyze different realignment and consolidation scenarios. The collaborative process takes into account the following factors and criteria when prioritizing facilities for realignment analysis: NextGen readiness; the Terminal Automation program schedule; operational and airspace factors; existing facility conditions and workforce impacts; industry stakeholder input; costs and benefits associated with each potential realignment alternative; facilities and engineering planning and priorities; and employee career development.

The collaborative workgroup developed the guiding principles and criteria for evaluating existing Terminal Radar Approach Control (TRACON) operations. The principles support the goals of developing operationally viable realignment and consolidation scenarios, capturing recommendations, and outlining next steps. The workgroup has developed a repeatable and defensible four-step process to evaluate facility TRACON operations and prioritize for analysis; determine an initial set of realignment scenarios and a set of alternatives for each scenario; collect facility and operational data and document system requirements; document facility, equipment, infrastructure, operational and safety data; capture qualitative workforce considerations, including training, transition, facility, and potential workforce impacts of potential realignments; consider potential impacts on operations, airspace modifications, route/fixes changes, arrival/departure procedures, intra/inter-facility coordination, and pilot community interaction; collect and consider industry stakeholder input; quantify benefits and cost of potential realignments; and develop a recommendation for each realignment scenario. The recommendations contained in the report entitled ''FAA National Facilities Realignment and Consolidation Report, Part 2'' primarily consist of legacy sites. Legacy sites are those sites that were determined by the FAA to be realigned prior to enactment of Section 804 of the FAA Modernization and Reform Act of 2012 and workgroup establishment. A copy of this report has been placed in the docket for this notice. The docket may be accessed at *http://www.regulations.gov.* A copy of the report has also been made available on the FAA's Web site at *http://www.faa.gov/regulations_policies/rulemaking/recently_published/.*

The realignment recommendations outlined in the Part 2 report are the result of a collaborative process that involved a multi-disciplinary team of FAA management, labor, field facilities, finance, and subject matter experts. The Section 804 process serves as a stable foundation for future realignment analyses and recommendations. The process aims to maximize operational, administrative, and maintenance efficiencies, support transition to NextGen, and deliver the highest value to stakeholders.

The FAA is requesting comments on this report pursuant to Section 804 of the FAA Modernization and Reform Act of 2012. The agency will consider all comments received on or before July 22, 2016. Following a 60-day comment review period, the final report along with public comments will be submitted to Congress. The FAA continues to analyze data collected from facilities across the United States and evaluate possible realignment scenarios.

Issued in Washington, DC, on May 31, 2016.

**Jim Pasto,**

*Terminal Facilities Execution Team, Implementation Manager, Federal Aviation Administration.*

[FR Doc. 2016–13331 Filed 6–6–16; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2006–26367]**

### Motor Carrier Safety Advisory Committee (MCSAC); Public Meeting

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** FMCSA announces that its MCSAC will meet on Tuesday and Wednesday, June 14–15, 2016, to provide recommendations to the Agency concerning implementation of section 5203 of the Fixing America's Surface Transportation Act (FAST Act) to: (1) Prioritize regulatory guidance that should be incorporated into the safety regulations to promote clear, consistent, and enforceable rules; (2) identify regulatory guidance that appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; and (3) identify guidance that should remain in place. The meeting is open to the public and there will be a period of time at the end of each day for the public to submit oral comments.

**DATES:** The meeting will be held Tuesday–Wednesday, June 14–15, 2016, from 9:15 a.m. to 4:30 p.m., Eastern Daylight Time (EDT), at the Westin Washington, DC City Center, 1400 M Street NW., Washington, DC 20005. Members of the public may submit written comments on the topics to be considered during the meeting by Thursday, June 9, 2016, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

*Services for Individuals with Disabilities:* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Eran Segev at (617) 494–3174 or *eran.segev@dot.gov,* by Thursday, June 9, 2016.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*MCSAC*

MCSAC was established to provide FMCSA with advice and recommendations on motor carrier safety programs and motor carrier safety regulations. MCSAC is composed of 20 voting representatives from safety

advocacy, safety enforcement, labor, and industry stakeholders of motor carrier safety. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. The Committee operates as a discretionary committee under the authority of the U.S. Department of Transportation (DOT), established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. See FMCSA's MCSAC Web site for additional information about the Committee's activities at *http://mcsac.fmcsa.dot.gov/.*

*Task 16–01: Review of Regulatory Guidance*

FMCSA has tasked MCSAC with providing recommendations to the Agency concerning implementation of section 5203 of the FAST Act to: (1) Prioritize regulatory guidance that should be incorporated into the safety regulations to promote clear, consistent, and enforceable rules; (2) identify regulatory guidance that appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; and (3) identify guidance that should remain in place.

Currently, FMCSA's Web site provides interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs). The guidance is presented in question and answer form for each part of the FMCSRs. A significant percentage of the guidance was published by the Federal Highway Administration on November 17, 1993 (58 FR 60734), with an updated publication on April 4, 1997 (62 FR 16370). Since 1997, FMCSA has issued new guidance documents periodically, revised guidance, or rescinded guidance based on changes to the FMCSRs. The Agency has not undertaken a comprehensive review of the full set of its regulatory guidance since the 1997 publication.

Section 5203 of the FAST Act provides new requirements for FMCSA's management of guidance documents. A ''guidance document'' is defined for purposes of section 5203 as a ''document . . . that (1) provides and interpretation of a regulation of the Administration; or [sic] (2) includes an enforcement policy of the Administration available to the public.'' Not later than December 4, 2016, the Administrator must conduct an initial review of all FMCSA guidance documents in effect on December 4, 2015, to ensure that the documents are current, readily accessible to the public, and meet the standards of section 5203(c)(1)(A)–(C) (consistent and clear; uniformly and consistently enforced; and still necessary). § 5203(b).

The Agency requests that the MCSAC consider the set of regulatory guidance for each part of the FMCSRs and determine which sets of guidance should be prioritized for review. The MCSAC should conduct of review of the regulatory guidance for those sets to identify regulatory guidance that should be (1) incorporated into the safety regulations to promote clear, consistent and enforceable rules; (2) eliminated because it appears to be inconsistent with the intent of the safety regulations or makes enforcement of key safety requirements difficult; or (3) retained because it is more appropriate as guidance rather than regulatory text. Copies of the MCSAC Task Statement and an agenda for the entire meeting will be made available in advance of the meeting at *https://www.fmcsa.dot.gov/advisory-committees/mcsac/welcome-fmcsa-mcsac.*

## II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close.

Issued on: May 31, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–13376 Filed 6–6–16; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 20, 2016.

**FOR FURTHER INFORMATION CONTACT:** Linda Rivera at 1–888–912–1227 or (202) 317–3337.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, July 20, 2016, at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202)317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–13418 Filed 6–6–16; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 21, 2016.

**FOR FURTHER INFORMATION CONTACT:** Antoinette Ross at 1–888–912–1227 or (202) 317–4110.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, July 21, 2016, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with

Antoinette Ross. For more information please contact: Antoinette Ross at 1–888–912–1227 or (202) 317–4110, or write TAP Office, 1111 Constitution Avenue NW., Room 1509, National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–13420 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Theresa Singleton at 1–888–912–1227 or 202–317–3329.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, July 27, 2016, at 12:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Theresa Singleton. For more information please contact: Theresa Singleton at 1–888–912–1227 or 202–317–3329, TAP Office, 1111 Constitution Avenue NW., Room 1509—National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–13419 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will conduct an open meeting and will solicit public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 13, 2016.

**FOR FURTHER INFORMATION CONTACT:** Otis Simpson at 1–888–912–1227 or 202–317–3332.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Wednesday, July 13, 2016, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Otis Simpson. For more information please contact: Otis Simpson at 1–888–912–1227 or 202–317–3332, TAP Office, 1111 Constitution Avenue NW., Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–13433 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Joint Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 27, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kim Vinci at 1–888–912–1227 or 916–974–5086.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, July 27, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave., Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–13432 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving

customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers at 1–888–912–1227 or (954) 423–7977.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Thursday, July 14, 2016, at 1:00 p.m.. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact: Donna Powers at 1–888–912–1227 or (954) 423–7977 or write: TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.* The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2016–13431 Filed 6–6–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Special Projects Committee

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, July 5, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kim Vinci at 1–888–912–1227 or 916–974–5086.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Special Projects Committee will be held Tuesday, July 5, 2016, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Kim Vinci. For more information please contact: Kim Vinci at 1–888–912–1227 or 916–974–5086, TAP Office, 4330 Watt Ave, Sacramento, CA 95821, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various special topics with IRS processes.

Dated: June 1, 2016.

**Otis Simpson,**

*Acting Director Taxpayer Advocacy Panel.*

[FR Doc. 2016–13434 Filed 6–6–16; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2016–29.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2016–29, Changes in accounting periods and methods of accounting.

**DATES:** Written comments should be received on or before August 8, 2016 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Changes in accounting periods and in methods of accounting.

*OMB Number:* 1545–1551.

*Revenue Procedure Number:* Revenue Procedure 2016–29.

*Abstract:* The information collected in the revenue procedure is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of the change.

*Current Actions:* Revenue Procedure 2016–29 provides the list of automatic changes to which the automatic change procedures in Rev. Proc. 2015–13, 2015–5 I.R.B. 419, as clarified and modified by Rev. Proc. 2015–33, 2015–24 I.R.B. 1067,and as modified by Rev. Proc. 2016–1, 2016–1 I.R.B.1 (or successor) apply.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit organizations, not-for-profit institutions, and farms.

*Estimated Number of Respondents:* 27,336.

*Estimated Time per Respondent:* 1 hour, 15 minutes.

*Estimated Total Annual Burden Hours:* 30,580.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Approved: May 31, 2016.

**Sara Covington,**

*IRS Tax Analyst.*

[FR Doc. 2016–13435 Filed 6–6–16; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Mint

### Citizens Coinage Advisory Committee June 27, 2016 Public Meeting

**AGENCY:** United States Mint, Treasury.

**ACTION:** Announcement of meeting.

**SUMMARY:** Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 27, 2016.

*Date:* June 27, 2016.

*Time:* 6:00 p.m. to 9:00 p.m. (Public Meeting followed by Public Forum).

*Location:* Gaylord Hall in the Worner Center, Campus of Colorado College, 902 N. Cascade Ave., Colorado Springs, CO 80903.

*Subject:* Review and discussion of the candidate designs for the 2018 America the Beautiful Quarters Program; review and discussion of candidate designs for the President Obama Presidential Medals (Terms One and Two); discussion of future palladium coin program; and election of jurors for the Breast Cancer Awareness Commemorative Coin Competition.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

Immediately following the public meeting the CCAC will be holding a public forum to receive input from collectors and the general public.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

**FOR FURTHER INFORMATION CONTACT:** William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

**Authority:** 31 U.S.C. 5135(b)(8)(C).

Dated: June 2, 2016.

**Richard A. Peterson,**

*Deputy Director for Manufacturing and Quality, United States Mint.*

[FR Doc. 2016–13403 Filed 6–6–16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; System of Records

**AGENCY:** Department of Veterans Affairs (VA).

**ACTION:** Notice of altered Privacy Act system of records.

**SUMMARY:** As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled, ''Readjustment Counseling Service (RCS) Vet Center Program-VA,'' (64VA15) as set forth in the **Federal Register** 74 FR 29019. VA is amending the system by revising the System Number, System Location, Categories of Individuals Covered by the System, Category of Records in the System, Purpose, Storage, Retrievability, Safeguard, Retention and Disposal, System Manager and Address, Notification Procedure, and Record Source Categories. VA is republishing the system notice in its entirety.

**DATES:** Comments on this new system of records must be received no later than July 7, 2016. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system will become effective July 7, 2016.

**ADDRESSES:** Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or email to *http://www.Regulations.gov*. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Veterans Health Administration (VHA) Privacy Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245–2492.

**SUPPLEMENTARY INFORMATION:** The system number is changed from 65VA15 to 65VA10RCS to reflect the current organizational alignment.

The System Location has been amended to replace sections (a) Counseling Folder and (b) Client Information File with the amended section (a) which will read: Vet Center Client Record: Starting in fiscal year 2010 the location of the Client Record was transitioned from paper files maintained at each individual Vet Center to being electronically maintained in the national computerized intra-net database (RCSNet). The Readjustment Counseling Service Net (RCSNet) servers are located in Philadelphia, PA in a secure, protected, and approved VA Office of Information and Technology (OI&T) Service Delivery and Engineering (SDE) site maintained by OI&T personnel. Full confidentiality for RCS Veteran client information is maintained by limiting access to RCS qualified personnel with the appropriate authority to administer RCS program data systems. Section (b) will state that authorized RCS staff will have access to the Client Record via stand-alone computers located in locked RCS facilities: Vet Centers, District Director Offices, and VA Central Office. Section (c) will be added to state that all paper Client Records established prior to 2010 are being archived and scanned copies have been are uploaded into RCSNet.

Categories of Individuals Covered by the System has been amended to add Servicemembers. Also added is that the Vet Center eligibility will also include any Veteran or Servicemember who provided direct emergency medical or mental health care, or mortuary services, to the casualties of combat operations, but whose service at the time was outside of the combat theater. Additionally, eligibility under this authority includes any Veteran or Servicemember who engaged in combat with an enemy by remotely controlling any aspect of unmanned aerial vehicle operations, regardless of whether the location of such operations was outside the combat theater.

The Category of Records in the System is being amended by deleting both sections (a) Counseling Folder and (b) Client Information File to more accurately represent the nature of the Category of Records in the System as the Client Record. There is only the Client Record therefore this section will now state the following: The Client Record contains demographic personally identifiable information (PII) such as unique Veteran identification number, name, address, social security number, marital status, gender, birth date, military service information, Veteran eligibility information, referral source, and other identifying statistical information. The Vet Center Client Record also contains protected health information (PHI) such as psychosocial assessment, military history, treatment plans, and ongoing case progress notes documenting the course of service delivery.

The Purpose section is being amended to remove the statement that information is collected to conduct a psychological assessment, to include a military history, and provide quality readjustment counseling to assist Veterans resolve war trauma and improve their level of post-war functioning. This section will now state that the purpose of this system of records is to collect and maintain all demographic and clinical information required by Vet Center counselors to provide quality readjustment counseling to eligible Veterans, Services members and their families.

The Storage section is being amended to remove section (a) Counseling Folder: Paper documents stored in file folders, and section (b) Client Information File: Stored on stand-alone personal computer hard drives and any backup media. The Storage section will now state: Vet Center Client Record Storage: (a) Client Records established during and after 2010 are electronically stored in the national computerized RCSNet servers located in Philadelphia, PA, in a secure, protected, and approved VA OI&T Service Delivery and Engineering (SDE) environment maintained by OI&T personnel; (b) Paper Client Records established prior to 2010 are stored in locked facilities at each individual Vet Center providing readjustment counseling throughout the country.

The Retrievability section is being amended to replace sections (a) Counseling Folder: Filed or indexed alphabetically by last name or unique Client Number and, (b) Client Information File: Indexed by Vet Center Number in conjunction with unique Client Number and SSN. This section will now state that the Vet Center Client Record is indexed by the Vet Center number in conjunction with the Veteran's name, social security number (SSN) and unique Veteran client number.

The Safeguard section is being amended to replace Sections (a) Counseling Folder and (b) Client Information File. The new language will state the following: (a) Access to the Vet Center Client Record is limited to authorized RCS staff (Vet Center, District Director Office, and/or the Office of the Chief Readjustment Counseling Officer in VACO) with a legitimate need to know connected to direct service delivery and/or the quality oversight of services provided. RCS staff access to the electronic Vet Center Client Record is via standalone computers located in locked RCS facilities. RCS program computers are user name and password protected. Computer security is in compliance with RCS and VA computer security policy and protocol; (b) RCS staff access to the paper Client Record will be controlled by staff during working hours. During after hours, records will be maintained in locked file cabinets. In higher crime areas, Vet Center offices are equipped with alarm systems; (c) Access to Veterans' and/or Servicemember's counseling records by elements outside of RCS (VA or non-VA) is contingent upon the Veteran or Servicemember's signed authorization, or to one of the routine uses identified above.

The Retention and Disposal section is being amended to remove the counseling folder and to add that all information maintained in the Client Record of obsolete Vet Center paper client records are being archived through VA Records Management and will be retained at one or more of the authorized Department of Veterans Affairs Records Center Vaults for 50 years after the date of last activity.

Section (b) will state the Client Record will be maintained electronically for the duration of the program. This section will also remove the statement that the RCS national data RCS support center stand-alone personal computers contain the computers database. This section will add that destruction of data will be conducted by deleting all sensitive information on all RCS national data support center servers and all stand-alone personal computers connected to the program electronic database located at all RCS Vet Centers, regional management offices, and RCS VACO.

The System Manager and Address and Notification Procedure are being amended to replace Chief Readjustment Counseling Officer (10RCS) with Chief Readjustment Counseling Officer (10RCS).

The Notification Procedure section is being amended to replace Regional Manager with District Director.

The Record Source Categories section is being amended to add item (3) Relevant Veteran data protocols completed by Vet Center staff to document the course of readjustment counseling provided.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate congressional committees and to the Director of the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

## 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 D. Synder, Chief of Staff, approved this document on May 23, 2016, for publication.

Dated: June 2, 2016.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

## 64VA10RCS

### SYSTEM NAME:

Readjustment Counseling Service (RCS) Vet Center Program-VA.

### SYSTEM LOCATION:

(a) Vet Center Client Record: Starting in fiscal year 2010 the location of the Client Record was transitioned from paper files maintained at each individual Vet Center to being electronically maintained in the national computerized intra-net database (RCSNet). The RCSNet servers are located in Philadelphia, PA in a secure, protected, and approved VA OI&T Service Delivery and Engineering (SDE) site maintained by OI&T personnel. Full confidentiality for RCS Veteran client information is maintained by limiting access to RCS qualified personnel with the appropriate authority to administer RCS program data systems.

(b) Authorized RCS staff will have access to the Client Record via stand-alone computers located in locked RCS facilities: Vet Centers, District Director Offices, and VA Central Office.

(c) All paper Client Records established prior to 2010 are being archived and scanned copies have been are uploaded into RCSNet.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 38, United States Code, section 1712A.

**PURPOSE(S):**

The purpose of this system of records is to collect and maintain all demographic and clinical information required by Vet Center counselors to provide quality readjustment counseling to eligible Veterans, services members and their families.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The individuals covered include eligible Veterans and Servicemembers who request and/or are provided readjustment counseling, including the family members of eligible Veterans and Servicemembers. Eligibility for readjustment counseling at Vet Centers includes any Veteran or Servicemember who served in the military in a theater of combat operations. Vet Center eligibility also includes any Veteran or Servicemember who provided direct emergency medical or mental health care, or mortuary services, to the casualties of combat operations, but whose service at the time was outside of the combat theater. Additionally, eligibility under this authority includes any Veteran or Servicemember who engaged in combat with an enemy by remotely controlling any aspect of unmanned aerial vehicle operations, regardless of whether the location of such operations was outside the combat theater.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The Client Record contains demographic personally identifiable information (PII) such as unique Veteran identification number, name, address, social security number, marital status, gender, birth date, military service information, Veteran eligibility information, referral source, and other identifying statistical information. The Vet Center Client Record Client Record also contains protected health information (PHI) such as psychosocial assessment, military history, treatment plans and ongoing case progress notes documenting the course of service delivery.

**RECORD SOURCE CATEGORIES:**

(1) Relevant forms to be filled out by Vet Center team members on first contact and each contact thereafter; counseling sessions with Veterans and other eligible counselees. (2) Other VA and Federal agency systems. (3) Relevant Veteran data protocols completed by Vet Center staff to document the course of readjustment counseling provided.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR parts 160 and 164.

1. The record of an individual who is covered by a system of records may be disclosed to a Member of Congress, or a staff person acting for the member, when the member or staff person requests the record on behalf of and at the written request of the individual.

2. Disclosure may be made to the National Archives and Records Administration and the General Services Administration in records management inspections conducted under authority of Title 44, Chapter 29, of the United States Code (U.S.C.).

3. Records from a system of records may be disclosed to the Department of Justice (DOJ), including U.S. Attorneys, or in a proceeding before a court, adjudicative body, or other administrative body when litigation or the adjudicative or administrative process is likely to affect VA, its employees, or any of its components is a party to the litigation or process, or has an interest in the litigation or process, and the use of such records is deemed by VA to be relevant and necessary to the litigation or process, provided that the disclosure is compatible with the purpose for which the records were collected.

4. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

5. VA may disclose on its own initiative any information in the system, except the names and home addresses of Veterans and their dependents, that is relevant to a suspected or reasonably imminent violation of the law whether civil, criminal, or regulatory in nature and whether arising by general or program statute or by regulation, rule, or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule, or order. VA may also disclose on its own initiative the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, or order issued pursuant thereto.

6. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud or abuse by individuals in their operations and programs.

7. Disclosure of information may be made when: (1) It is suspected or confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure is to agencies, entities, and persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosure by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Vet Center Client Record Storage:

(a) Client Records established during and after 2010 are electronically stored in the national computerized RCSNet servers located in Philadelphia, PA, in a secure, protected, and approved VA OI&T Service Delivery and Engineering (SDE) environment maintained by OI&T personnel.

(b) Paper Client Records established prior to 2010 are stored in locked facilities at each individual Vet Center providing readjustment counseling throughout the country.

**POLICIES AND PRACTICES FOR RETRIEVABILITY OF RECORDS:**

The Vet Center Client Record is indexed by the Vet Center number in conjunction with the Veteran's name, social security number (SSN) and unique Veteran client number.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

(a) All obsolete Vet Center paper client records are being archived through VA Records Management and will be retained at one or more of the authorized Department of Veterans Affairs Records Center Vaults for 50 years after the date of last activity. Destruction of paper counseling folders will be by shredding.

(b) The Client Record will be maintained for the duration of the program. Destruction will be by deleting all sensitive information on all RCS national data support center servers and all stand-alone personal computers connected to the program electronic database located at all RCS Vet Centers, regional management offices, and RCS VACO.

**PHYSICAL, PROCEDURAL, AND ADMINISTRATIVE SAFEGUARDS:**

(a) Access to the Vet Center Client Record is limited to authorized RCS staff (Vet Center, District Director Office, and/or the Office of the Chief Readjustment Counseling Officer in VACO) with a legitimate need to know connected to direct service delivery and/or the quality oversight of services provided. RCS staff access to the electronic Vet Center Client Record is via standalone computers located in locked RCS facilities. RCS program computers are user name and password protected. Computer security is in compliance with RCS and VA computer security policy and protocol.

(b) RCS staff access to the paper Client Record will be controlled by staff during working hours. During after hours, records will be maintained in locked file cabinets. In higher crime areas, Vet Center offices are equipped with alarm systems.

(c) Access to Veterans' or Servicemember's counseling records by elements outside of RCS, VA or non-VA, is contingent upon the Veteran or Servicemember's signed authorization, or to one of the routine uses identified above.

**SYSTEM MANAGER(S):**

Chief Readjustment Counseling Officer (10RCS), VA Central Office, 810 Vermont Ave. NW., Washington, DC 20420.

**RECORD ACCESS PROCEDURE:**

An individual (or duly authorized representative of such individual) who seeks access to or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the individuals listed under Notification Procedure below.

**CONTESTING RECORD PROCEDURES:**

(See Record Access Procedures above.)

**NOTIFICATION PROCEDURE:**

A Veteran who wishes to determine whether a record is being maintained by the Readjustment Counseling Service Vet Center Program under his or her name or other personal identifier or wishes to determine the contents of such records should submit a written request or apply in person to: (1) The Team Leader of the Vet Center, or the RCS District Director having supervisory responsibility for the Vet Center, with whom he or she had contact, or (2) the Chief Readjustment Counseling Officer (10RCS), VA Central Office, 810 Vermont Ave. NW., Washington, DC 20420. Inquiries should include the individual's full name and social security number.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

[FR Doc. 2016–13378 Filed 6–6–16; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0003]**

## Proposed Information Collection (Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21P–530); Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2016.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0003'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21P–530.

*OMB Control Number:* 2900–0003.

*Type of Review:* Revision of a Currently Approved Collection.

*Abstract:* The Department of Veterans Affairs (VA), through its Veterans Benefits Administration (VBA), administers an integrated program of benefits and services established by law for veterans, service personnel, and their dependents and/or beneficiaries. Information is requested by this form under the authority of 38 U.S.C. Chapter 23 ''Burial Benefits,'' including 38 U.S.C. 2302, 2303, 2304, 2307, and 2308.

VA uses the information provided on the form to evaluate the respondent's eligibility for monetary burial benefits, including the burial allowance, plot or

internment allowance, and transportation reimbursement.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 33,750 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 135,000.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–13392 Filed 6–6–16; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0138]**

### Agency Information Collection (Request for Details of Expenses, VA Form 21P–8049) Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2016.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB control No. 2900–0138.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Details of Expenses, VA Form 21P–8049.

*OMB Control Number:* 2900–0138.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA uses the information collected on this form as evidence of additional circumstances which may affect entitlement determinations pursuant to 38 U.S.C. 1522. The information is used as a counterbalance to a claimant's substantial estate and/or annual income.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 28, 2016, at 81 FR 17245.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 5,700 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 22,800.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst,*

VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–13393 Filed 6–6–16; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0652]**

### Proposed Information Collection (Request for Nursing Home Information in Connection With Claim for Aid and Attendance (VA Form 21–0779)); Activity: Comment Request.

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

VA Form 21–0779 is used to gather the necessary information to determine eligibility for pension and aid and attendance benefits based on nursing home status. The form also requests information regarding Medicaid status and nursing home care charges, so VA can determine the proper rate of payment.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2016.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0652'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for Nursing Home Information in Connection with Claim for Aid and Attendance (VA Form 21–0779).

*OMB Control Number:* 2900–0652.

*Type of Review:* Revision of an approved collection.

*Abstract:* VA Form 21–0779 is used to gather the necessary information to

determine eligibility for pension and aid and attendance benefits based on nursing home status. The form also requests information regarding Medicaid status and nursing home care charges, so VA can determine the proper rate of payment.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 10,188 hours.

*Estimated Average Burden per Respondent:* 10 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 61,125.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–13391 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C., App. 2, that the Research Advisory Committee on Gulf War Veterans' Illnesses will conduct a telephone conference call meeting from 3:00 p.m. to 5:30 p.m. (EDT) on June 25, 2016. The toll-free number for the meeting is (800) 767–1750, and the access code is 56978#. All sessions are open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans, and research strategies relating to the health consequences of military service in the Southwest Asia Theater of Operations during the Gulf War in 1990–1991.

The Committee will discuss draft recommendations regarding future VA research directions and other Committee business.

A 30-minute period will be reserved at 5:00 p.m. (EDT) for public comments. Individuals who wish to address the Committee may submit a 1–2 page summary of their comments for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Dr. Victor Kalasinsky via email at *victor.kalasinsky@va.gov.* Any member of the public seeking additional information should contact Dr. Kalasinsky, Designated Federal Officer, at (202) 443–5600.

Dated: June 2, 2016.

**Jelessa Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2016–13383 Filed 6–6–16; 8:45 am]

BILLING CODE P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0086]**

### Agency Information Collection—Request for a Certificate of Eligibility VA Form 26–1880; Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2016.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0086'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0086.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for a Certificate of Eligibility.

*OMB Control Number:* 2900–0086.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Under title 38, U.S.C., section 3702, authorizes collection of this information to help determine a Veteran's qualification for a VA-guaranteed home loan. 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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 18, 2016, at page 8359.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 80,250 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 321,000.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–13390 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–NEW]**

### Agency Information Collection (Alternate Signer Certification) Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2016.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB

Control No. 2900–NEW'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email, *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Title:* Alternate Signer Certification.

*OMB Control Number:* 2900–NEW.

*Type of Review:* New collection.

*Abstract:* VA Form 21–0972 will be used to collect the alternate signer information necessary for VA to accept benefit application forms signed by individuals on behalf of Veterans and claimants. The information collected will be used to contact the alternate signer for verification purposes.

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. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 81 FR 58 on March 25, 2016, pages 16282 and 16283.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 1,250.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 5,000.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–13395 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0495]**

## Agency Information Collection (Marital Status Questionnaire, 21P–0537) Activity Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 7, 2016.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0495'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB control No. 2900–0495.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Marital Status Questionnaire, VA Form 21P–0537.

*OMB Control Number:* 2900–0495.

*Type of Review:* Revision of an approved collection.

*Abstract:* VA Form 21P–0537 is used to verify a surviving spouse's current marital status to determine his or her continuing entitlement to Dependency and Indemnity Compensation (DIC) benefits. The form letter is automatically generated and mailed to DIC beneficiaries. Agency action depends on the information provided by the beneficiary. If the information provided supports the beneficiary's continued entitlement to benefits, no action is taken. If the information provided by the beneficiary does not support continued entitlement to benefits, VA will take action to terminate benefit payments, based on the facts found.

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.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on Friday, March 25, 2016, at 81 FR 16283.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,484 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 17,808.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–13394 Filed 6–6–16; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 81 Tuesday,

No. 109 June 7, 2016


Part II

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Incidental Take During Specified Activities; Proposed Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 18**

**[Docket No. FWS–R7–ES–2016–0060; FF07CAMM00FXFR133707REG01167]**

**RIN 1018–BA99**

## Marine Mammals; Incidental Take During Specified Activities

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the Marine Mammal Protection Act of 1972, as amended, and its implementing regulations, we, the U.S. Fish and Wildlife Service, propose incidental take regulations (ITR) that authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses (*Odobenus rosmarus divergens*) and polar bears (*Ursus maritimus*) during oil and gas industry activities in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations include similar types of activities covered by the previous 5-year Beaufort Sea ITR effective from August 3, 2011, through August 3, 2016; this rule would also be effective for 5 years. If this rule is finalized, we will issue Letters of Authorization, upon request, for specific proposed activities in accordance with the regulations. We intend that any final action resulting from this proposed rule will be as accurate and as effective as possible. Therefore, we request comments or suggestions on these proposed regulations.

**DATES:** We will consider comments we receive on or before July 7, 2016.

**ADDRESSES:** You can view this proposed rule and the associated draft environmental assessment at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2016–0060. You may submit comments on the proposed rule by one of the following methods:

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2016–0060, Division of Policy, Performance, and Management Programs, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.
- *Electronic submission:* Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–ES–2016–0060.

We will post all comments at *http://www.regulations.gov.* You may request that we withhold all personal identifying information from public review. However, we cannot guarantee that we will be able to do so. See Public Comments below for more information.

**FOR FURTHER INFORMATION CONTACT:** Christopher Putnam, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road MS–341, Anchorage, AK 99503, Telephone 907–786–3844, or Email: *christopher_putnam@fws.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service or we), propose incidental take regulations (ITR) that authorize the nonlethal, incidental, unintentional take of small numbers of Pacific walruses (*Odobenus rosmarus divergens*) and polar bears (*Ursus maritimus*) during oil and gas industry (Industry) activities in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations include similar types of activities covered by the previous 5-year Beaufort Sea ITR effective from August 3, 2011, through August 2, 2016, and found in title 50 of the Code of Federal Regulations (CFR) in part 18, subpart J. If adopted as proposed, this rule would be effective for 5 years from the date of issuance of the final rule.

This proposed rule is based on our finding that the total takings of Pacific walruses (walruses) and polar bears during proposed Industry activities will impact small numbers of animals, will have a negligible impact on these species, and will not have an unmitigable adverse impact on the availability of these species for subsistence use by Alaska Natives. We base our finding on data from monitoring the encounters and interactions between these species and Industry; research on these species; oil spill risk assessments; potential and documented Industry effects on these species; information regarding the natural history and conservation status of walruses and polar bears; and data reported from Alaska Native subsistence hunters. We have prepared a draft environmental assessment (EA) in conjunction with this rulemaking, and it is available for public review.

The proposed regulations include permissible methods of nonlethal taking; mitigation measures to ensure that Industry activities will have the least practicable adverse impact on the species, their habitat, and the availability of these species for subsistence uses; and requirements for monitoring and reporting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to during all previous ITRs for this area. These costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations.

### Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) gives the Secretary of the Interior (Secretary) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (as defined in 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) in a specified geographic region. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (Service). According to the MMPA, the Service shall allow this incidental taking if we make a finding that the total of such taking for the 5-year regulatory period:

(1) Will affect only small numbers of individuals of these species;

(2) will have no more than a negligible impact on these species;

(3) will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives; and

(4) we issue regulations that set forth:

(a) permissible methods of taking,

(b) means of effecting the least practicable adverse impact on the species, their habitat, and the availability of the species for subsistence uses, and

(c) requirements for monitoring and reporting.

If regulations allowing such incidental taking are issued, we may then subsequently issue Letters of Authorization (LOAs), upon request, to authorize incidental take during specified activities.

The term ''take,'' as defined by the MMPA, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. Harassment, as defined by the MMPA, for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government, means ''any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild'' (the MMPA calls this Level A harassment);

or ''(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering'' (the MMPA calls this Level B harassment).

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27 (*i.e.,* regulations governing small takes of marine mammals incidental to specified activities) as follows. ''Negligible impact'' is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. ''Unmitigable adverse impact'' means an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met. Also defined in 50 CFR 18.27 is the term ''small numbers,'' however, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impacts'' as two separate and distinct requirements for promulgating ITRs under the MMPA. Instead, for our small numbers determination, we estimate the likely number of takes of marine mammals, and evaluate if that take is small relative to the size of the population or stock.

In these proposed ITRs, the term ''Industry'' includes individuals, companies, and organizations involved in exploration, development, production, extraction, processing, transportation, marketing, research, monitoring, and support services of petroleum products, and other substantially similar activities. Industry activities may result in the taking of walruses and polar bears. The MMPA does not require that Industry must obtain incidental take authorization; however, any taking that occurs without authorization is a violation of the MMPA. Since 1993, the oil and gas industry operating in the Beaufort Sea and the adjacent northern coast of Alaska has requested, and we have issued, ITRs for the incidental take of walruses and polar bears in specified areas during specified activities. For a detailed history of our recent Beaufort Sea ITRs, refer to the **Federal Register** at, 76 FR 47010, August 3, 2011; 71 FR 43926, August 2, 2006; and 68 FR 66744, November 28, 2003. These regulations are at 50 CFR part 18, subpart J (§§ 18.121 to 18.129).

**Summary of Current Request**

On May 5, 2014, the Service received a petition from the Alaska Oil and Gas Association (AOGA) on behalf of its members and other participating companies to promulgate regulations for nonlethal incidental take of small numbers of walruses and polar bears in the Beaufort Sea and adjacent northern coast of Alaska for a period of 5 years (2016–2021). The anticipated incidental takes would be limited to Level B harassment. We received an amendment to the petition on July 1, 2015. The petition and previous regulations are available at: *http://www.fws.gov/alaska/fisheries/mmm/itr_beaufort.htm.* The petition is also available at *www.regulations.gov* at Docket No. FWS–R7–ES–2016–0060.

The AOGA application requests regulations that will be applicable to any company conducting oil and gas exploration, development, and production activities as described within the application. This includes AOGA members and other non-member companies planning to conduct oil and gas operations in the specified geographic region. Members of AOGA represented in the petition include Alyeska Pipeline Service Company, Apache Corporation, BP Exploration (Alaska) Inc. (BPXA), Caelus Energy Alaska, LLC, Chevron USA, Inc., Eni Petroleum; ExxonMobil Production Company, Flint Hills Resources, Inc., Hilcorp Alaska, LLC, Petro Star Inc., Repsol, Shell Exploration & Production Company (Shell), Statoil, Tesoro Alaska Company, and XTO Energy, Inc.

Non-AOGA companies include ConocoPhillips Alaska, Inc. (CPAI), Brooks Range Petroleum Corporation (BRPC), and Arctic Slope Regional Corporation (ASRC) Energy Services. The activities and geographic region specified in AOGA's request, and considered in these regulations, are described in the following sections titled Description of Activities and Description of Geographic Region.

In response to this request, prior to issuing regulations at 50 CFR part 18 subpart J, we have evaluated the level of proposed activities, their associated potential effects upon walruses and polar bears, and their effects on the availability of these species for subsistence use. The information provided by the petitioners indicates that projected oil and gas activities over this period will encompass onshore and offshore exploration, development, and production activities. The Service's task is to analyze the impacts that the proposed lawful activities will have on walruses and polar bears. In addition, we will evaluate the potential for oil spills and associated impacts on walruses and polar bears.

**Description of Proposed Regulations**

These proposed regulations will not authorize, or ''permit,'' the proposed Industry activities. Rather, they will authorize the nonlethal incidental, unintentional take of small numbers of walruses and polar bears associated with those activities based on standards set forth in the MMPA. The Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), the U.S. Army Corps of Engineers, and the Bureau of Land Management (BLM) are responsible for permitting activities associated with Industry activities in Federal waters and on Federal lands. The State of Alaska is responsible for permitting Industry activities on State lands and in State waters. The proposed regulations include:

- Permissible methods of nonlethal taking;
- Measures to ensure the least practicable adverse impact on walruses and polar bears and the availability of these species for subsistence uses; and
- Requirements for monitoring and reporting.

**Description of LOAs**

If these proposed ITRs are made final, companies, groups, or individuals conducting an Industry, or other substantially similar, activity within the specified geographic region may request an LOA for the authorized nonlethal, incidental, Level B take of walruses and polar bears. We must receive requests for LOAs in writing at least 90 days before the proposed activity is to begin. Requests must include an operations plan for the activity, a walrus and polar bear interaction plan, and a site-specific marine mammal monitoring and mitigation plan that specifies the procedures to monitor and mitigate the effects of the proposed activities on walruses and polar bears. We will evaluate each request for an LOA, including plans of operation and interaction plans, based on the proposed activity and location. We will condition each LOA depending on specific circumstances for the proposed activity and location to ensure the activity and

level of take are consistent with our findings in the ITRs. We will issue an LOA if we evaluated the proposed activity in the ITRs and the level of take caused by the activity is consistent with the findings of the ITRs. We must receive an after action report on the monitoring and mitigation activities within 90 days after the LOA expires.

The monitoring and mitigation conditions included in each LOA will minimize interference with the normal behavior and movements of walruses and polar bears to ensure that the effects of Industry activity are negligible. For example, conditions include, but are not limited to: (1) A reminder that LOAs do not authorize intentional taking of walruses or polar bears, nor lethal incidental take; (2) measures to protect pregnant polar bears during denning activities (*e.g.,* den selection, birthing, nurturing of cubs, and departing the den site); and (3) the requirement of a site-specific plan of operation and a site-specific interaction plan. For more information on requesting and receiving an LOA, refer to 50 CFR 18.27.

**Description of Plans of Cooperation (POCs)**

A POC is a documented plan with potentially affected subsistence hunting communities that describes measures to mitigate potential conflicts between proposed Industry activities and subsistence hunting. To ensure that Industry activities do not adversely impact subsistence hunting opportunities, applicants requesting an LOA must provide the Service documentation of communication and coordination with potentially affected Alaska Native communities potentially affected by the proposed Industry activity and, as appropriate, with the Eskimo Walrus Commission, the Alaska Nanuuq Commission (ANC), and the North Slope Borough (NSB). As part of the POC process, Industry representatives engage with Native communities to provide information and respond to questions and concerns. Industry representatives inquire whether their proposed activities will adversely affect the availability of walruses and polar bears for subsistence use. If community concerns suggest that Industry activities may have an impact on the subsistence uses of these species, the POC must document the procedures for how Industry will cooperate with the affected subsistence communities and what actions Industry will take to mitigate adverse impacts on the availability of walruses and polar bears for subsistence uses. We will review these plans and provide guidance to ensure compliance with the MMPA. We will not accept POCs if they fail to provide adequate measures to ensure that Industry activities will not have an unmitigable adverse impact on the availability of walruses and polar bears for subsistence uses.

**Description of Geographic Region**

The geographic region covered by the requested ITRs (Beaufort Sea ITR region (Figure 1)) encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (71°23′29″ N., −156 °28′30″ W., BGN 1944), and extending approximately 322 kilometers (km) (~200 miles (mi)) north, including all Alaska State waters and Outer Continental Shelf (OCS) waters, and east of that line to the Canadian border. The offshore boundary of the Beaufort Sea ITR region matches the boundary of the BOEM Beaufort Sea Planning area, approximately 322 km (~200 mi) offshore. The onshore region is the same north/south line through Point Barrow, extending 40.2 km (25 mi) inland and east to the Canning River. The Arctic National Wildlife Refuge (ANWR) is not included in the Beaufort Sea ITR region. The geographical extent of the proposed Beaufort Sea ITR region (approximately 29.8 million hectares (ha) (~73.6 million acres (ac))) is similar to the region covered in previous regulations (approximately 29.9 million ha (~68.9 million ac)) (76 FR 47010, August 3, 2011). An increase in the geographic area of the proposed Beaufort Sea ITR region versus the region set forth in previous ITRs (approximately 1.9 million ha (~4.7 million ac)) is the result of matching the offshore boundary with that of the BOEM Beaufort Sea Planning area boundary.

**Description of Activities**

This section summarizes the type and scale of Industry activities proposed to occur in the Beaufort Sea ITR region from 2016 to 2021. Year-round onshore and offshore Industry activities are anticipated. Planned and potential activities considered in our analysis include activities described by the petitioners (AES Alaska 2015) and other potential activities identified by the Service and deemed substantially similar to the activities requested in the petition. During the 5 years that the proposed ITRs will be in place, Industry activities are expected to be generally similar in type, timing, and effect to activities that have been evaluated under the prior ITRs. Due to the large number of variables affecting Industry activities, prediction of exact dates and locations of activities is not possible. However, operators must provide specific dates and locations of proposed activities prior to receiving an LOA. Requests for LOAs for activities and impacts that exceed the scope of analysis and determinations for these proposed ITRs will not be issued. Additional information is available in the AOGA petition for ITRs at: *http://www.fws.gov/alaska/fisheries/mmm/Beaufort_Sea/Beaufort%20Sea%20ITR%20Petition_2015.pdf* and at *www.regulations.gov* in Docket No. FWS–R7–ES–2016–0060.

*Exploration Activities*

In the Beaufort Sea ITR region, oil and gas exploration occurs onshore, in coastal areas, and in the offshore environment. Exploration activities may include geological and geophysical surveys consisting of: Geotechnical site investigations, reflective seismic exploration, vibratory seismic data collection, airgun and water gun seismic data collection, explosive seismic data collection, vertical seismic profiling, and subsea sediment sampling. Exploratory drilling involves construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-supported or bottom-founded structures such as the steel drilling caisson, or floating drill vessels. Exploratory drilling and associated support activities and features may include: Transportation to site; setup and relocation of lodging camps and support facilities (such as lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, landing strips, aircraft support, health and safety facilities, data recording facilities, and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection; construction of ice islands, pads, and ice roads; gravel hauling; gravel mining; road building; road maintenance; operating heavy equipment; digging trenches; burying and covering pipelines; security operations; dredging; moving floating drill units; helicopter support; and conducting ice, water, and flood management. Support facilities include pipelines, electrical lines, water lines, buildings and facilities, sea lifts, and large and small vessels. Exploration activities could also include the development of staging facilities; oil spill prevention, response, and cleanup activities; and site restoration and remediation. The level of proposed exploration activities is similar to levels during past regulatory periods, although exploration projects may shift to different locations, particularly to the National Petroleum Reserve—Alaska (NPR–A). During the proposed

regulatory period, exploration activities are anticipated to occur in the offshore environment and to continue in the existing oilfield units.

BOEM Outer Continental Shelf Lease Sales

BOEM manages oil and gas leases in the Alaska OCS region, which encompasses 242 million ha (600 million ac). Of that acreage, approximately 26 million ha (~65 million ac) are within the Beaufort Sea Planning Area and within the scope of the proposed ITRs. Ten lease sales have been held in this area since 1979, resulting in 147 active leases, where 32 exploratory wells were drilled. Production has occurred on one joint Federal/State unit, with Federal oil production accounting for more than 28.7 million barrels (bbl) (1 bbl = 42 U.S. gallons or 159 liters) of oil since 2001 (BOEM 2015). Details regarding availability of future leases, locations, and acreages are not yet available, but exploration of the OCS is expected to continue. Lease Sale 242 previously planned in the Beaufort Sea during 2017 (BOEM 2012) was cancelled in 2015. A Draft Programmatic Environmental Impact Statement (EIS) for the 2017–2022 OCS Oil and Gas Leasing Program is planned for public comment in early 2016 and is expected to propose Beaufort Sea Lease Sale 255 for the year 2020 (BOEM 2015).

Shell Exploration and Production Company (Shell) is the majority lease holder of BOEM Alaska OCS leases. In 2015 Shell announced that it would cease exploration activities on its BOEM Alaska OCS leases for the foreseeable future. Nevertheless, it is possible that Shell may pursue some sort of exploration activities on its Beaufort Sea BOEM Alaska OCS leases or State of Alaska offshore leases during the 5-year period of these proposed ITRs. Shell may conduct exploration and/or delineation drilling during the open-water Arctic drilling season from a floating drilling vessel along with attendant ice management and oil spill response (OSR) equipment. For the winter drilling season, Shell may conduct drilling from an ice island or bottom-founded structure, along with attendant OSR equipment. Shell will provide a detailed exploration plan prior to conducting any activities in the Beaufort Sea BOEM Alaska lease area.

National Petroleum Reserve—Alaska

The BLM manages the 9.2-million-ha (22.8-million-ac) NPR–A of which 1.3 million ha (3.2 million ac) occur within the Beaufort Sea ITR region. Within this area, the BLM has offered approximately 4.7 million ha (~11.8 million ac) for oil and gas leasing (BLM 2013a). Between 1999 and 2014, 2.1 million ha (5.1-million ac) were sold in 10 lease sales. As of January 2015, there were 205 leases amounting to over 0.6 million ha (1.7 million ac) leased (BLM 2015). From 2000 to 2013, Industry drilled 29 wells in federally managed portions of the NPR–A and 3 in adjacent Native lands (BLM 2013b). ConocoPhillips Alaska, Inc. (CPAI) currently holds a majority of the leased acreage and is expected to continue exploratory efforts, especially seismic work and exploratory drilling, within the Greater Mooses Tooth and Bear Tooth Units of the NPR–A. Other operators, including Anadarko E&P Onshore LLC and NORDAQ Energy, Inc. also hold leases in the NPR–A. Caelus Energy Alaska, LLC (Caelus) has recently announced acquisition of leases and intentions to pursue exploratory drilling near Smith Bay in the Tulimaniq prospect. This project would include construction of ice pads, ice roads, temporary camps, and a temporary ice airstrip.

Area-Wide Lease Sales

The State of Alaska Department of Natural Resources (ADNR), Oil and Gas Division, holds annual lease sales of State lands available for oil and gas development. Lease sales are organized by planning area. The approximately 0.8 million ha (~2 million ac) Beaufort Sea planning area occurs in coastal land and shallow waters along the shoreline of the North Slope between the NPR–A and the ANWR (State of Alaska 2015a). It is entirely within the boundary of the Beaufort Sea ITR region. The North Slope planning area includes tracts located to the south and inland from the Beaufort Sea planning area. Of the approximately 2.1 million ha (~5.1-million ac), 0.8 million ha (2 million ac) occur within the Beaufort Sea ITR region. As of August 2015, there were 1,253 active leases on the North Slope, encompassing 1.1 million ha (2.8 million ac), and 261 active leases in the State waters of the Beaufort Sea, encompassing 284,677 ha (703,452 ac; State of Alaska 2015b). The number of acres leased has increased by 25 percent on the North Slope and 14 percent in the Beaufort Sea planning areas since 2013. Although most of the existing oil and gas development in the Southern Beaufort ITR region is concentrated in these State planning areas, the increase in leased acreage suggests that exploration on State lands and waters will continue during the 2016–2021 ITR period.

*Development Activities*

Industry operations during oil and gas development may include construction of roads, pipelines, waterlines, gravel pads, work camps (personnel, dining, lodging, and maintenance facilities), water production and wastewater treatment facilities, runways, and other support infrastructure. Activities associated with the development phase include transportation activities (automobile, airplane, and helicopter); installation of electronic equipment; well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation work. Industry development activities are often planned or coordinated by unit. A unit is composed of a group of leases covering all or part of an accumulation of oil or gas. Alaska's North Slope oil and gas field primary units include Prudhoe Bay, Kuparuk River, Greater Point McIntyre, Milne Point, Endicott, Badami, the Alpine oilfields of the Colville River Unit, Greater Mooses Tooth (GMT), Northstar, Oooguruk, Nikaitchuq, Liberty, Beechey Point and Point Thomson. In addition, some of these fields are associated with satellite oilfields: Tarn, Palm, Tabasco, West Sak, Meltwater, West Beach, North Prudhoe Bay, Niakuk, Western Niakuk, Kuparuk, Schrader Bluff, Sag River, Eider, Sag Delta North, Qannik, and others.

Alpine Satellites and Greater Mooses Tooth Units

Continued expansion of the existing Alpine oilfield within the Colville River Unit is planned for the 2016–2021 ITR period. Three new drill sites, Colville Delta drill site 5 (CD5, also known as Alpine West), GMT–1 (Lookout prospect, formerly CD6), and GMT–2 (Rendezvous prospect, formerly CD7) are located in the Northeast NPR–A. The GMT–1 project would facilitate the first production of oil from Federal lands in the NPR–A (although within NPR–A, CD5 is not on Federal land). These facilities will connect to existing infrastructure at Alpine via a gravel road and four bridges over the Colville River (BLM 2014). Development of CD5 is currently under way, and commercial oil production began in October 2015. The GMT–1 project has received permits, and road, pad, pipeline, and facilities construction is anticipated for 2017–2018, but due to permitting delays and low oil prices, CPAI has slowed construction plans that would have begun production by late 2017 (CPAI 2015). Permitting for GMT–2 has not yet been completed, but construction and first production is tentatively scheduled

for 2019 and 2020. In addition to new drill site development in the NPR–A, expansion of existing drill sites in the Colville River Unit are also being considered. Additional development infrastructure in the area is planned with construction of the Nuiqsut spur road. Although the road is not specifically proposed for Industry purposes, it will provide access to Alpine workers living in Nuiqsut.

The Colville-Kuparuk Fairway Units

The region between the Alpine field and the Kuparuk Unit has been called the Colville-Kuparuk Fairway (NSB 2014). Within this region, Brooks Range Petroleum Corporation (BRPC) has proposed development of 3 drill sites by 2020 as part of the 13-well Mustang development. An independent processing center is proposed at the hub of the Mustang Development, but production pipelines will tie into the Kuparuk facilities. Approximately 32.2 km (~20 mi) of gravel road and pipeline will need to be constructed to tie in the drill sites back to the Mustang development and provide year-round access. First production of oil is planned for mid-2016. BRPC has also proposed development within the Tofkat Unit southeast of the Alpine oilfield for the years 2020–2021. If constructed, the Tofkat gravel pad will cover approximately 6.07 ha (~15 ac) and will connect to Alpine infrastructure via an 8-km (5-mi) gravel road and pipeline.

Caelus has begun development of the Nuna prospect within the fairway. This project is located at the northeast end, within the Oooguruk Unit. Estimated date of first production from the Nuna prospect is 2017. Development activities include seismic surveys, continued exploratory drilling, drilling production wells, and construction of drill pads, roads, and pipeline connections to Kuparuk infrastructure. Spanish oil company, Repsol, has submitted plans for development of five potential well locations beginning in winter 2016 with a three-well exploration program just northwest of the Alpine field. If deemed commercial, a spine-and-spur road system expanded from these drill sites to existing Kuparuk facilities is easily envisaged, along with multiple new drill sites, a centralized processing facility, and a network of flow lines tied into the Alpine Pipeline System.

Kuparuk River Unit

CPAI has pursued ongoing infield and peripheral development at the existing Kuparuk River Unit over the past decade and is likely to do so into the foreseeable future. Efforts have focused on improving technologies, expanding current production, and developing new drill sites. Technological advancements have included hydraulic fracturing, enhanced oil recovery, coil-tube drilling, and 4–D seismic surveys. Two new drill rigs will be brought online in 2016. As of 2015, a new drill site ''2S'' in the southwest ''Shark Tooth'' portion of the unit is under construction. It will require approximately 3.2 km (2 mi) of additional gravel road, pipelines, and power lines. Oil production from this well is planned for 2016. The proposed ''Northeast West Sak'' expansion of the existing ''1H'' drill site is also under way. The 3.8-ha (9.3-ac) project will accommodate additional wells and is planned to be complete in 2017. Oil from these facilities would be routed through the Kuparuk facilities to the Trans-Alaska pipeline. Other pad expansions and two additional drill sites in the eastern portion of the Kuparuk Unit may be developed later this decade to access additional oil resources.

Prudhoe Bay Unit

New development within the Prudhoe Bay Unit is planned to help offset declining production from older wells. The newer wells employ horizontal and multilateral drilling, improved water and miscible gas injection techniques, multi-stage fracturing, and other technologies to access oil from sediments with low permeability at the periphery of the main oilfield. The BPXA has discussed the possibility of development of as many as 200 new wells within the Greater Prudhoe Bay Unit area during the upcoming decade. Much of this expansion is planned to occur as part of the ''West End Development Program.'' Proposed activities in this program include drilling 16 new wells, improving capacity of existing facilities, adding 25 additional miles of pipeline, construction of the first new pad in more than a decade, adding 2 drill rigs to the fleet, and expanding 2 additional pads within the unit. This program of development has been under way since 2013 and is expected to be completed in 2017 or later.

Beechey Point/East Shore Units

The Beechey Point Unit lies immediately north of the Prudhoe Bay Unit near the shore of Gwydyr Bay. The unit operator, BRPC, is planning to produce oil from several small hydrocarbon accumulations in and near this unit as part of the East Shore Development Project. Existing Prudhoe Bay infrastructure will be incorporated with new development to access the estimated 26 million bbl of recoverable reserves in the Central North Slope region. The proposed East Shore pad will cover approximately 6.07 ha (~15 ac). An 8.9-km (5.5-mi) gravel road will be constructed to provide year-round access to production facilities. Oil will be transported via a 1.6-km (1-mi) pipeline from the East Shore pad to existing pipelines. Gravel construction is expected to begin in 2018 with first oil planned for 2020.

Liberty Unit

Hilcorp Alaska, LLC (Hilcorp) recently assumed operation of the Liberty Unit, located in nearshore Federal waters in Foggy Island Bay about 17 km (11 mi) west of the Prudhoe Bay Unit. Initial development of the Liberty Unit began in early 2009 but was suspended following changes in production strategy. The current project concept involves production from a gravel island over the reservoir with full on-island processing capacity. Support infrastructure would include a 12.9-km (8-mi) subsea pipeline connecting to the existing Badami pipeline. Pending permit approvals, first oil production is expected by 2020 or later. This project concept supersedes the cancelled Liberty ultraextended-reach drilling project.

Point Thomson Unit

The Point Thomson Unit is located approximately 25 km (~20 mi) east of the Liberty Unit and 97 km (60 mi) east of Prudhoe Bay. The reservoir straddles the coastline of the Beaufort Sea. It consists of a gas condensate reservoir containing up to 8 trillion cubic feet ($ft^3$) of gas and hundreds of millions of bbl of gas liquids and oil. This amount is an estimated 25 percent of the North Slope's natural gas reserves and is critical to any major gas commercialization project. Operator ExxonMobil is actively pursuing development of a processing facility capable of handling 10,000 bbl per day, a pipeline with a design capacity of 70,000 bbl per day, a camp, an airstrip, and other ancillary facilities. Production is estimated to begin in 2016. All proposed wells and supporting infrastructure are located onshore. No permanent roads connecting with Prudhoe Bay are currently proposed, but gravel roads will connect the infield facilities. Ice roads and barges are used seasonally to provide equipment and supplies. Potential full field development may include two satellite drill sites, additional liquids production, and sale of gas. The timing and nature of additional expansion will depend upon initial field performance

and potential construction of a gas pipeline to export gas from the North Slope.

Natural Gas Pipeline

Two proposals currently exist for construction of a natural gas pipeline to transport natural gas from the Point Thomson and Prudhoe Bay production fields. The Alaska Liquefied Natural Gas (LNG) project is an Industry-sponsored partnership whose members include BP Alaska LNG LLC; ConocoPhillips Alaska LNG Company; and ExxonMobil Alaska LNG LLC. The Alaska LNG project proposes to build a large-diameter (45–106 centimeters (cm), 18–42 inch (in)) natural gas pipeline from the North Slope to Southcentral Alaska. In 2014, the State of Alaska joined in the project as a 25 percent co-investor. Since then, the project has begun the preliminary front end engineering and design phase, which is expected to extend into 2016 with gross spending of more than $500 million. The routing of the proposed Alaska LNG project pipeline is from Prudhoe Bay, generally paralleling the Dalton Highway corridor from the North Slope to Fairbanks. An approximately 56.3-km (~35-mi) lateral pipeline will take off from the main pipeline and end at Fairbanks. The main pipeline would continue south, terminating at a natural gas liquefaction plant near Nikiski. There the remaining hydrocarbons will be condensed for export to national and international markets.

The second partnership, the Alaska Stand Alone Gas Pipeline (ASAP) project, was originally planned as a 24-in diameter natural gas pipeline with a natural gas flow rate of 500 million $ft^3$ per day at peak capacity, and is currently considered by many as a backup plan for the larger Alaska LNG project. The Alaska Gasline Development Corporation in partnership with TransCanada Corp. has led the planning effort for ASAP. Production from this pipeline would emphasize in-State distribution, although surplus gas would also likely be condensed and exported.

Either project would include an underground pipeline with elevated bridge stream crossings, compressor stations, possible fault crossings, pigging facilities, and off-take valve locations. Both pipelines would be designed to transport a highly conditioned natural gas product, and would follow the same general route. As currently proposed, approximately 40 km (~25 mi) of pipeline would occur within the Beaufort ITR region. A gas conditioning facility would need to be constructed near Prudhoe Bay and will likely require one or more large equipment modules to be off-loaded at the West Dock loading facility. The West Dock facility is a gravel causeway stretching 4 km (2.5 mi) into Prudhoe Bay. Shipments to West Dock will likely require improvements to the dock facilities including installing breasting dolphins to facilitate berthing and mooring of vessels, and raising the height of the existing dockhead to accept the large shipments. Dredging will be needed to deepen the navigational channel to the dockhead. Continued preconstruction project engineering and design work involving site evaluations and environmental surveys on the North Slope is likely to occur in the 2016–2021 period. Additional early-phase construction work could occur during this time but would likely be limited to expansion of West Dock beginning in 2020, gravel extraction and placement for pads and roads near Prudhoe Bay beginning in 2019, and ice-road construction in 2018–2021.

*Production Activities*

North Slope production facilities occur between the oilfields of the Alpine Unit in the west to Badami and Point Thomson in the east. Production activities include building operations, oil production, oil transport, facilities maintenance and upgrades, restoration, and remediation. Production activities are permanent, year-round activities, whereas exploration and development activities are usually temporary and seasonal. Alpine and Badami are not connected to the road system and must be accessed by airstrips, barges, and seasonal ice roads. Transportation on the North Slope is by automobile, airplanes, helicopters, boats, rolligons, tracked vehicles, and snowmobiles. Aircraft, both fixed wing and helicopters, are used for movement of personnel, mail, rush-cargo, and perishable items. Most equipment and materials are transported to the North Slope by truck or barge. Much of the barge traffic during the open water season unloads from West Dock. Maintenance dredging of up to 220,000 cubic yards per year of material is performed at West Dock to ensure continued operation.

Oil pipelines extend from each developed oilfield to the Trans-Alaska Pipeline System (TAPS). The 122-cm (48-in) diameter TAPS pipeline extends 1,287 km (800 mi) from the Prudhoe Bay oilfield to the Valdez Marine Terminal. Alyeska Pipeline Service Company conducts pipeline operations and maintenance. Access to the pipeline is primarily from established roads, such as the Spine Road and the Dalton Highway, or along the pipeline right-of-way.

Colville River Unit

The Alpine oilfield within the Colville River Unit was discovered in 1994 and began production in 2000. CPAI maintains a majority interest and is the primary operator. Alpine is currently the westernmost production oilfield on the North Slope, located 50 km (31 mi) west of the Kuparuk oilfield and 14 km (9 mi) northeast of the village of Nuiqsut. Facilities include a combined production pad/drill site and 3 additional drill sites with a total of approximately 180 wells. Pads, gravel roads, an airstrip, and processing facilities cover a total surface area of 66.8 ha (165 ac). Crude oil from Alpine is transported 34 mi through a 14-in pipeline to the Trans-Alaska Pipeline System. An ice road is constructed annually between Alpine and the Kuparuk oilfield to support major resupply activities. Small aircraft are used year-round to provide supplies and crew changeovers; camp facilities can support up to approximately 630 personnel.

Oooguruk Unit

The Oooguruk Unit, operated by Caelus, is located at the north end of the Colville-Kuparuk fairway, adjacent to the Kuparuk Unit in shallow waters of Harrison Bay. The Oooguruk drillsite is located on a 6 ac artificial island in the shallow waters of Harrison Bay. A 9.2-km (5.7-mi) system of subsea flowlines, power cables, and communications cables connects the island to onshore support facilities. Production began in 2008. Expansion of the drill site in 2015 and 2016 will increase the working surface area from 2.4 ha (6 ac) to 3.8 ha (9.5 ac). Drilling of additional production wells are planned and new injection well technology will be employed. Cumulative production was estimated to be 9.8 million bbl as of 2011 (AOGCC 2013)

Kuparuk River Unit

The Kuparuk oilfield, operated by CPAI, is Alaska's second-largest producing oilfield behind Prudhoe Bay. The gross volume of the oilfield has been estimated to be 6 billion bbl; more than 2.5 billion bbl have been produced as of 2014 (CPAI 2014). Nearly 900 wells have been drilled in the Greater Kuparuk Area, which includes the satellite oilfields of Tarn, Palm, Tabasco, West Sak, and Meltwater. The total development area in the Greater Kuparuk Area is approximately 603 ha (~1,508 ac), including 167 km (104 mi) of gravel roads, 231 km (144 mi) of

pipelines, 6 gravel mine sites, and over 50 gravel pads. The Kuparuk operations center and construction camp can accommodate up to 1,200 personnel.

Nikaitchuq Unit

The Nikaitchuq Unit, operated by Eni, is north of the Kuparuk River Unit. The offshore portion of Nikaitchuq, the Spy Island Development, is located south of the barrier islands of the Jones Island group and 6.4 km (4 mi) north of Oliktok Point. In 2007, Eni became the operator in the area and subsequently constructed an offshore gravel pad and onshore production facilities at Spy Island and Oliktok Point. The offshore pad is located in shallow water (*i.e.,* 3 meters (m) (10 feet (ft) deep)). A subsea flowline was constructed to transfer produced fluids from shore. The wells require an electrical submersible pump to produce oil because they are not capable of unassisted flow. The flow can be stopped by turning off the pump. Production began in 2011 at Oliktok Point and in 2012 at Spy Island. Cumulative production at the end of 2011 was approximately 2 million bbl. As of 2015, a program to expand production is under way, including drilling of 20 or more new wells to recover oil from the nearby Schrader Bluff reservoirs.

Milne Point Unit

The Milne Point Unit, operated by Hilcorp, is located approximately 56 km (~35 mi) northwest of Prudhoe Bay and immediately east of the Nikaitchuq Unit. This field consists of more than 220 wells drilled from 12 gravel pads. Milne Point produces oil from three main fields: Kuparuk, Schrader Bluff, and Sag River. Cumulative oil production as of the end of 2012 was 308 million bbl of oil equivalent per day (BOE, the amount of hydrocarbon product containing the energy equivalent of a barrel of oil). Average daily production rate in 2012 was 17,539 BOE with 114 production wells online. The total gravel footprint of Milne Point and its satellites is 182 ha (450 ac). The Milne Point Operations Center has accommodations for up to 180 people. An expansion program is under way for the Milne Point Unit. It is likely to improve technology of existing wells and may also include building a new drill pad, roads, and associated wells.

Prudhoe Bay Unit

The Prudhoe Bay Unit, operated by BPXA, is one of the largest oilfields by production in North America and ranks among the 20 largest oilfields worldwide. Over 12 billion bbl have been produced from a field originally estimated to have 25 billion bbl of oil in place. The Prudhoe Bay oilfield also contains an estimated 26 trillion $ft^3$ of recoverable natural gas. More than 1,100 wells are currently in operation in the Prudhoe Bay oilfields, approximately 830 of which are producing oil (others are for gas or water injection). Average daily production in 2012 was around 255,500 BOE.

The Prudhoe Bay Unit encompasses several oilfields, including the Point McIntyre, Lisburne, Niakuk, Western Niakuk, West Beach, North Prudhoe Bay, Borealis, Midnight Sun, Polaris, Aurora, and Orion reservoirs. Of these, the largest field by production is the Point McIntyre oilfield, which lies about 11 km (7 mi) north of Prudhoe Bay. Cumulative oil production between 1993 and 2011 was 436 million bbl (AOGCC 2013). In 2014, production at Point McIntyre averaged about 18,700 bbl of oil per day. The Lisburne field is largest by area. It covers about 80,000 ac just northwest of the main Prudhoe Bay field. Production was reported as 7,070 bbl per day in 2011, and cumulative production was approximately 182 million BOE as of 2014. The Niakuk fields have also reached high cumulative yields among the Greater Prudhoe Bay area oilfields. Between 1994 and 2011, these fields produced about 157 million bbl. In 2014, the combined Niakuk fields yielded about 1,200 bbl per day. Orion, Aurora, Polaris, Borealis and Midnight Sun are considered satellite fields and were producing more than 22,500 bbl per day combined in 2014 (BPXA 2015). In total, Prudhoe Bay satellite fields have produced more than 184 million BOE.

The total development area in the Prudhoe Bay Unit is approximately 2,785 ha (~6,883 ac) within an area of about 86,418 ha (213,543 ac). On the east side of the field the main construction camp can accommodate up to 625 people, the Prudhoe Bay operations center houses up to 449 people, and the Tarmac Camp houses 244 people. The base operations center on the western side of the Prudhoe Bay oilfield can accommodate 474 people. Additional personnel are housed at facilities in nearby Deadhorse industrial center or in temporary camps placed on existing gravel pads. Activities in the Prudhoe Bay Unit are likely to emphasize greater production of natural gas if a gas pipeline is approved during the 2016–2021 ITR period.

Northstar Unit

The Northstar oilfield, currently operated by Hilcorp, is located 6 km (4 mi) northwest of the Point McIntyre and 10 km (6 mi) north of the Prudhoe Bay Unit in approximately 10 m (~33 ft) of water. It was developed by BPXA in 1995, and began producing oil in 2001. The 15,360 ha (38,400 ac) reservoir lies offshore in waters up to 40 ft deep. A 2-ha (5-ac) artificial island supports 24 operating wells and all support facilities for this field. A subsea pipeline connects facilities to the Prudhoe Bay oilfield. As of 2013, production had surpassed 158.26 million bbl. The onsite base operations center houses 50 people. Access to Northstar is via helicopter, hovercraft, boat, and seasonal ice road. Of the existing offshore facilities Northstar is located the farthest from shore.

Duck Island Unit

The Endicott oilfield, operated by Hilcorp, is located in the Duck Island Unit approximately 16 km (~10 mi) northeast of Prudhoe Bay. In 1986 it became the first continuously producing offshore field in the U.S. Arctic. The Endicott oilfield was developed from two man-made gravel islands connected to the mainland by a gravel causeway. The operations center and processing facilities are located on the 24-ha (58-ac) main production island approximately 4.8 km (~3 mi) offshore. As of August 2013, 501 million BOE have been produced from Endicott. Production is from the Endicott reservoir in the Kekiktuk formation and two satellite fields (Eider and Sag Delta North) in the Ivishak formation. All wells were drilled from Endicott's main production island. The total area of development is 210 ha (522 ac) of land (including the Liberty satellite drilling island) with 24 km (15 mi) of roads, 43 km (24 mi) of pipelines, and 1 gravel mine site. Approximately 85 people can be housed at Endicott's Liberty camp.

Badami and Point Thomson Units

The Badami and Point Thomson units are located in the eastern portion of the North Slope and Beaufort Sea planning areas. Production from the Badami oilfield began in 1998 and from Point Thomson in 1983, but has not been continuous from either unit. The Badami field is located approximately 56 km (~35 mi) east of Prudhoe Bay and is the most easterly oilfield currently in production on the North Slope. Point Thomson, located 4 km (2.5 mi) east of Badami, was not in production as of 2015. The Badami development area is approximately 34 ha (~85 ac) of tundra including 7 km (4.5 mi) of gravel roads, 56 km (35 mi) of pipeline, 1 gravel mine site, and 2 gravel pads with a total of eight wells. As of 2011, cumulative production had reached 5.7 million bbl.

There is no permanent road connection from Badami to Prudhoe Bay. A pipeline connecting the Badami oilfield to the common carrier pipeline system at Endicott was built from an ice road.

*Other Activities*

Gas Hydrate Exploration and Research

Growing interest in the North Slope's methane gas hydrate resources is expected to continue in the upcoming 5 years. The U.S. Geological Survey (USGS) has estimated the volume of technically recoverable undiscovered methane gas hydrate on the North Slope is approximately 85 trillion ft$^3$ (with a range of 25–158 trillion ft$^3$ (USGS 2013)). Recent gas hydrate test wells drilled on the North Slope have confirmed the presence of viable reservoirs and buoyed interest in long-term testing. International and Gulf of Mexico test well simulations have generated production-level gas yields. Gas hydrate research on the North Slope is supported by Federal funding and State initiatives. In 2013, the State of Alaska temporarily set aside 11 tracts of unleased State lands on the North Slope for methane hydrate research. This support is expected to result in a continued interest in gas hydrate research and exploration, but development of this nonconventional hydrocarbon resource is yet unproven and uncertainties regarding economic feasibility, safety, and environmental impact remain unresolved. For these reasons, a relatively low, but increasing level of gas hydrate exploration and research is expected during the regulatory period.

Barrow Gas Fields

The NSB operates the Barrow Gas Fields located south and east of the city of Barrow. The Barrow Gas Fields include the Walakpa, South, and East Gas Fields; of these, the Walakpa Gas Field and a portion of the South Gas Field are located within the boundaries of the Chukchi Sea geographical region and, therefore, not discussed here. The East Field and part of the South Field are included in the Beaufort Sea ITR region.

The Barrow Gas Fields provide a source of heat and electricity for the Barrow community. Drilling and testing of the East Barrow Field began in 1974, and regular gas production from the pool began in December 1981. Production peaked at about 2.75 million ft$^3$ of gas per day in 1983, and then began to decline. In 2011 and 2012, NSB increased production by drilling five new wells, upgrading pipelines, and installing modern wellhead housings. In the winter of 2013, production was about 350 million ft$^3$ per day. Cumulatively, the field produced more than 8.8 billion ft$^3$ through July 2013, surpassing the original estimate of 6.2 billion ft$^3$ of gas in place.

Although activities within the Barrow Gas Fields were not specifically identified by the Applicants, the petition did include this area as part of the request for ITRs. Additionally, a portion of the Barrow Gas Fields are similarly described in ITRs for the Chukchi Sea (78 FR 35364, June 12, 2013), while the remainder is located in the Beaufort Sea geographic region. Therefore, as part of this analysis, we have included the Barrow Gas Fields in the event that LOAs for activities on the Beaufort Sea side of the field are requested. Gas production is expected to continue at its current rate during the next 5 years, and will be accompanied by maintenance and support activities, including possible access by air or over land, ice road construction, survey work, or on-pad construction.

**Evaluation of the Nature and Level of Activities**

Based on the Industry request, we assume that the proposed activities will increase the area of the industrial footprint with the addition of new facilities, such as drill pads, pipelines, and support facilities at a rate consistent with prior 5-year regulatory periods. However, oil production volume is expected to continue a long-term decline during this 5-year regulatory period despite new development. This prediction is due to declining production from currently producing fields. During the period covered by the regulations, we assume the annual level of activity at existing production facilities, as well as levels of new annual exploration and development activities, will be similar to that which occurred under the previous regulations, although exploration and development may shift to new locations and new production facilities will add to the overall Industry footprint. Additional onshore and offshore production facilities are being considered within the timeframe of these regulations, potentially adding to the total permanent activities in the area. The rate of progress is similar to prior production schedules, but there is a potential increase in the accumulation of the industrial footprint, with an increase mainly in onshore facilities.

**Biological Information**

*Pacific Walrus*

Pacific walruses constitute a single panmictic population inhabiting the shallow continental shelf waters of the Bering and Chukchi seas (Lingqvist *et al.* 2009, Berta and Churchill 2012). The distribution of walruses is largely influenced by the extent of the seasonal pack ice and prey densities. From April to June, most of the walrus population migrates from the Bering Sea through the Bering Strait and into the Chukchi Sea. Walruses tend to migrate into the Chukchi Sea along lead systems that develop in the sea-ice. Walruses are closely associated with the edge of the seasonal pack ice during the open-water season. By July, thousands of animals can be found along the edge of the pack ice from Russian waters to areas west of Point Barrow, Alaska. The pack-ice usually advances rapidly southward in late fall, and most walruses return to the Bering Sea by mid- to late-November. During the winter breeding season walruses are found in three concentration areas of the Bering Sea where open leads, polynyas, or thin ice occur (Fay *et al.* 1984, Garlich-Miller *et al.* 2011a). While the specific location of these groups varies annually and seasonally depending upon the extent of the sea-ice, generally one group occurs near the Gulf of Anadyr, another south of St. Lawrence Island, and a third in the southeastern Bering Sea south of Nunivak Island into northwestern Bristol Bay.

Although most walruses remain in the Chukchi Sea throughout the summer months, a few occasionally range into the Beaufort Sea in late summer. Industry monitoring reports have observed no more than 35 walruses in the area of these proposed ITRs between 1995 and 2012, with only a few instances of disturbance to those walruses (AES Alaska 2015, Kalxdorff and Bridges 2003, USFWS unpubl. data). Beginning in 2008, the USGS, and since 2013 the Alaska Department of Fish and Game (ADF&G), have fitted about 30 − 60 walruses with satellite transmitters each year during spring and summer. In 2014, a female tagged by ADF&G spent about 3 weeks in Harrison Bay (ADF&G 2014). The USGS tracking data indicates that at least one instrumented walrus ventured into the Beaufort Sea for brief periods in all years except 2011. Most of these movements extend northeast of Barrow to the continental shelf edge north of Smith Bay (USGS 2015). All available information indicates that few walruses enter the Beaufort Sea and those that do spend little time there. The Service and

USGS are conducting multiyear studies on the walrus population to investigate movements and habitat use patterns. It is possible that as sea-ice diminishes in the Chukchi Sea beyond the 5-year period of this rule, walrus distribution and habitat use may change.

Walruses are generally found in waters of 100 m (328 ft) or less although they are capable of diving to greater depths. They use sea-ice as a resting platform over feeding areas, as well as for giving birth, nursing, passive transportation and avoiding predators (Fay 1982, Ray *et al.* 2006). They feed almost exclusively on benthic invertebrates. Native hunters have also reported incidences of walruses preying on seals, and other items such as fish and birds are occasionally taken (Sheffield and Grebmeier 2009, Seymour *et al.* 2014). Foraging trips may last for several days with walruses diving to the bottom nearly continuously. Most foraging dives last between 5 and 10 minutes, with a 1–2-minute surface interval. The disturbance of the sea floor by foraging walruses releases nutrients into the water column, provides food for scavenger organisms, contributes to the diversity of the benthic community, and is thought to have a significant influence on the ecology of the Bering and Chukchi seas (Ray *et al.* 2006).

Walruses are social and gregarious animals. They travel and haul-out onto ice or land in groups. Walruses spend approximately 20 – 30 percent of their time out of the water. Hauled-out walruses tend to be in close physical contact. Young animals often lie on top of adults. The size of the hauled out groups can range from a few animals up to several thousand individuals. The largest aggregations occur at land haulouts. In recent years, the barrier islands north of Point Lay, Alaska, have held large aggregations of walruses (20,000 – 40,000) in late summer and fall (Monson *et al.* 2013).

The size of the walrus population has never been known with certainty. Based on large sustained harvests in the 18th and 19th centuries, Fay (1957) speculated that the pre-exploitation population was represented by a minimum of 200,000 animals. Since that time, population size following European contact is believed to have fluctuated markedly in response to varying levels of human exploitation. Large-scale commercial harvests are believed to have reduced the population to 50,000–100,000 animals in the mid-1950s (Fay *et al.* 1989). The population increased rapidly in size during the 1960s and 1970s in response to harvest regulations that limited the take of females. The population likely reached or exceeded the food-based carrying capacity (K) of the region by 1980 (Fay *et al.* 1989, Fay *et al.* 1997, Garlich-Miller *et al.* 2006, MacCracken *et al.* 2014).

Between 1975 and 1990, aerial surveys conducted jointly by the United States and Russia at 5-year intervals produced population estimates ranging from about 200,000 to 255,000 individuals, with large confidence intervals. Efforts to survey the walrus population were suspended by both countries after 1990 because problems with survey methods produced population estimates with unknown bias and unknown variances that severely limited their utility. In 2006, the United States and Russia conducted another joint aerial survey in the pack ice of the Bering Sea using thermal imaging systems to more accurately count walruses hauled out on sea-ice and satellite transmitters to account for walruses in the water. The number of walruses within the surveyed area was estimated at 129,000 with 95 percent confidence limits of 55,000 to 507,000 individuals. This estimate should be considered a minimum, as weather conditions forced termination of the survey before large areas of the Bering Sea were surveyed (Speckman *et al.* 2011).

Taylor and Udevitz (2015) used both the aerial survey population estimates described above and ship-based age and sex composition counts that occurred in 1981–1984, 1998, and 1999 (Citta *et al.* 2014) in a Bayesian integrated population model to estimate population trend and vital rates from 1975–2006. They recalculated the 1975–1990 aerial survey estimates based on a lognormal distribution for inclusion in their model. Their results generally agreed with the large-scale population trends identified by the previous efforts, but with slightly different population estimates in some years along with more precise confidence intervals. They were careful to note that all of the demographic rates in their model were estimated based on age structure data from 1981 to 1999, when the population was in decline, and that projections outside those years are extrapolations of demographic functions that may not accurately reflect dynamics for different population trends. Ultimately, they concluded (i) that though their model provides improved clarity on past walrus population trends and vital rates, it cannot overcome the large uncertainties in the available population size data, and (ii) that the absolute size of the Pacific walrus population will continue to be speculative until accurate empirical estimation of the population size becomes feasible.

A detailed description of the Pacific walrus stock can be found in the Pacific Walrus (*Odobenus rosmarus divergens*) Stock Assessment Report (announced at 79 FR 22154, April 21, 2014). A digital copy of the Stock Assessment Report is available at: *http://www.fws.gov/alaska/fisheries/mmm/stock/Revised_April_2014_Pacific_Walrus_SAR.pdf.*

Polar bears are known to prey on walruses, particularly calves, and killer whales *(Orcinus orca)* have been known to take all age classes of walruses (Frost *et al.* 1992, Melnikov and Zagrebin 2005). Predation rates are unknown but are thought to be highest near terrestrial haulout sites where large aggregations of walruses can be found. However, few observations exist of predation upon walruses farther offshore.

Walruses have been hunted by coastal Natives in Alaska and Chukotka for thousands of years. Exploitation of the walrus population by Europeans has also occurred in varying degrees since beginning with the arrival of exploratory expeditions, but ceased in 1972 in the United States with the passage of the MMPA and in 1990 in Russia. Presently, walrus hunting in Alaska and Chukotka is restricted to subsistence use by aboriginal peoples. Harvest mortality from 2000 – 2014 for both the United States and Russian Federation averaged 3,207 (SE = 194) walruses per year. This mortality estimate includes corrections for under-reported harvest (U.S. only) and struck and lost animals. Harvests have been declining by about 3 percent per year since 2000 and were exceptionally low in the United States in 2012 – 2014. Resource managers in Russia have concluded that the population has declined and reduced harvest quotas in recent years accordingly (Kochnev 2004; Kochnev 2005; Kochnev 2010; pers. comm.; Litovka 2015, pers. comm.), based in part on the lower abundance estimate generated from the 2006 survey. However, Russian hunters have never reached the quota (Litovka 2015, pers. comm.).

Intra-specific trauma at coastal haulouts is also a known source of injury and mortality (USFWS 2015). Disturbance events can cause walruses to stampede into the water and have been known to result in injuries and mortalities. The risk of stampede-related injuries increases with the number of animals hauled out. Calves and young animals are particularly vulnerable to trampling injuries and mortality. Management and protection programs in both the United States and Russian Federation have been successful in

reducing disturbances and large mortality events at coastal haulouts (USFWS 2015).

The Service announced a 12-month petition finding to list the Pacific walrus as endangered or threatened and to designate critical habitat on February 10, 2011 (76 FR 7634). The listing of walruses was found to be warranted, but precluded due to higher priority listing actions and, the Pacific walrus was added to the list of candidate species under the Endangered Species Act (ESA; 16 U.S.C. 1533 *et seq.*). We will make any determination on critical habitat during development of the proposed listing rule.

*Polar Bear*

Polar bears are found throughout the ice-covered seas and adjacent coasts of the Arctic with a current population estimate of approximately 26,000 individuals (95 percent Confidence Interval (CI) = 22,000–31,000) (Wiig *et al.* 2015). Polar bears live up to 30 years, have no natural predators, though cannibalism is known to occur, and they do not often die from diseases or parasites. Polar bears typically occur at low densities throughout their circumpolar range (DeMaster and Stirling 1981). They are generally found in areas where the sea is ice-covered for much of the year; however, polar bears are not evenly distributed throughout their range. They are typically most abundant on sea-ice, near the ice edges or openings in the ice, over relatively shallow continental shelf waters with high marine productivity (Durner *et al.* 2004). Their primary prey is ringed *(Pusa hispida)* and bearded *(Erignathus barbatus)* seals, although diet varies regionally with prey availability (Thiemann *et al.* 2008, Cherry *et al.* 2011). Polar bears use the sea-ice as a platform to hunt seals. Over most of their range, polar bears remain on the sea-ice year-round or spend only short periods on land. They may, however, be observed throughout the year in the onshore and nearshore environments, where they will opportunistically scavenge on beached marine mammal carcasses (Kalxdorff and Fischbach 1998). Their distribution in coastal habitats is often influenced by the movement of seasonal sea-ice.

Females can initiate breeding at 5 to 6 years of age. Females without dependent cubs breed in the spring. Pregnant females enter maternity dens by late November, and the young are usually born in late December or early January. Only pregnant females den for an extended period during the winter; other polar bears may excavate temporary dens to escape harsh winter winds. On average two cubs are born per reproductive event, and, therefore, reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is 3 to 4 years, and a female polar bear can produce 8–10 cubs in her lifetime, in healthy populations, and 50–60 percent of the cubs will survive.

In late March or early April, the female and cubs emerge from the den. If the mother moves young cubs from the den before they can walk or withstand the cold, mortality to the cubs increases. Therefore, it is thought that successful denning, birthing, and rearing activities require a relatively undisturbed environment. Radio and satellite telemetry studies elsewhere indicate that denning can occur in multiyear pack ice and on land. In the Southern Beaufort Sea (SBS) population the proportion of dens on pack ice declined from approximately 60 percent from 1985 through 1994 to 40 percent from 1998 through 2004 (Fischbach *et al.* 2007). This change is likely in response to reductions in stable old ice, increases in unconsolidated ice, and lengthening of the melt season (Fischbach *et al.* 2007). If sea-ice extent in the Arctic continues to decrease and the amount of unstable ice increases, a greater proportion of polar bears may seek to den on land (Durner *et al.* 2006, Fischbach *et al.* 2007).

In Alaska, maternal polar bear dens appear to be less densely concentrated than those in Canada and Russia. In Alaska, certain areas, such as barrier islands (linear features of low-elevation land adjacent to the main coastline that are separated from the mainland by bodies of water), river bank drainages, much of the North Slope coastal plain, and coastal bluffs that occur at the interface of mainland and marine habitat, receive proportionally greater use for denning than other areas. Maternal denning occurs on tundra-bearing barrier islands along the Beaufort Sea and also in the large river deltas, such as those associated with the Colville and Canning rivers.

During the late summer/fall period (August through October), polar bears are most likely to be encountered along the coast and barrier islands. They use these areas as travel corridors and hunting areas. Based on Industry observations, encounter rates are higher during the fall (August to October) than any other time period. The duration of time the bears spend in these coastal habitats depends on a variety of factors including storms, ice conditions, and the availability of food. In recent years, polar bears have been observed in larger numbers than previously recorded during the fall period. The remains of subsistence-harvested bowhead whales at Cross and Barter islands provide a readily available food source for bears in these areas and appear to play a role in this increase (Schliebe *et al.* 2006). Based on Industry observations and coastal survey data acquired by the Service, up to 125 individuals of the SBS bear population have been observed annually during the fall period between Barrow and the Alaska-Canada border.

In 2008, the Service listed polar bears as threatened under the ESA due to the loss of sea-ice habitat caused by climate change (73 FR 28212, May 15, 2008). The Service later published a final rule under section 4(d) of the ESA for the polar bear, which was vacated then reinstated when procedural requirements were satisfied (78 FR 11766, February 20, 2013). This special rule provides for measures that are necessary and advisable for the conservation of polar bears. Specifically, the 4(d) rule: (a) Adopts the conservation regulatory requirements of the MMPA and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) for the polar bear as the appropriate regulatory provisions, in most instances; (b) provides that incidental, nonlethal take of polar bears resulting from activities outside the bear's current range is not prohibited under the ESA; (c) clarifies that the special rule does not alter the Section 7 consultation requirements of the ESA; and (d) applies the standard ESA protections for threatened species when an activity is not covered by an MMPA or CITES authorization or exemption.

The Service designated critical habitat for polar bear populations in the United States effective January 6, 2011 (75 FR 76086, December 7, 2010). On January 13, 2013, the U.S. District Court for the District of Alaska issued an order that vacated and remanded the polar bear critical habitat final rule to the Service (*Alaska Oil and Gas Association and American Petroleum Institute* v. *Salazar, Case No. 3:11–cv–0025–RRB*). On February 29, 2016, the United States Court of Appeals for the 9th Circuit reversed that order and remanded it back to the U.S. District Court for the District of Alaska for entry of judgment in favor of FWS (*Alaska Oil and Gas Association* v. *Jewell, Case No. 13–35619*).

Critical habitat identifies geographic areas that contain features that are essential for the conservation of a threatened or endangered species and that may require special management or protection. Under section 7 of the ESA,

if there is a Federal action, we will analyze the potential impacts of the action upon polar bear critical habitat. Polar bear critical habitat units include: Barrier island habitat, sea-ice habitat (both described in geographic terms), and terrestrial denning habitat (a functional determination). Barrier island habitat includes coastal barrier islands and spits along Alaska's coast; it is used for denning, refuge from human disturbance, access to maternal dens and feeding habitat, and travel along the coast. Sea-ice habitat is located over the continental shelf, and includes water 300 m (~984 ft) or less in depth. Terrestrial denning habitat includes lands within 32 km (~20 mi) of the northern coast of Alaska between the Canadian border and the Kavik River and within 8 km (~5 mi) between the Kavik River and Barrow. The total area designated covers approximately 484,734 km$^2$ (~187,157 mi$^2$), and is entirely within the lands and waters of the United States. Polar bear critical habitat is described in detail in the final rule that designated polar bear critical habitat (75 FR 76086, December 7, 2010). A digital copy of the final critical habitat rule is available at: *http://alaska.fws.gov/fisheries/mmm/polarbear/pdf/federal_register_notice.pdf.*

Management and conservation concerns for the SBS and Chukchi/Bering Seas (CS) polar bear populations include sea-ice loss due to climate change, bear-human conflict, oil and gas industry activity, oil spills and contaminants, increased marine shipping, increased disease, and the potential for overharvest. Research has linked declines in sea-ice to reduced physical condition, growth, and survival of polar bears (Bromaghin *et al.* 2015). Projections indicate continued climate warming at least through the end of this century (IPCC 2013). The associated reduction of summer Arctic sea-ice is expected to be a primary threat to polar bear populations (Amstrup *et al.* 2008, Stirling and Derocher 2012).

Stock Definition, Range, and Status

Polar bears are distributed throughout the circumpolar Arctic region. In Alaska, polar bears have historically been observed as far south in the Bering Sea as St. Matthew Island and the Pribilof Islands (Ray 1971). A detailed description of the SBS and CS polar bear stocks can be found in the Polar Bear *(Ursus maritimus)* Stock Assessment Reports (announced at 74 FR 69139, December 30, 2009). Digital copies of the Stock Assessment Reports are available at: *http://www.fws.gov/alaska/fisheries/mmm/stock/final_sbs_polar_bear_sar.pdf* and *http://www.fws.gov/alaska/fisheries/mmm/stock/final_cbs_polar_bear_sar.pdf.* A summary of the Alaska polar bear stocks are described below.

Southern Beaufort Sea

The SBS polar bear population is shared between Canada and Alaska. Radio-telemetry data, combined with eartag returns from harvested bears, suggest that the SBS population occupies a region with a western boundary near Icy Cape, Alaska, and an eastern boundary near Pearce Point, Northwest Territories, Canada (USFWS 2010).

Early estimates from the mid-1980s suggested the size of the SBS population was approximately 1,800 polar bears, although uneven sampling was known to compromise the accuracy of that estimate. A population analysis of the SBS stock was completed in June 2006 through joint research coordinated between the United States and Canada. That analysis indicated the population of the region between Icy Cape and Pearce Point was approximately 1,500 polar bears (95 percent confidence intervals approximately 1,000–2,000). Although the confidence intervals of the 2006 population estimate overlapped the previous population estimate of 1,800, other statistical and ecological evidence (*e.g.,* high recapture rates encountered in the field) suggest that the current population is actually smaller than has been estimated for this area in the past. The most recent population estimate for the SBS population was produced by the USGS in 2015. Bromaghin *et al.* (2015) developed mark-recapture models to investigate the population dynamics of polar bears in the SBS from 2001 to 2010. They estimated that in 2010 there were approximately 900 polar bears (90 percent CI 606–1212) in the SBS population (Bromaghin *et al.* 2015). That study showed a 25 to 50 percent decline in abundance of SBS bears due to low survival from 2004 through 2006. Though survival of adults and cubs began to improve in 2007, and abundance was comparatively stable from 2008 to 2010, survival of subadult bears declined throughout the entire period.

Chukchi/Bering Seas

The CS polar bear population is shared between Russia and Alaska. The CS stock is widely distributed on the pack-ice in the Chukchi Sea, northern Bering Sea, and adjacent coastal areas in Alaska and Chukotka, Russia. Radio-telemetry data indicate that the northeastern boundary of the CS population is near the Colville Delta in the central Beaufort Sea and the western boundary is near the Kolyma River in northeastern Siberia (Garner *et al.*1990; Amstrup 1995; Amstrup *et al.* 2005). The population's southern boundary is determined by the extent of annual sea-ice in the Bering Sea. There is an extensive area of overlap between the SBS and CS populations roughly between Icy Cape, Alaska, and the Colville Delta (Garner *et al.* 1990; Garner *et al.* 1994; Amstrup *et al.* 2000; Amstrup *et al.* 2004; Obbard *et al.* 2010; Wiig *et al.* 2015).

It has been difficult to obtain a reliable population estimate for this stock due to the vast and inaccessible nature of the habitat, movement of bears across international boundaries, logistical constraints of conducting studies in the Russian Federation, and budget limitations (Amstrup and DeMaster 1988; Garner *et al.* 1992; Garner *et al.* 1998; Evans *et al.* 2003).

Estimates of the stock have been derived from observations of dens and aerial surveys (Chelintsev 1977; Stishov 1991a; Stishov 1991b; Stishov *et al.* 1991); however, those estimates have wide confidence intervals and are outdated. The most recent estimate of the CS stock was approximately 2,000 animals, based on extrapolation of aerial den surveys (Lunn *et al.* 2002; USFWS 2010; Wiig *et al.* 2015). However, accurate estimates of the size and trend of the CS stock are difficult to obtain and not currently available. Ongoing and planned research studies for the period 2016–2018 will result in improved information, although the wide distribution of polar bears on sea ice, the vast size of the region, and the lack of infrastructure to support research studies will continue to make it difficult to obtain up-to-date and accurate estimates of vital rates and population size. More information about polar bears can be found at: *http://www.fws.gov/alaska/fisheries/mmm/polarbear/pbmain.htm.*

**Climate Change**

As atmospheric greenhouse gas concentrations increase so will global temperatures (Pierrehumbert 2011). The Arctic has warmed at twice the global rate (IPCC 2007), and long-term data sets show that substantial reductions in both the extent and thickness of Arctic sea-ice cover have occurred over the past 40 years (Meier *et al.* 2014, Frey *et al.* 2015). Stroeve *et al.* (2012) estimated that, since 1979, the minimum area of fall Arctic sea-ice declined by over 12 percent per decade through 2010. Record minimum areas of fall Arctic sea-ice extent were recorded in 2002,

2005, 2007, and 2012 (lowest on record). The overall trend of continued decline of Arctic sea-ice is expected to continue for the foreseeable future (Stroeve *et al.* 2007, Amstrup *et al.* 2008, Hunter *et al.* 2010, Overland and Wang 2013, 73 FR 28212, May 15, 2008).

For walruses, climate-driven trends in the Chukchi Sea have resulted in seasonal fall sea-ice retreat beyond the continental shelf over deep Arctic Ocean waters. Reasonably foreseeable impacts to walruses as a result of diminishing sea-ice cover include potential shifts in range, habitat use, local abundance, increased frequency and duration at coastal haulouts, increased vulnerability to predation and disturbance, and localized declines in prey. It is unknown if walruses will utilize the Beaufort Sea more in the future due to climate change effects. Currently, and for the next 5 years, it appears that walruses will remain uncommon in the Beaufort Sea.

For polar bears, sea-ice habitat loss due to climate change has been identified as the primary cause of conservation concern. Amstrup *et al.* (2007) projected a 42 percent loss of optimal summer polar bear habitat by 2050. They concluded that, if current Arctic sea-ice declines continue, polar bears may eventually be excluded from onshore denning habitat in the Polar Basin Divergent Ecoregion, where ice is formed and then drawn away from near-shore areas, especially during the summer minimum ice season. The SBS and CS polar bear populations inhabit this ecoregion, and Amstrup *et al.* (2008) projected that these populations may be extirpated within the next 45–75 years if sea-ice declines continue at current rates.

Climate change is likely to have serious consequences for the worldwide population of polar bears and their prey (Amstrup *et al.* 2007, Amstrup *et al.* 2008, Hunter *et al.* 2010). Climate change is expected to impact polar bears in a variety of ways including increased movements, changes in bear distributions, changes to the access and allocation of denning areas, increased energy expenditure from open-water swimming, and possible decreased fitness. The timing of ice formation and breakup will impact seal distributions and abundance and, consequently, how efficiently polar bears can hunt seals. Reductions in sea-ice are expected to require polar bears to use more physiological energy, as moving through fragmented sea-ice and open water requires more energy than walking across consolidated sea-ice (Cherry *et al.* 2009, Pagano *et al.* 2012, Rode *et al.* 2014).

Decreased sea-ice extent may impact the reproductive success of denning polar bears. In the 1990s, approximately 50 percent of the maternal dens of the SBS polar bear population occurred annually on the pack-ice in contrast to terrestrial sites (Amstrup and Gardner 1994). The proportion of dens on sea-ice declined from 62 percent in 1985–1994 to 37 percent in 1998–2004 (Fischbach *et al.* 2007) causing a corresponding increase in terrestrial dens. This trend in terrestrial denning appears to have continued. Polar bears require a stable substrate for denning. As sea-ice conditions deteriorate and become less stable, coastal dens become vulnerable to erosion from storm surges. Polar bear dens on land, especially on the North Slope of Alaska, are also at greater risk of conflict with human activities.

Polar bear use of Beaufort Sea coastal areas in Alaska during the fall open-water period (June through October) have increased over time. The Service anticipates that polar bear use of the Beaufort Sea coast will continue to increase during the open-water season. This change in distribution has been correlated with the distance of the pack-ice from the coast at that time of year (*i.e.,* the farther from shore the leading edge of the pack-ice, the more bears observed onshore) (Schliebe *et al.* 2006). The current trend for sea-ice in the region will result in increased distances between the ice edge and land, likely resulting in more bears coming ashore during the open-water period. More polar bears on land for a longer period of time may increase human-bear interactions during this time period.

**Potential Effects of Oil and Gas Industry Activities on Subsistence Uses of Pacific Walruses and Polar Bears**

*Pacific Walrus*

Few walruses are harvested in the Beaufort Sea along the northern coast of Alaska since their primary range is in the Bering and Chukchi seas. Walruses constitute a small portion of the total marine mammal harvest for the village of Barrow. Hunters from Barrow harvested 451 walruses in the past 20 years with 78 harvested since 2009. Walrus harvest from Nuiqsut and Kaktovik is opportunistic. They have reported taking four walruses since 1993. Less than 1.5 percent of the total walrus harvest for Barrow, Nuiqsut, and Kaktovik from 2009 to 2014 has occurred within the geographic range of the incidental take regulations.

*Polar Bear*

Based on subsistence harvest reports, polar bear hunting is less prevalent in communities on the north coast of Alaska than it is in west coast communities. There are no quotas under the MMPA for Alaska Native polar bear harvest in the Southern Beaufort Sea; however, there is a Native-to-Native agreement between the Inuvialuit in Canada and the Inupiat in Alaska, created in 1988. This agreement, referred to as the Inuvialuit-Inupiat Polar Bear Management Agreement, established quotas and recommendations concerning protection of denning females, family groups, and methods of take. Although this Agreement does not have the force of law from either the Canadian or the U.S. Governments, the users have abided by its terms. In Canada, users are subject to provincial regulations consistent with the Agreement. Commissioners for the Inuvialuit-Inupiat Agreement set the original quota at 76 bears in 1988, split evenly between the Inuvialuit in Canada and the Inupiat in the United States. In July 2010, the quota was reduced to 70 bears per year.

The Alaska Native subsistence harvest of polar bears from the SBS population has remained relatively consistent since 1980 and averages 36 bears annually. From 2005 through 2009, Alaska Natives harvested 117 bears from the SBS population, an average of approximately 23 bears annually. From 2010 through 2014, Alaska Natives harvested 98 polar bears from the SBS population, an average of approximately 20 bears annually. The reason for the decline of harvested polar bears from the SBS population is unknown. Alaska Native subsistence hunters and harvest reports have not indicated a lack of opportunity to hunt polar bears or disruption by Industry activity.

**Evaluation of Effects of Activities on Subsistence Uses of Pacific Walruses and Polar Bears**

Barrow and Kaktovik are expected to be affected to a lesser degree by Industry activities than Nuiqsut. Nuiqsut is located within 5 mi of ConocoPhillips' Alpine production field to the north and ConocoPhillips' Alpine Satellite development field to the west. However, Nuiqsut hunters typically harvest polar bears from Cross Island during the annual fall bowhead whaling. Cross Island is approximately 16 km (~10 mi) offshore from the coast of Prudhoe Bay. We have received no evidence or reports that bears are altering their habitat use patterns, avoiding certain areas, or being affected in other ways by the existing level of oil and gas activity near communities or traditional hunting areas that would diminish their availability for subsistence use.

Changes in activity locations may trigger community concerns regarding the effect on subsistence uses. Industry will need to remain proactive to address potential impacts on the subsistence uses by affected communities through consultations, and where warranted, POCs. Open communication through venues such as public meetings, which allow communities to express feedback prior to the initiation of operations, will be required as part of an LOA application. If community subsistence use concerns arise from new activities, appropriate mitigation measures are available and will be applied, such as a cessation of certain activities at certain locations during specified times of the year, *i.e.,* hunting seasons.

No unmitigable concerns from the potentially affected communities regarding the availability of walruses or polar bears for subsistence uses have been identified through Industry consultations with the potentially affected communities of Barrow, Kaktovik, and Nuiqsut. Based on Industry reports, aerial surveys, direct observations, community consultations, and personal communication with hunters, it appears that subsistence hunting opportunities for walruses and polar bears have not been affected by past Industry activities, and we do not anticipate that the proposed activities for this ITR will have different effects.

**Potential Effects of Oil and Gas Industry Activities on Pacific Walruses, Polar Bears, and Prey Species**

Individual walruses and polar bears can be affected by Industry activities in numerous ways. These include (1) noise disturbance, (2) physical obstructions, (3) human encounters, and (4) effects on prey. In order to evaluate effects to walruses and polar bears, we analyzed both documented and potential effects, including those that could have more than negligible impacts. The effects analyzed included the loss or preclusion of habitat, harassment, lethal take, and exposure to oil spills.

*Pacific Walrus*

Walruses do not utilize the Beaufort Sea frequently and the likelihood of encountering walruses during Industry operations is low. During the time period of these regulations, Industry operations may occasionally encounter small groups of walruses swimming in open water or hauled out onto ice floes or along the coast. Industry monitoring data have reported 35 walruses between 1995 and 2012, with only a few instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). From 2009 through 2014 no interactions between walrus and Industry were reported in the Beaufort Sea ITR region. We have no evidence of any physical effects or impacts to individual walruses due to Industry activity. If an interaction did occur, it could potentially result in some level of disturbance. The response of walruses to disturbance stimuli is highly variable. Anecdotal observations by walrus hunters and researchers suggest that males tend to be more tolerant of disturbances than females and individuals tend to be more tolerant than groups. Females with dependent calves are considered least tolerant of disturbances. In the Chukchi Sea disturbance events are known to cause walrus groups to abandon land or ice haulouts and occasionally result in trampling injuries or cow-calf separations, both of which are potentially fatal. Calves and young animals at terrestrial haulouts are particularly vulnerable to trampling injuries.

Noise Disturbance

Walruses hear sounds both in air and in water. Kastelein *et al.* (1996) tested the in-air hearing of a walrus from 125 hertz (Hz) to 8 kilohertz (kHz) and determined the walrus could hear all frequency ranges tested but the best sensitivity was between 250 Hz and 2 kHz. Kastelein *et al.* (2002) tested underwater hearing and determined that range of hearing was between 1 kHz and 12 kHz with greatest sensitivity at 12 kHz. The small sample size warrants caution; other pinnipeds can hear up to 40 kHz. Many of the noise sources generated by Industry activities, other than the very high frequency seismic profiling, are likely to be audible to walruses.

Seismic operations, pile driving, ice breaking, and various other Industry activities introduce substantial levels of noise into the marine environment. Greene *et al.* (2008) measured underwater and airborne noise from ice road construction, heavy equipment operations, auguring, and pile driving during construction of a gravel island at Northstar. Underwater sound levels from construction ranged from 103 decibels (dB) at 100 m (328 ft) for auguring to 143 dB at 100 m (328 ft) for pile driving. Most of the energy of these sounds was below 100 Hz. Airborne sound levels from these activities ranged from 65 dB at 100 m (328 ft) for a bulldozer and 81 dB at 100 m (328 ft) for pile driving. Most of the energy for in-air levels was also below 100 Hz. Airborne sound levels and frequencies typically produced by Industry are unlikely to cause hearing damage unless marine mammals are very close to the sound source, but may cause disturbance.

Typical source levels associated with underwater marine 3D and 2D seismic surveys are 230–240 dB. Airgun arrays produce broadband frequencies from 10 Hz to 2 kHz with most of the energy concentrated below 200 Hz. Frequencies used for high-resolution oil and gas exploration surveys are typically 200 Hz–900 kHz. Commercial sonar systems may also generate lower frequencies audible to marine mammals (Deng et al 2012). Some surveys use frequencies as low as 50 Hz or as high as 2 MHz. Broadband source levels for high-resolution surveys can range from 210 to 226 dB at 1 m. Sound attenuates in air more rapidly than in water, and underwater sound levels can be loud enough to cause hearing loss in nearby animals and disturbance of animals at greater distances.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb walruses. Marine mammals in general have variable reactions to noise sources, particularly mobile sources such as marine vessels. Reactions depend on the individuals' prior exposure to the disturbance source, their need, or desire to be in the particular habitat or area where they are exposed to the noise, and visual presence of the disturbance source. Walruses are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Potential impacts of Industry-generated noise include displacement from preferred foraging areas, increased stress, energy expenditure, interference with feeding, and masking of communications. Any impact of Industry noise on walruses is likely to be limited to a few individuals due to their geographic range and seasonal distribution. Walruses typically inhabit the pack-ice of the Bering and Chukchi seas and do not often move into the Beaufort Sea.

In the nearshore areas of the Beaufort Sea, stationary offshore facilities could produce high levels of noise that has the potential to disturb walruses. These include Endicott, BPXA's Saltwater Treatment Plant (located on the West Dock Causeway), Oooguruk, and Northstar facilities. The Liberty project will also have this potential when it commences operations. From 2009 through 2014 there were no reports of walruses hauling out at Industry facilities in the Beaufort Sea ITR region. Previous observations have been

reported of walruses hauled out on Northstar Island and swimming near the Saltwater Treatment Plant. In 2007, a female and a subadult walrus were observed hauled-out on the Endicott Causeway. In instances where walruses have been seen near these facilities, they have appeared to be attracted to them, possibly as a resting area or haulout.

In the open waters of the Beaufort Sea, seismic surveys and high-resolution site-clearance surveys will be the primary source of high levels of underwater sound. Such surveys are typically carried out away from the edge of the seasonal pack-ice. This scenario will minimize potential interactions with large concentrations of walruses, which typically favor sea-ice habitats. The most likely response of walruses to acoustic disturbances in open water will be for animals to move away from the source of the disturbance. Displacement from a preferred feeding area may reduce foraging success, increase stress levels, and increase energy expenditures. Potential adverse effects of Industry noise on walruses can be reduced through the implementation of the monitoring and mitigation measures identified in this ITR.

Potential acoustic injuries from high levels of sound such as those produced during seismic surveys may manifest in the form of temporary or permanent changes in hearing sensitivity. The underwater hearing abilities of the Pacific walrus have not been studied sufficiently to develop species-specific criteria for preventing harmful exposure. Sound pressure level thresholds have been developed for other members of the pinniped taxonomic group, above which exposure is likely to cause behavioral responses and injuries (Finneran 2015).

Historically, the National Oceanic and Atmospheric Administration (NOAA) has used 190 $dB_{rms}$ as a threshold for predicting injury to pinnipeds and 160 $dB_{rms}$ as a threshold for behavioral impacts from exposure to impulse noise (NMFS 1998, HESS 1999). The behavioral response threshold was developed based primarily on observations of marine mammal responses to airgun operations (*e.g.,* Malme *et al.,* 1983a, 1983b; Richardson *et al.,* 1986, 1995). Southall *et al.* 2007 assessed relevant studies, found considerable variability among pinnipeds, and determined that exposures between ~90 and 140 dB generally do not appear to induce strong behavioral responses in pinnipeds in water, but an increasing probability of avoidance and other behavioral effects exists in the 120 to 160 dB range.

The NOAA 190-$dB_{rms}$ injury threshold is an estimate of the sound level likely to cause a permanent shift in hearing threshold (permanent threshold shift or PTS). This value was modelled from temporary threshold shifts (TTS) observed in pinnipeds (NMFS 1998, HESS 1999). More recently, Kastak *et al.* (2005) found exposures resulting in TTS in pinniped test subjects ranging from 152 to 174 dB (183 to 206 dB SEL). Southall *et al.* (2007) reviewed the literature and derived behavior and injury thresholds based on peak sound pressure levels of 212 dB (peak) and 218 dB (peak) respectively. Because onset of TTS can vary in response to duration of exposure, Southall *et al.* (2007) also derived thresholds based on sound exposure levels (SEL). Sound exposure level can be thought of as a composite metric that represents both the magnitude of a sound and its duration. The study proposed threshold SELs weighted at frequencies of greatest sensitivities for pinnipeds of 171 dB (SEL) and 186 dB (SEL) for behavioral impacts and injury respectively (Southall *et al.* 2007). Reichmuth *et al.* (2008) demonstrated a persistent TTS, if not a PTS, after 60 seconds of 184 dB SEL. Kastelein (2012) found small but statistically significant TTSs at approximately 170 dB SEL (136 dB, 60 min) and 178 dB SEL (148 dB, 15 min).

Based on these data, and applying a precautionary approach in the absence of empirical information, we assume it is possible that walruses exposed to 190-dB or greater sound levels from underwater activities (especially seismic surveys) could suffer injury from PTS. Walruses exposed to underwater sound pressure levels greater than 180 dB could suffer temporary shifts in hearing thresholds. Repeated or continuous exposure to sound levels between 160 and 180 dB may also result in TTS, and exposures above 160 dB are more likely to elicit behavioral responses than lower level exposures. The Service's underwater sound mitigation measures include employing protected species observers (PSOs) to establish and monitor 160-dB, 180-dB, and 190-dB isopleth mitigation zones centered on any underwater sound source greater than 160 db. The 160-dB zone must be monitored; walruses in this zone will be assumed to experience Level B take. The 180-dB and 190-dB zones shall be free of marine mammals before the sound-producing activity can begin and must remain free of marine mammals during the activity. The proposed ITRs incorporate slight changes in the mitigation zones when compared to previous ITRs for the region. Previous ITRs have required separate actions for groups of greater than 12 walruses. Industry activities are unlikely to encounter large aggregations of walruses in the Beaufort Sea. This stipulation was originally developed for and is more applicable to mitigation of impacts to walruses in the Chukchi Sea and is not likely to be applicable in the Beaufort Sea.

The acoustic thresholds for marine mammals under NOAA's jurisdiction are currently being revised (NOAA 2015, NOAA 2016). New thresholds will estimate PTS onset levels for impulsive (*e.g.,* airguns, impact pile drivers) and nonimpulsive (*e.g.,* sonar, vibratory pile drivers) sound sources. Thresholds will be specific to marine mammal functional hearing groups; separate thresholds for otariid and phocid pinnipeds will be adopted. Auditory weighting functions will be incorporated into calculation of PTS threshold levels. The updated acoustic thresholds will also account for accumulation of injury due to repeated or ongoing exposure by adopting dual metrics of sound (cumulative sound exposure level and peak sound pressure level). The updated criteria will not provide specification for modeling sound exposures from various activities. They will not update thresholds for preventing behavioral responses, nor will they provide any new information regarding the Pacific walrus.

Once NOAA's new criteria for preventing harm to marine mammals from sound exposure are finalized, the Service will evaluate the new thresholds for applicability to walruses. In most cases, the Service's existing thresholds for Pacific walrus will result in greater separation distances or shorter periods of exposure to Industry sound sources than would NOAA's new pinniped thresholds. Assuming walrus hearing sensitivities are similar to other pinnipeds, the Service's sound exposure thresholds are, in some situations, likely to be more conservative than necessary to prevent injury from PTS and TTS. However, animals may be exposed to multiple stressors beyond acoustics during an activity, with the possibility of additive or synergistic effects (*e.g.,* Crain *et al.* 2008). The Service's mitigation measures will prevent acoustic injury as well as minimize noise exposures that may cause biologically significant behavioral reactions in walruses.

To reduce the likelihood of Level B harassment, and prevent behavioral responses capable of causing Level A harassment, the Service has established an 805-m (0.5-mile) operational exclusion zone around groups of

walruses feeding in water or any walrus observed on land or ice. As mentioned previously, walruses show variable reactions to noise sources. Relatively minor reactions, such as increased vigilance, are not likely to disrupt biologically important behavioral patterns and, therefore, do not reach the level of harassment, as defined by the MMPA. However, more significant reactions have been documented in response to noise. Industry monitoring efforts in the Chukchi Sea suggest that icebreaking activities can displace some walrus groups up to several kilometers away (Brueggeman *et al.* 1990). Approximately 25 percent of walrus groups on pack-ice responded by diving into the water, and most reactions occurred within 1 km (0.6 mi) of the ship (Brueggeman *et al.* 1991). Reactions such as fleeing a haulout or departing a feeding area have the potential to disrupt biologically significant behavioral patterns, including nursing, feeding, and resting, and may result in decreased fitness for the affected animal. These reactions meet the criteria for Level B harassment under the MMPA. Industry activities producing high levels of noise or occurring in close proximity also have the potential to illicit extreme reactions (Level A harassment) including separation of mothers from young or instigation of stampedes. However, most groups of hauled out walruses showed little reaction to icebreaking activities beyond 805 m (0.5 mi; Brueggeman *et al.* 1990).

Because some seismic survey activities are expected to occur in nearshore regions of the Beaufort Sea, impacts associated with support vessels and aircraft are likely to be locally concentrated, but distributed over time and space. Therefore, noise and disturbance from aircraft and vessel traffic associated with seismic surveys are expected to have relatively localized, short-term effects. The mitigation measures stipulated in these ITRs will require seismic survey vessels and associated support vessels to apply acoustic mitigation zones, maintain an 805-m (0.5-mile) distance from Pacific walrus groups, introduce noise gradually by implementing ramp-up procedures, and to maintain a 457-m (1,500-ft) minimum altitude above walruses. These measures are expected to reduce the intensity of disturbance events and to minimize the potential for injuries to animals.

With the low occurrence of walruses in the Beaufort Sea and the adoption of the mitigation measures required by this ITR, the Service concludes that the only anticipated effects from Industry noise in the Beaufort Sea would be short-term behavioral alterations of small numbers of walruses.

Vessel Traffic

Although seismic surveys and offshore drilling operations are expected to occur in areas of open water away from the pack ice, support vessels and aircraft servicing seismic and drill operations may encounter aggregations of walruses hauled out onto sea-ice. The sight, sound, or smell of humans and machines could potentially displace these animals from any ice haulouts. Walruses react variably to noise from vessel traffic; however, it appears that low-frequency diesel engines cause less of a disturbance than high-frequency outboard engines. In addition, walrus densities within their normal distribution are highest along the edge of the pack-ice, and Industry vessel traffic typically avoids these areas. The reaction of walruses to vessel traffic is dependent upon vessel type, distance, speed, and previous exposure to disturbances. Walruses in the water appear to be less readily disturbed by vessels than walruses hauled out on land or ice. Furthermore, barges and vessels associated with Industry activities travel in open water and avoid large ice floes or land where walruses are likely to be found. In addition, walruses can use a vessel as a haul-out platform. In 2009, during Industry activities in the Chukchi Sea, an adult walrus was found hauled out on the stern of a vessel. It eventually left once confronted.

Drilling operations are expected to involve drill ships attended by icebreaking vessels to manage incursions of sea-ice. Ice management operations are expected to have the greatest potential for disturbances since walruses are more likely to be encountered in sea-ice habitats and ice management operations typically require the vessel to accelerate, reverse direction, and turn rapidly, thereby maximizing propeller cavitation and producing significant noise. Previous monitoring efforts in the Chukchi Sea suggest that icebreaking activities can displace some walrus groups up to several kilometers away; however, most groups of hauled-out walruses showed little reaction beyond 805 m (0.5 mi).

Monitoring programs associated with exploratory drilling operations in the Chukchi Sea since 1990 noted that approximately 25 percent of walrus groups encountered in the pack-ice during icebreaking responded by diving into the water, with most reactions occurring within 1 km (0.6 mi) of the ship. The monitoring report noted that: (1) Walrus distributions were closely linked with pack-ice; (2) pack-ice was near active prospects for relatively short time periods; and (3) ice passing near active prospects contained relatively few animals. The report concluded that effects of the drilling operations on walruses were limited in time, geographical scale, and the proportion of population affected.

When walruses are present, underwater noise from vessel traffic in the Beaufort Sea may ''mask'' ordinary communication between individuals by preventing them from locating one another. It may also prevent walruses from using potential habitats in the Beaufort Sea and may have the potential to impede movement. Vessel traffic will likely increase if offshore Industry expands and may increase if warming waters and seasonally reduced sea-ice cover alter northern shipping lanes.

Because offshore exploration activities are expected to move throughout the Beaufort Sea, impacts associated with support vessels and aircrafts are likely to be distributed in time and space. Therefore, the only effect anticipated would be short-term behavioral alterations impacting small numbers of walruses in the vicinity of active operations. Adoption of mitigation measures that include an 805-m (0.5-mi) exclusion zone for marine vessels around walrus groups observed on ice are expected to reduce the intensity of disturbance events and minimize the potential for injuries to animals.

Aircraft Traffic

Aircraft overflights may disturb walruses. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walruses tend to be more sensitive to aircraft disturbance. Fixed-winged aircraft are less likely to elicit a response than helicopter overflights. Walruses are particularly sensitive to changes in engine noise and are more likely to stampede when planes turn or fly low overhead. Researchers conducting aerial surveys for walruses in sea-ice habitats have observed little reaction to fixed-winged aircraft above 457 m (1,500 ft) (USFWS unpubl. data). Although the intensity of the reaction to noise is variable, walruses are probably most susceptible to disturbance by fast-moving and low-flying aircraft (100 m (328 ft) above ground level) or aircraft that change or alter speed or direction. In the Chukchi Sea there are recent examples of walruses being disturbed by aircraft flying in the vicinity of haulouts. It appears that walruses are

more sensitive to disturbance when hauled out on land versus sea-ice.

Physical Obstructions

Based on known walrus distribution and the very low numbers found in the Beaufort Sea, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar Island or causeway-linked Endicott complex, or by vessel traffic. There is no indication that the few walruses that used Northstar Island as a haulout in the past were displaced from their movements. Vessel traffic could temporarily interrupt the movement of walruses, or displace some animals when vessels pass through an area. This displacement would probably have minimal or no effect on animals and would last no more than a few hours.

Human Encounters

Human encounters with walruses could occur in the course of Industry activities, although such encounters would be rare due to the limited distribution of walruses in the Beaufort Sea. These encounters may occur within certain cohorts of the population, such as calves or animals under stress. In 2004, a suspected orphaned calf hauled-out on the armor of Northstar Island numerous times over a 48-hour period, causing Industry to cease certain activities and alter work patterns before it disappeared in stormy seas. Additionally, a walrus calf was observed for 15 minutes during an exploration program 60 ft from the dock at Cape Simpson in 2006. From 2009 through 2014, Industry reported no similar interactions with walruses.

Effect on Prey Species

Walruses feed primarily on immobile benthic invertebrates. The effect of Industry activities on benthic invertebrates most likely would be from oil discharged into the environment. Oil has the potential to impact walrus prey species in a variety of ways including, but not limited to, mortality due to smothering or toxicity, perturbations in the composition of the benthic community, as well as altered metabolic and growth rates. Relatively few walruses are present in the central Beaufort Sea. It is important to note that, although the status of walrus prey species within the Beaufort Sea are poorly known, it is unclear to what extent, if any, prey abundance plays in limiting the use of the Beaufort Sea by walruses. Further study of the Beaufort Sea benthic community as it relates to walruses is warranted. The low likelihood of an oil spill large enough to affect prey populations (see the section titled Risk Assessment of Potential Effects Upon Polar Bears From a Large Oil Spill in the Beaufort Sea) combined with the fact that walruses are not present in the region during the ice-covered season and occur only infrequently during the open-water season indicates that Industry activities will likely have limited indirect effects on walruses through effects on prey species.

*Polar Bear*

Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could disturb polar bears. The impact of noise disturbances may affect bears differently depending upon their reproductive status (*e.g.,* denning versus non-denning bears). The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include construction, maintenance, repair and remediation activities, operations at production facilities, gas flaring, and drilling operations from either onshore or offshore facilities. Mobile sources include vessel and aircraft traffic, open-water seismic exploration, winter vibroseis programs, geotechnical surveys, ice road construction, vehicle traffic, tracked vehicles and snowmobiles, drilling, dredging, and ice-breaking vessels.

Noise produced by stationary activities could elicit variable responses from polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities, especially exploration facilities in the coastal or nearshore environment, could result in human-bear encounters, unintentional harassment, intentional hazing, or lethal take of the bear.

Industry activities may potentially disturb polar bears at maternal den sites. The timing of potential Industry activity compared with the timing of the maternal denning period can have variable impacts on the female bear and her cubs. Disturbance, including noise, may negatively impact bears less during the early stages of denning when the pregnant female has less investment in a den site before giving birth. She may abandon the site in search of another one and still successfully den and give birth. Premature den site abandonment after the birth of cubs may also occur. If den site abandonment occurs before the cubs are able to survive outside of the den, or if the female abandons the cubs, the cubs will die.

An example of a den abandonment in the early stages of denning occurred in January 1985, where a female polar bear appears to have abandoned her den in response to Rolligon traffic within 500 m (1,640 ft) of the den site. In spring 2002, noise associated with a polar bear research camp in close proximity to a bear den is thought to have caused a female bear and her cub(s) to abandon their den and move to the ice prematurely. In spring 2006, a female with two cubs emerged from a den 400 m (1,312 ft) from an active river crossing construction site. The den site was abandoned within hours of cub emergence, and 3 days after the female had emerged. In spring 2009, a female with two cubs emerged from a den within 100 m (328 ft) of an active ice road with heavy traffic and quickly abandoned the site. In January 2015 a freshly dug polar den was discovered in an active gravel pit adjacent to an active landfill and busy road. The bear abandoned the den after 56 days. During the time the bear occupied the den, Industry activity in the area was restricted, and the den was constantly monitored. A subsequent investigation of the den found no evidence that the bear gave birth. It is unknown if or to what extent Industry activity contributed to the bear leaving the den. While such events may have occurred, information indicates they have been infrequent and isolated. It is important to note that the knowledge of these recent examples occurred because of the monitoring and reporting program established by the ITRs.

Conversely, during the denning seasons of 2000–2002, two dens known to be active were located within approximately 0.4 km and 0.8 km (~0.25 mi and ~0.5 mi) of remediation activities on Flaxman Island in the Beaufort Sea with no observed impact to the polar bears. This observation suggests that polar bears exposed to routine industrial noises may habituate to those noises and show less vigilance than bears not exposed to such stimuli. This observation came from a study that occurred in conjunction with industrial activities performed on Flaxman Island in 2002 and a study of undisturbed dens in 2002 and 2003 (N = 8) (Smith *et al.* 2007). Researchers assessed vigilant behavior with two potential measures of disturbance: (1) The proportion of time scanning their surroundings; and (2) the frequency of observable vigilant behaviors. The two bears exposed to the industrial activity spent less time scanning their surroundings than bears

in undisturbed areas and engaged in vigilant behavior significantly less often.

The potential for disturbance increases once the female emerges from the den. She is more vigilant against perceived threats and easier to disturb. As noted earlier, in some cases, while the female is in the den, Industry activities have progressed near den site with no observed disturbance. In the 2006 denning example previously discussed, it was believed that Industry activity commenced in the area after the den had been established. Industry activities occurred within 50 m (164 ft) of the den site with no apparent disturbance while the female was in the den. Ongoing activity most likely had been occurring for approximately 3 months in the vicinity of the den.

Likewise, in 2009, two bear dens were located along an active ice road. The bear at one den site appeared to establish her site prior to ice road activity and was exposed to approximately 3 months of activity 100 m (328 ft) away and emerged at the appropriate time. The other den site was discovered after ice road construction commenced. This site was exposed to ice road activity, 100 m (328 ft) away, for approximately 1 month. Known instances of polar bears establishing dens prior to the onset of Industry activity within 500 m (1,640 ft) or less of the den site, but remaining in the den through the normal denning cycle and later leaving with her cubs, apparently undisturbed despite the proximity of Industry activity, occurred in 2006, 2009, 2010, and 2011.

Industry observation data suggests that, with proper mitigation measures in place, activities can continue in the vicinity of dens until the emergence by the female bear. Mitigation measures such as activity shutdowns near the den and 24-hour monitoring of the den site can minimize impacts to the animals and allow the female bear to naturally abandon the den when she chooses. For example, in the spring of 2010, an active den site was observed approximately 60 m (197 ft) from a heavily used ice road. A 1.6-km (1-mi) exclusion zone was established around the den, closing a 3.2 km (2-mi) section of the road. Monitors were assigned to observe bear activity and monitor human activity to minimize any other impacts to the bear group. These mitigation measures minimized disturbance to the bears and allowed them to abandon the den site naturally.

Mobile sources of sound, *e.g.,* vessel-based exploration activities, seismic surveys, or geophysical surveys, may disturb polar bears. In the open-water season, Industry activities are generally limited to relatively ice-free, open water. During this time in the Beaufort Sea, polar bears are typically found either on land or on the pack ice, which limits the chances of the interaction of polar bears with offshore Industry activities. Though polar bears have been observed in open water, miles from the ice edge or ice floes, the encounters are relatively rare. However, if bears come in contact with Industry operations in open water, the effects of such encounters may include short-term behavioral disturbance. Bears in the water could be affected by sound in the water, but received sound in the water would be attenuated near the surface due to the pressure release effect of airgun sounds near the water's surface (Greene and Richardson 1988, Richardson *et al.* 1995). Because polar bears generally do not dive far or for long below the surface and they normally swim with their heads above the surface, it is likely that they would be exposed to very little sound in the water. Exposure to sound in the water would also be short term and temporary for only the time a bear's head was below the surface. It is likely that offshore seismic exploration activities or other geophysical surveys during the open-water season would result in no more than short-term and temporary behavioral disturbance to polar bears, similar to that discussed earlier.

In 2012, during the open-water season, Shell vessels encountered a few polar bears swimming in ice-free water more than 70 mi (112.6 km) offshore in the Chukchi Sea. In those instances the bears were observed to either swim away from or approach the Shell vessels. Sometimes a polar bear would swim around a stationary vessel before leaving. In at least one instance a polar bear approached, touched, and investigated a stationary vessel from the water before swimming away.

Polar bears are more likely to be affected by on-ice or in-ice Industry activities versus open-water activities. From 2009 through 2014 there were a few Industry observation reports of polar bears during on-ice activities. Those observations were primarily of bears moving through an area during winter seismic surveys on near-shore ice. The disturbance to bears, if any, was minimal, short-term, and temporary due to the mobility of such projects and limited to small-scale alterations to bear movements.

Vessel Traffic

During the open-water season, most polar bears remain offshore associated with the multiyear pack ice and are not typically present in the ice-free areas where vessel traffic occurs. Barges and vessels associated with Industry activities travel in open water and avoid large ice floes. As demonstrated in the 2012 Shell example previously, encounters between vessels and polar bears would most likely result in short-term and temporary behavioral disturbance only.

Aircraft Traffic

Routine Industry aircraft traffic should have little to no effect on polar bears, though frequent and chronic aircraft activity may cause more significant disturbance. Observations of polar bears during fall coastal surveys, which flew at much lower altitudes than is required of Industry aircraft (see mitigation measures), indicate that the reactions of non-denning polar bears should be limited to short-term changes in behavior ranging from no reaction to running away. Such disturbance should have no more than short-term, temporary, and minor impacts on individuals and no discernible impacts on the polar bear population, unless it was chronic and long-term. In contrast, denning bears could prematurely abandon their dens in response to repeated aircraft overflight noise. Mitigation measures, such as minimum flight elevations over polar bears, habitat areas of concern, and flight restrictions around known polar bear dens, will be required, as appropriate, to reduce the likelihood that polar bears are disturbed by aircraft.

Physical Obstructions

Industry facilities may act as physical barriers to movements of polar bears. Most facilities are located onshore and inland where polar bears are less frequently found. The offshore and coastal facilities are more likely to be approached by polar bears. The majority of Industry bear observations occur within 1.6-km (1-mi) of the coastline as bears use this area as travel corridors. As bears encounter these facilities, the chances for human-bear interactions increase. The Endicott and West Dock causeways, as well as the facilities supporting them, have the potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. However, polar bears have frequently been observed crossing existing roads and causeways and appear to traverse the human-developed areas as easily as the undeveloped areas. Offshore production facilities, such as Northstar, Spy Island, and Oooguruk, have frequently been approached by polar bears, but appear to present only a small-scale, local obstruction to the

bears' movement. Of greater concern is the increased potential for polar bear-human interaction at these facilities.

Human Encounters

Historically, polar bear observations are seasonally common, but close encounters with Industry personnel are uncommon. These encounters can be dangerous for both polar bears and humans.

Encounters are more likely to occur during the fall at facilities on or near the coast. Polar bear interaction plans, training, and monitoring required by the ITRs have proven effective at reducing polar bear–human encounters and the risks to bears and humans when encounters occur. Polar bear interaction plans detail the policies and procedures that Industry facilities and personnel will implement to avoid attracting and interacting with polar bears as well as minimizing impacts to the bears. Interaction plans also detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel.

Industry has also developed and uses technology to aid in detecting polar bears, including bear monitors, closed-circuit television (CCTV), video cameras, thermal cameras, radar devices, and motion-detection systems. In addition, some companies take steps to actively prevent bears from accessing facilities using safety gates and fences.

Known polar bear dens around the oilfield, discovered opportunistically, or as a result of planned surveys, such as tracking marked bears or den detection surveys, are monitored by the Service. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year Industry coordinates with the Service to conduct surveys to determine the location of Industry's activities relative to known dens and denning habitat. Industry activities are required to avoid known polar bear dens by 1 mi. There is the possibility that an unknown den may be encountered during Industry activities. When a previously unknown den is discovered in proximity to Industry activity, the Service implements mitigation measures such as the 1.6-km (1-mi) activity exclusion zone around the den and 24-hour monitoring of the site.

Effect on Prey Species

The effects of Industry activity upon polar bear prey, primarily ringed seals, will be similar to that of effects upon walruses, and primarily through noise disturbance or exposure to an oil spill. Seals may be displaced by disturbance from habitat areas such as pupping lairs or haulouts and abandon breathing holes near Industry activity. However, these disturbances appear to have minor, short-term, and temporary effects (NMFS 2013). Effects of contamination from oil discharges for seals are described in the following section.

**Evaluation of Effects of Oil and Gas Industry Activity on Pacific Walruses and Polar Bears**

*Pacific Walrus*

Proposed Industry activities may result in some incremental cumulative effects to the relatively few walruses exposed to these activities through the potential exclusion or avoidance of walruses from resting areas and disruption of associated biological behaviors. However, based on the habitat use patterns of walruses and their close association with seasonal pack-ice, relatively few animals are likely to be encountered during the open-water season when marine activities are expected to occur. Required monitoring and mitigation measures designed to minimize interactions between Industry activities and walruses are also expected to limit these impacts. Hunting pressure, climate change, and the increase of other human activities in walrus habitat all have potential to impact walruses. But those activities and their impacts are mostly a concern in the Bering and Chukchi seas where large numbers of walruses are found. Therefore, we conclude that in the Beaufort Sea, Industry activities during the 5-year period covered by these regulations, as mitigated through the regulatory process, are not expected to add significantly to the cumulative impacts on the walrus population.

*Polar Bear*

The effects of Industry activity are evaluated, in part, through information gained in monitoring reports, which are required for each LOA issued. Information from these reports provides a history of past effects on polar bears from interactions with Industry activities. In addition, information used in our effects evaluation includes published and unpublished polar bear research and monitoring reports, information from the 2008 ESA polar bear listing, stock assessment reports, status reviews, conservation plans, Alaska Native traditional knowledge, anecdotal observations, and professional judgment.

Since 1993, the documented impacts of incidental take by Industry activity in the Beaufort Sea ITR region affected only small numbers of bears, were primarily short-term changes to behavior, and had no long-term impacts on individuals and no impacts on the polar bear population. Industry monitoring data has documented various types of interactions between polar bears and Industry. The most significant impacts to polar bears from Industry activity have been the result of close bear-human encounters, some of which have led to deterrence events.

For the analysis of Industry take of polar bears, we included both incidental and intentional takes that occurred from 2010 through 2014. We included intentional takes to provide a transparent and complete analysis of Industry-related polar bear takes on the North Slope of Alaska. Intentional take of polar bears is a separate authorization under sections 101(a)(4)(A), 109(h), and 112(c) of the MMPA and is distinct from the ITRs. Intentional take authorizations allow citizens conducting activities in polar bear habitat to take polar bears by nonlethal, noninjurious harassment for the protection of both human life and polar bears. The purpose of the intentional take authorization is to deter polar bears prior to a bear-human encounter escalating to the use of deadly force against a polar bear. The Service provides guidance and training as to the appropriate harassment response necessary for polar bears. The MMPA-specific authorizations have proven to be successful in preventing injury and death to humans and polar bears.

From 2010 through 2014, a total of 107 LOAs were issued to Industry, and polar bear observations were recorded for 36.4 percent (39) of those LOAs. Industry reported 1,234 observations of 1,911 polar bears. The highest number of bears was observed during the months of August and September. Industry polar bear observations have increased from previous regulatory time periods. The higher number of bear sightings was most likely the result of an increased number of bears using terrestrial habitat as a result of changes in sea-ice, multiple vessel-based projects occurring near barrier islands, and the increased compliance and improved monitoring of Industry projects. This trend in observations is consistent with the anticipation that polar bears will increase their use of coastal habitats during the months when sea-ice is far from shore and over deep water. Because some of the reports were repeat observations of the same bears on different dates, the actual number of individual bears encountered is lower than reported. However, due to the nature of the information in the Industry

observation reports, we must accept the information ''as is'' while acknowledging that it collectively over-reports bear numbers.

When we compared the reported bear numbers to the SBS population (*i.e.,* 900 bears), we found that 42 percent of the SBS polar bear population may have been observed by Industry personnel from 2010 to 2014. When we evaluated the effects upon the 1,911 bears observed, we found that 81 percent (1,549) resulted in instances of non-taking. Of the remaining 362 encounters, 78 resulted in Level B takes by incidental disturbance, 260 Level B takes by deterrence, 23 instances of unknown effect, and 1 Level A take associated with Industry activity. Over those 5 years, 338 Level B takes of polar bears occurred, which is approximately 18 percent of the observed bears, or 7.5 percent of the SBS population.

For the 2011–2016 ITR, the Service estimated that takes of polar bears by all Level B harassment events would not exceed 150 per year. Our analysis of Industry polar bear observation reports shows that from 2010 through 2014 an average of 68 Level B harassment events occurred per year, well below our estimated value. Industry activities that occur on or near the Beaufort Sea coast continue to have the greatest potential for encountering polar bears rather than Industry activities occurring inland or far offshore.

From 2010 through 2014, intentional harassment by deterrence of 260 polar bears (14 percent of the observed 1,911) resulted in Level B take. The percentage of polar bear deterrence events that result in Level B take has decreased over time from a high of 39 percent of observed bears in 2005. The Service attributes this long-term decrease in deterrence events to increased polar bear safety and awareness training of Industry personnel as well as our ongoing deterrence education, training, and monitoring programs. We have no indication that nonlethal, noninjurious harassment by deterrence, which temporarily alters the behavior and movement of some bears, has an effect on survival and recruitment in the SBS polar bear population.

Lethal take of polar bears by Industry activity is very rare. Since 1968, three documented cases of lethal take of polar bears associated with oil and gas activities have occurred. In winter 1968–1969, an Industry employee shot and killed a polar bear in defense of human life. In 1990, a female polar bear was killed at a drill site on the west side of Camden Bay, also in defense of human life. Since the beginning of the incidental take program in 1993, which includes measures that minimize impacts to the species, one polar bear has been killed due to encounters associated with current Industry activities on the North Slope. In August 2011, a female polar bear was accidentally killed on the Endicott causeway when an attempt to nonlethally deter the bear was not conducted properly. After the 2011 lethal take incident, the Service reviewed the circumstances that contributed to the death of the bear and implemented a series of corrective actions with Industry. The Service believes that the corrective actions significantly reduce the potential for a similar situation to arise in the future. Therefore, we do not anticipate any lethal take of polar bears during the 5-year period of these proposed ITRs.

The activities proposed by Industry are likely to result in incremental cumulative effects to polar bears during the 5-year regulatory period. Based on Industry monitoring information, for example, deflection from travel routes along the coast appears to be a common occurrence, where bears move around coastal facilities rather than traveling through them. Incremental cumulative effects could also occur through the potential exclusion or temporary avoidance of polar bears from feeding, resting, or denning areas and disruption of associated biological behaviors. However, based on monitoring results acquired from past ITRs, the level of cumulative effects, including those of climate change, during the 5-year regulatory period would result in negligible effects on the bear population.

Mitigation measures required for all projects will include a polar bear interaction plan, training of personnel, a record of communication with potentially affected communities, and a POC when appropriate. Mitigation measures that may be used on a case-by-case basis include the use of trained marine mammal monitors associated with marine activities, the use of den habitat maps developed by the USGS, surveys to locate polar bear dens, timing of the activity to limit disturbance around dens, the 1.6-km (1-mi) buffer surrounding known dens, and suggested work actions around known dens. The Service implements certain mitigation measures based on need and effectiveness for specific activities based largely on timing and location. For example, the Service will implement different mitigation measures for a 2-month-long exploration project 20 mi inland from the coast, than for an annual nearshore development project in shallow waters.

An example of the application of this process would be in the case of Industry activities occurring around a known bear den, where a standard condition of an LOA requires Industry projects to have developed a polar bear interaction plan and to maintain a 1.6-km (1-mi) buffer between Industry activities and any known denning sites. In addition, we may require Industry to avoid working in known denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens through the use of remote sensing techniques, such as maps of denning habitat along the Beaufort Sea coast and FLIR imagery.

FLIR imagery, as a mitigation tool, is used in cooperation with coastal polar bear denning habitat maps. Industry activity areas, such as coastal ice roads, are compared to polar bear denning habitat, and transects are then created to survey the specific habitat within the Industry area. FLIR heat signatures within a standardized den location protocol are noted, and further mitigation measures are placed around these locations. FLIR surveys are more effective at detecting polar bear dens than visual observations. The effectiveness increases when FLIR surveys are combined with site-specific, scent-trained dog surveys. These techniques will continue to be required as conditions of LOAs when appropriate.

Industry has sponsored cooperative research evaluating how polar bears perceive and respond to various types of disturbance. This information has been useful to refine site-specific mitigation measures. Using current mitigation measures, Industry activities have had no known polar bear population-level effects during the period of previous regulations. We anticipate that, with continued mitigation measures, the impacts to denning and non-denning polar bears will be at the same low level as in previous regulations.

The Service believes that the required mitigation measures will be effective in minimizing the impacts of Industry activity upon polar bears during the 5-year timeframe of this proposed ITR as they have in the past.

For further information on the cumulative effects of oil and gas development on polar bears in Alaska, refer to the Service's 2008 ''Range-Wide Status Review of the Polar Bear (*Ursus maritimus*)'' at: *http://www.fws.gov/alaska/fisheries/mmm/polarbear/pdf/Polar_Bear_%20Status_Assessment.pdf.*

**Potential Effects of Oil Spills on Pacific Walruses and Polar Bears**

Walrus and polar bear ranges overlap with many active and planned Industry activities. There is a risk of oil spills from facilities, ships, and pipelines in both offshore and onshore habitat. To date, no major offshore oil spills have occurred in the Alaska Beaufort Sea. Though numerous small onshore spills have occurred on the North Slope, there have been no documented effects to polar bears.

Oil spills are unintentional releases of oil or petroleum products. In accordance with the National Pollutant Discharge Elimination System Permit Program, all North Slope oil companies must submit an oil spill contingency plan. It is illegal to discharge oil into the environment, and a reporting system requires operators to report spills. Between 1977 and 1999, an average of 70 oil and 234 waste product spills occurred annually on the North Slope oilfields. Although most spills have been small by Industry standards (less than 50 bbl), larger spills (more than 500 bbl) accounted for much of the annual volume. Seven large spills occurred between 1985 and 2009 on the North Slope. The largest spill occurred in the spring of 2006 when approximately 6,190 bbl leaked from flow lines near an oil gathering center. More recently, several large spills have occurred. In 2012, 1,000 bbl of drilling mud and 100 bbl of crude were spilled in separate incidents, in 2013, approximately 166 bbl of crude oil was spilled, and in 2014, 177 bbl of drilling mud was spilled. Those spills occurred primarily in the terrestrial environment in heavily industrialized areas not utilized by walruses or polar bears and posed little risk to the animals.

Walruses and polar bears could encounter spilled oil from exploratory operations, existing offshore facilities, pipelines, or from marine vessels. The shipping of crude oil, oil products, or other toxic substances, as well as the fuel for the shipping vessels, increases the risk of a spill. Future reductions in Arctic sea-ice extent are expected to improve access to Arctic shipping lanes and extend the Arctic shipping season, also increasing the risk of a spill.

Oil spills in the sea-ice environment, at the ice edge, in leads, polynyas, and similar areas of importance to walruses and polar bears, are of particular concern. Oil spilled in those areas presents an even greater challenge because of both the difficulties associated with cleaning oil in sea-ice, and the presence of wildlife in those areas. As additional offshore Industry projects are planned, the potential for large spills in the marine environment increases.

Oiling of food sources, such as ringed seals, may result in indirect effects on polar bears, such as a local reduction in ringed seal numbers, or a change to the local distribution of seals and bears. More direct effects on polar bears could occur from: (1) Ingestion of oiled prey, potentially resulting in reduced survival of individual bears; (2) oiling of fur and subsequent ingestion of oil from grooming; (3) oiling and fouling of fur with subsequent loss of insulation, leading to hypothermia; and (4) disturbance, injury, or death from interactions with humans during oil spill response activities. Polar bears may be particularly vulnerable to disturbance when nutritionally stressed and during denning. Cleanup operations that disturb a den could result in death of cubs through abandonment, and perhaps death of the sow as well. In spring, females with cubs of the year that denned near or on land and migrate to contaminated offshore areas may encounter oil following a spill (Stirling in Geraci and St. Aubin 1990).

In the event of an oil spill, the Service follows oil spill response plans to respond to the spill, coordinate with partners, and reduce the impact of a spill on wildlife. Several factors will be considered when responding to an oil spill. They include the location of the spill, the magnitude of the spill, oil viscosity and thickness, accessibility to spill site, spill trajectory, time of year, weather conditions (*i.e.,* wind, temperature, precipitation), environmental conditions (*i.e.,* presence and thickness of ice), number, age, and sex of walruses and polar bears that are (or are likely to be) affected, degree of contact, importance of affected habitat, cleanup proposal, and likelihood of human-bear interactions. Response efforts will be conducted under a three-tier approach characterized as: (1) Primary response, involving containment, dispersion, burning, or cleanup of oil; (2) secondary response, involving hazing, herding, preventative capture/relocation, or additional methods to remove or deter wildlife from affected or potentially affected areas; and (3) tertiary response, involving capture, cleaning, treatment, and release of wildlife. If the decision is made to conduct response activities, primary and secondary response options will be vigorously applied. Tertiary response capability has been developed by the Service and partners, though such response efforts would most likely only be able to handle a few animals at a time. More information is available in the Service's oil spill response plans for walruses and polar bears in Alaska is located at: *http://www.fws.gov/alaska/fisheries/contaminants/pdf/Polar%20Bear%20WRP%20final%20v8_Public%20website.pdf* and *https://dec.alaska.gov/spar/ppr/plans/uc/Annex%20G%20(Oct%202012).pdf.*

BOEM has acknowledged that there are difficulties in effective oil-spill response in broken-ice conditions, and the National Academy of Sciences has determined that ''no current cleanup methods remove more than a small fraction of oil spilled in marine waters, especially in the presence of broken ice.'' BOEM advocates the use of nonmechanical methods of spill response, such as in-situ burning, during periods when broken-ice would hamper an effective mechanical response (MMS 2008b). An in-situ burn has the potential to rapidly remove large quantities of oil and can be employed when broken-ice conditions may preclude mechanical response. However, the resulting smoke plume may contain toxic chemicals and high levels of particulates that can pose health risks to marine mammals, birds and other wildlife, as well as to humans. Smoke trajectories must be considered before making the decision to burn spilled oil. Another potential nonmechanical response strategy is the use of chemical dispersants to speed dissipation of oil from the water surface and disperse it within the water column in small droplets. Dispersant use presents environmental trade-offs. While walruses and polar bears would likely benefit from reduced surface or shoreline oiling, dispersant use could have negative impacts on the aquatic food chain. Oil spill cleanup in the broken-ice and open-water conditions that characterize Arctic waters is problematic.

**Evaluation of Effects of Oil Spills on Pacific Walruses and Polar Bears**

The MMPA does not authorize the incidental take of marine mammals as the result of illegal actions, such as oil spills. Any event that results in an injurious or lethal outcome to a marine mammal is not authorized under this ITR. However, for the purpose of determining whether Industry activity would have a negligible effect on walruses and polar bears, the Service evaluated the potential impacts of oil spills within the Beaufort Sea ITR region.

*Pacific Walrus*

As stated earlier, the Beaufort Sea is not within the primary range for walruses. Therefore, the probability of

walruses encountering oil or waste products as a result of a spill from Industry activities is low. Onshore oil spills would not impact walruses unless oil moved into the offshore environment. In the event of a spill that occurs during the open-water season, oil in the water column could drift offshore and possibly encounter a small number of walruses. Oil spills from offshore platforms could also contact walruses under certain conditions. Spilled oil during the ice-covered season not cleaned up could become part of the ice substrate and be eventually released back into the environment during the following open-water season. During spring melt, oil would be collected by spill response activities, but it could eventually contact a limited number of walruses.

Little is known about the effects of oil specifically on walruses as no studies have been conducted. Hypothetically, walruses may react to oil much like other pinnipeds. Walruses are not likely to ingest oil while grooming since walruses have very little hair and exhibit no grooming behavior. Adult walruses may not be severely affected by the oil spill through direct contact, but they will be extremely sensitive to any habitat disturbance by human noise and response activities. In addition, due to the gregarious nature of walruses, an oil spill would most likely affect multiple individuals in the area. Walruses may also expose themselves more often to the oil that has accumulated at the edge of a contaminated shore or ice lead if they repeatedly enter and exit the water.

Walrus calves are most likely to suffer the effects of oil contamination. Female walruses with calves are very attentive, and the calf will stay close to its mother at all times, including when the female is foraging for food. Walrus calves can swim almost immediately after birth and will often join their mother in the water. It is possible that an oiled calf will be unrecognizable to its mother either by sight or by smell, and be abandoned. However, the greater threat may come from an oiled calf that is unable to swim away from the contamination and a devoted mother that would not leave without the calf, resulting in the potential mortality of both animals. Further, a nursing calf might ingest oil if the cow was oiled, also increasing the risk of injury or mortality.

Walruses have thick skin and blubber layers for insulation. Heat loss is regulated by control of peripheral blood flow through the animal's skin and blubber. The peripheral blood flow is decreased in cold water and increased at warmer temperatures. Direct exposure of walruses to oil is not believed to have any effect on the insulating capacity of their skin and blubber, although it is unknown if oil could affect their peripheral blood flow.

Damage to the skin of pinnipeds can occur from contact with oil because some of the oil penetrates into the skin, causing inflammation and death of some tissue. The dead tissue is discarded, leaving behind an ulcer. While these skin lesions have only rarely been found on oiled seals, the effects on walruses may be greater because of a lack of hair to protect the skin. Direct exposure to oil can also result in conjunctivitis. Like other pinnipeds, walruses are susceptible to oil contamination in their eyes. Continuous exposure to oil will quickly cause permanent eye damage.

Inhalation of hydrocarbon fumes presents another threat to marine mammals. In studies conducted on pinnipeds, pulmonary hemorrhage, inflammation, congestion, and nerve damage resulted after exposure to concentrated hydrocarbon fumes for a period of 24 hours. If the walruses were also under stress from molting, pregnancy, etc., the increased heart rate associated with the stress would circulate the hydrocarbons more quickly, lowering the tolerance threshold for ingestion or inhalation.

Walruses are benthic feeders, and much of the benthic prey contaminated by an oil spill would be killed immediately. Others that survived would become contaminated from oil in bottom sediments, possibly resulting in slower growth and a decrease in reproduction. Bivalve mollusks, a favorite prey species of the walrus, are not effective at processing hydrocarbon compounds, resulting in highly concentrated accumulations and long-term retention of the contamination within the organism. Specifically, bivalve mollusks bioconcentrate polycyclic aromatic hydrocarbons (PAHs), a particularly toxic fraction of oil. PAHs may cause a variety of chronic toxic effects in exposed organisms, including enzyme induction, immune impairment, or cancer, among others. In addition, because walruses feed primarily on mollusks, they may be more vulnerable to a loss of this prey species than other pinnipeds that feed on a larger variety of prey. Furthermore, complete recovery of a bivalve mollusk population may take 10 years or more, forcing walruses to find other food resources or move to nontraditional areas.

The relatively few walruses in the Beaufort Sea and the low potential for a large oil spill (1,000 bbl or more), which is discussed in the following Risk Assessment Analysis, limit potential impacts to walruses to only certain events (*i.e.,* a large oil spill) and then only to a limited number of individuals. Fueling crews have personnel that are trained to handle operational spills and contain them. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately. A detailed discussion of oil spill prevention and response for walruses can be found at: *https://dec.alaska.gov/spar/ppr/plans/uc/Annex%20G%20(Oct%202012).pdf.*

*Polar Bear*

To date, large oil spills from Industry activities in the Beaufort Sea and coastal regions that would impact polar bears have not occurred, although the interest in, and the development of, offshore hydrocarbon reservoirs has increased the potential for large offshore oil spills. With limited background information available regarding oil spills in the Arctic environment, the outcome of such a spill is uncertain. For example, in the event of a large spill equal to a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline (approximately 5,900 bbl), oil would be influenced by seasonal weather and sea conditions including temperature, winds, wave action, and currents. Weather and sea conditions also affect the type of equipment needed for spill response and the effectiveness of spill cleanup. Based on the experiences of cleanup efforts following the Exxon Valdez oil spill, where logistical support was readily available, spill response may be largely unsuccessful in open-water conditions. Indeed, spill response drills have been unsuccessful in the cleanup of oil in broken-ice conditions.

Small spills of oil or waste products throughout the year could potentially impact some bears. The effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short-term or result in death. For example, in April 1988, a dead polar bear was found on Leavitt Island, northeast of Oliktok Point. The cause of death was determined to be due to a mixture that included ethylene glycol and Rhodamine B dye (Amstrup *et al.* 1989). Again, in 2012, two dead polar bears that had been exposed to Rhodamine B were found on Narwhal Island, northwest of Endicott. While those bears' deaths were clearly human-caused, investigations were unable to identify a source for the chemicals. Rhodamine B is commonly used on the North Slope of Alaska by many people

for many uses, including Industry. Without identified sources of contamination, those bear deaths cannot be attributed to Industry activity.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than non-mobile, denning females. Current management practices by Industry, such as requiring the proper use, storage, and disposal of hazardous materials, minimize the potential occurrence of such incidents. In the event of an oil spill, it is also likely that polar bears would be intentionally hazed to keep them away from the area, further reducing the likelihood of impacting the population.

In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, and biochemical changes indicative of stress, renal impairment, and death. Many effects did not become evident until several weeks after the experiment (Oritsland *et al.* 1981).

Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperature. Oiled bears are also likely to ingest oil as they groom to restore the insulation value of the oiled fur.

Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment, and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces; some was absorbed and later found in body fluids and tissues.

Ingestion of sublethal amounts of oil can have various physiological effects on polar bears, depending on whether the animal is able to excrete or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, thereby affecting motility, digestion, and absorption.

Polar bears swimming in, or walking adjacent to, an oil spill could inhale toxic, volatile organic compounds from petroleum vapors. Vapor inhalation by polar bears could result in damage to the respiratory and central nervous systems, depending on the amount of exposure.

Oil may also affect food sources of polar bears. Seals that die as a result of an oil spill could be scavenged by polar bears. This food source would increase exposure of the bears to hydrocarbons and could result in lethal impacts or reduced survival to individual bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Possible impacts from the loss of a food source could reduce recruitment and/or survival.

Spilled oil can concentrate and accumulate in leads and openings that occur during spring breakup and autumn freeze-up periods. Such a concentration of spilled oil would increase the chance that polar bears and their principal prey would be oiled. To access ringed and bearded seals, polar bears in the SBS concentrate in shallow waters less than 300 m (984 ft) deep over the continental shelf and in areas with greater than 50 percent ice cover (Durner *et al.* 2004).

Due to their seasonal use of nearshore habitat, the times of greatest impact from an oil spill to polar bears are likely the open-water and broken-ice periods (summer and fall). This scenario is important because distributions of polar bears are not uniform through time. Nearshore and offshore polar bear densities are greatest in fall, and polar bear use of coastal areas during the fall open-water period has increased in recent years in the Beaufort Sea. An analysis of data collected from 2001–2005 during the fall open-water period concluded: (1) On average approximately 4 percent of the estimated polar bears in the Southern Beaufort population were observed onshore in the fall; (2) 80 percent of bears onshore occurred within 15 km (9 mi) of subsistence-harvested bowhead whale carcasses, where large congregations of polar bears have been observed feeding; and (3) sea-ice conditions affected the number of bears on land and the duration of time they spent there (Schliebe *et al.* 2006). Hence, bears concentrated in areas where beach-cast marine mammal carcasses occur during the fall would likely be more susceptible to oiling.

The persistence of toxic subsurface oil and chronic exposures, even at sublethal levels, can have long-term effects on wildlife (Peterson *et al.* 2003). Exposure to PAHs can have chronic effects because some effects are sublethal (*e.g.,* enzyme induction or immune impairment) or delayed (*e.g.,* cancer). Although it is true that some bears may be directly affected by spilled oil initially, the long-term impact could be much greater. Long-term effects could be substantial through complex environmental interactions and compromised health of exposed animals. For example, PAHs can impact the food web by concentrating in filter-feeding organisms, thus affecting fish that feed on those organisms, and the predators of those fish, such as the ringed seals that polar bears prey upon. How these complex interactions would affect polar bears is not well understood, but sublethal, chronic effects of an oil spill may affect the polar bear population due to reduced fitness of surviving animals.

Polar bears are biological sinks for some pollutants, such as polychlorinated biphenyls or organochlorine pesticides, because they are an apex predator of the Arctic ecosystem and are also opportunistic scavengers of other marine mammals. Additionally, their diet is composed mostly of high-fat sealskin and blubber (Norstrom *et al.* 1988). The highest concentrations of persistent organic pollutants in Arctic marine mammals have been found in seal-eating walruses and polar bears near Svalbard (Norstrom *et al.* 1988, Andersen *et al.* 2001, Muir *et al.* 1999). As such, polar bears would be susceptible to the effects of bioaccumulation of contaminants, which could affect their reproduction, survival, and immune systems.

In addition, subadult polar bears are more vulnerable than adults to environmental effects (Taylor *et al.* 1987). Subadult polar bears would be most prone to the lethal and sublethal effects of an oil spill due to their proclivity for scavenging (thus increasing their exposure to oiled marine mammals) and their inexperience in hunting. Because of the greater maternal investment a weaned subadult represents, reduced survival rates of subadult polar bears have a greater impact on population growth rate and sustainable harvest than

reduced litter production rates (Taylor *et al.* 1987).

Evaluation of the potential impacts of spilled Industry waste products and oil suggest that individual bears could be adversely impacted by exposure to these substances (Oritsland *et al.* 1981). The major concern regarding a large oil spill is the impact such a spill would have on the rates of recruitment and survival of the SBS polar bear population. If an oil spill killed a small number of bears, the SBS population may be able to survive and continue to sustain the current level of subsistence harvest. However, if a large oil spill killed large numbers of polar bears, the SBS population may experience reduced rates of recruitment and survival and subsistence harvest could become unsustainable. Polar bear deaths from an oil spill could be caused by direct exposure to the oil. However, indirect effects, such as a reduction of prey or scavenging contaminated carcasses, could also cause health effects, death, or otherwise affect rates of recruitment and survival. Depending on the type and amount of oil or wastes involved and the timing and location of a spill, impacts could be acute, chronic, temporary, or lethal. In order for the rates of polar bear reproduction, recruitment, or survival to be impacted, a large-volume oil spill would have to take place. The following section analyzes the likelihood and potential effects of such a large-volume oil spill.

**Risk Assessment of Potential Effects Upon Polar Bears From a Large Oil Spill in the Beaufort Sea**

In this section, we qualitatively assess the likelihood that polar bears may be oiled by a large oil spill. We considered: (1) The probability of a large oil spill occurring in the Beaufort Sea; (2) the probability of that oil spill impacting coastal polar bear habitat; (3) the probability of polar bears being in the area and coming into contact with that large oil spill; and (4) the number of polar bears that could potentially be impacted by the spill. Although the majority of the information in this evaluation is qualitative, the probability of all of these factors occurring sequentially in a manner that impacts polar bears in the Beaufort Sea is low. Since walruses are not often found in the Beaufort Sea, and there is little information available regarding the potential effects of an oil spill upon walruses, this analysis emphasizes polar bears.

The analysis was based on polar bear distribution and habitat use using four sources of information that, when combined, allowed the Service to make conclusions on the risk of oil spills to polar bears. This information included: (1) The description of existing offshore oil and gas production facilities previously discussed in the Description of Activities section; (2) polar bear distribution information previously discussed in the Biological Information section; (3) BOEM Oil-Spill Risk Analysis (OSRA) for the OCS, including polar bear environmental resource areas (ERAs) and land segments (LSs), which allowed us to qualitatively analyze the risk to polar bears and their habitat from a marine oil spill; and (4) the most recent polar bear risk assessment from the previous ITRs.

Development of offshore production facilities with supporting pipelines increases the potential for large offshore spills. The probability of a large oil spill from offshore oil and gas facilities and the risk to polar bears is a scenario that has been considered in previous regulations (71 FR 43926, August 2, 2006 and 76 FR 47010, August 3, 2011). With the limited background information available regarding the effects of large oil spills on polar bears in the marine Arctic environment, the impact of a large oil spill is uncertain. As far as is known, polar bears have not been affected by oil spilled as a result of North Slope Industry activities.

In order to effectively evaluate how a large oil spill may affect polar bears, we considered the following factors in developing our oil spill assessment for polar bears: The origin (location) of a large spill; the volume of a spill; oil viscosity; accessibility to spill site; spill trajectory; time of year; weather conditions (*i.e.,* wind, temperature, precipitation); environmental conditions (*i.e.,* presence and thickness of ice); number, age, and sex of polar bears that are (or likely to be) affected; degree of contact; importance of affected habitat; and mitigation measures to prevent bears from encountering spilled oil.

The oil-spill scenario for this analysis considers the potential impacts of a large oil spill (*i.e.,* 1,000 bbl or more) from one of the offshore Industry facilities: Northstar, Spy Island, Oooguruk, Endicott, or the future Liberty. Estimating a large oil-spill occurrence is accomplished by examining a wide variety of probabilities. Uncertainty exists regarding the location, number, and size of a large oil spill and the wind, ice, and current conditions at the time of a spill, but we have made every effort to identify the most likely spill scenarios and sources of risk to polar bears. Conditional probabilities analysis assumes that a large spill has occurred and that no cleanup takes place. The probability of a spill occurring would be different for each site depending upon oil type, depth, oil flow rates, etc.

*BOEM Oil Spill Risk Analysis*

Because the BOEM OSRA provides the most current and rigorous treatment of potential oil spills in the Beaufort Sea Planning Area, our analysis of potential oil spill impacts applied BOEM's OSRA (MMS 2008a) to help analyze potential impacts of a large oil spill originating in the Beaufort Sea ITR region to polar bears. The OSRA is a computer model that analyzes how and where large offshore spills will likely move (Smith *et al.* 1982). To estimate the likely trajectory of large oil spills, the OSRA model used information about the physical environment, including data on wind, sea-ice, and currents. As a conditional model, the OSRA is a hypothetical analysis of an oil spill.

The BOEM OSRA model was developed for the Federal offshore waters and does not include analysis of oil spills in the State of Alaska-controlled nearshore waters. Northstar, Oooguruk, Spy Island, and the Endicott/Liberty complex are located in nearshore State waters. Northstar has one Federal well, and Liberty is a Federal reservoir to be developed from State waters. Although the OSRA cannot calculate trajectories of oil spills originating from specific locations in the nearshore area, it can be used to help examine how habitat may be affected by a spill should one originate in the OCS. We can then compare the location of the affected habitat to habitat use by bears.

The OSRA model predicted where the oil trajectory would go if the oil persisted as a slick at a particular time of year. Oil spills of less than 1,000 bbl are not expected to persist on the water long enough to warrant a trajectory analysis. For this reason, we only analyzed the effects of a large oil spill. Although no large spills from oil and gas activities have occurred on the Alaska OCS to date, the large spill volume assumptions used by BOEM were based on the reported spills from oil exploration and production in the Gulf of Mexico and Pacific OCS regions. BOEM used the median spill size in the Gulf of Mexico and Pacific OCS in the period 1985–1999 as the likely large spill size for analysis purposes. The median size of a large crude oil spill from a pipeline in the period 1985–1999 on the U.S. OCS was 4,600 bbl, and the average was 6,700 bbl (Anderson and LaBelle 2000). The median large spill size for a platform on the OCS over the entire record in the period 1964–1999 is 1,500 bbl, and the average is 3,300 bbl (Anderson and LaBelle 2000).

The OSRA estimated that the statistical mean number of large spills is less than one over the 20-year life of past, present, and reasonably foreseeable developments in the Beaufort Sea Planning Area. In addition large spills are more likely to occur during development and production than during exploration in the Arctic (MMS 2008). Our oil spill assessment during a 5-year regulatory period was predicated on the same assumptions.

Between 1971 and 2007, OCS operators have produced almost 15 billion bbl of oil in the United States. During this period, 2,645 spills totaled approximately 164,100 bbl spilled (~0.001 percent of bbl produced), or about 1 bbl spilled for every 91,400 bbl produced. Between 1993 and 2007, almost 7.5 billion bbl of oil were produced. During this period, 651 spills totaled approximately 47,800 bbl spilled (~0.0006 percent of bbl produced), or approximately 1 bbl spilled for every 156,900 bbl produced.

Between July 1, 2009, and June 30, 2014, the North Slope industrial area reported an average of 59,043 gallons of spilled substances annually, with a total of 138 crude oil spills. Statewide during this period, approximately 5.6 percent of the total volume of spilled material consisted of crude oil. The volume of spilled crude on the North Slope was, therefore, estimated to be approximately 79 bbl (~1,406 × 0.056 = ~79). Recent large spills of crude oil have included a subsurface release of 166 bbl from a well at Milne Point, and a 100 bbl spill from a tank. Secondary containment retained the smaller of these spills.

Two large onshore terrestrial oil spills have occurred as a result of pipeline failures. In the spring of 2006, approximately 6,200 bbl of crude oil spilled from a corroded pipeline operated by BP Exploration (Alaska). The spill impacted approximately 0.8 ha (~2 ac). In November 2009, a spill of approximately 1,150 bbl from a ''common line'' carrying oil, water, and natural gas operated by BP occurred as well, impacting approximately 780 $m^2$ (~8,400 $ft^2$). None of these spills were known to impact polar bears, in part due to the locations and timing. Both sites were within or near Industry facilities not frequented by polar bears, and they are not typically observed in the affected areas during the time of the spills and subsequent cleanup.

The BLM and BOEM modelled the likelihood of spills occurring during exploration and development in the NPR–A and in the Beaufort and Chukchi Sea planning area (BLM 2012 and BOEM 2011, respectively). Large (≥1,000 bbl) or very large spills (≥120,000 bbl) were considered extremely unlikely to occur during oil and gas exploration. The two sources of potential large crude oil spills are from pipelines and long-duration blowout resulting from a well-control incident. The loss of the entire volume in an onshore pipeline between two valves would also result in a large spill of crude oil. The BLM estimated a 28 percent chance that one or more large crude oil spills would occur during 50 years. Based on information on past spills, spill volumes close to the lower end of the ''large spill'' range (1,000 bbl) are much more likely than spill volumes in the upper end of the range (119,999 bbl). BOEM (2014) considered spill sizes of 1,700 and 5,100 bbl to be the largest spill size likely to occur from a pipeline or facility, respectively. BOEM estimated that the occurrence and frequency of large and very large spills from OCS exploratory and delineation wells at 0.003 (mean spill frequency per 1,000 years) and $2.39 \times 10^{-5}$ (mean spill frequency per well), respectively (BOEM 2011). The approximate occurrence rates worldwide for very large oil spills are about one for every 270 billion bbl produced (BLM 2012). More locally (at Northstar), the statistical frequency of a blowout well leading to a very large oil spill was estimated at $9.4 \times 10^{-7}$ per well drilled (for volumes >130,000 bbl (BLM 2012)). Thus, while small spills (<50 bbl) are reasonably likely to occur, very large oil spills are extremely unlikely to occur, and none have occurred on Alaska's North Slope or in the Beaufort Sea to date.

Across the United States, in the period 1971–2010, one well control incident resulted in a spill volume estimated at 4.9 million bbl (210 million gal) and that was the Deepwater Horizon event. The large oil spill estimates for the draft Environmental Impact Statement (DEIS) of the Beaufort Sea and Chukchi Sea Planning Areas are still considered valid despite the Deepwater Horizon oil spill. Geologic and other conditions in the Arctic OCS are substantially different from those in the Gulf of Mexico, including much shallower well depth and the resulting lower pressures, such that BOEM currently does not believe that the Deepwater horizon incident serves as a predictor for the likelihood or magnitude of a very large oil spill event in the Beaufort Sea. Considering the low number of exploratory wells (84) that have occurred in the Beaufort Sea Alaska OCS (BOEM 2011), the low rate of exploratory drilling blowouts per well drilled, and the low rate of well control incidents that spill fluids, it is reasonable to conclude that the chance of a large spill occurring during OCS exploration drilling in the Beaufort is small. In addition, it is important to note that Industry does not plan to conduct drilling operations at more than three exploration sites in the Beaufort Sea OCS for the duration of the 5-year regulatory period.

Trajectory Estimates of Large Offshore Oil Spills

Although it is reasonable to conclude that the chance of one or more large spills occurring during the period of these regulations on the Alaskan OCS from production activities is low, for analysis purposes, we assume that a large spill does occur in order to evaluate potential impacts to polar bears. The BOEM OSRA model analyzes the likely paths of more than two million simulated oil spills in relation to the shoreline and biological, physical, and sociocultural resource areas specific to the Beaufort Sea. The chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (launch area or pipeline segment) is termed a ''conditional probability.'' Conditional probabilities assume that no cleanup activities take place, and that there are no efforts to contain the spill. We used the BOEM OSRA analysis from the Arctic Multi-sale DEIS to estimate the conditional probabilities of a large spill contacting sensitive ERAs pertinent to polar bears.

Oil-Spill Persistence

How long an oil spill persists on water or on the shoreline can vary, depending upon the size of the oil spill, the environmental conditions at the time of the spill, and the substrate of the shoreline. In its large oil spill analysis, BOEM assumed 1,500-bbl and 4,600-bbl spills could last up to 30 days on the water as a coherent slick based on oil weathering properties and dispersal data specific to North Slope crude oils. Therefore, we assumed that winter spills (October–June) could last up to 180 days as a coherent slick (*i.e.,* if a coherent slick were to freeze into ice over winter, it would melt out as a slick in spring).

We used three BOEM launch areas (LAs), LA 8, LA 10, LA 12, and three pipeline segments (PLs), PL 10, PL 11, and PL 12, from Appendix A of the Arctic Multi-sale DEIS (Map A.1–4) to represent the oil spills moving from hypothetical offshore areas. These LAs and PLs were selected because of their close proximity to current offshore facilities.

Oil-Spill-Trajectory Model Assumptions

For purposes of its oil spill trajectory simulation, BOEM made the following assumptions: All spills occur instantaneously; large oil spills occur in the hypothetical origin areas or along the hypothetical pipeline segments noted above; large spills do not weather for purposes of trajectory analysis; weathering is calculated separately; the model does not simulate cleanup scenarios; the oil spill trajectories move as though no oil spill response action is taken; and large oil spills stop when they contact the mainland coastline.

Analysis of the Conditional Probability Results

As noted above, the chance that a large oil spill will contact a specific ERA of concern within a given time of travel from a certain location (LA or PL), assuming a large spill occurs and that no cleanup takes place, is termed a ''conditional probability.'' From the DEIS, Appendix A, we chose ERAs and LSs to represent areas of concern pertinent to polar bears (MMS 2008a). Those ERAs and LSs and the conditional probabilities that a large oil spill originating from the selected LAs or PLs could affect those ERAs and LSs are presented in Table 1. From Table 1, we noted the highest chance of contact and the range of chances of contact that could occur should a large spill occur from LAs or PLs.

Table 1. Conditional oil spill probabilities (percent) in regards to Environmental Resource Areas and Land Segments for LAs and PLs offshore of four oil and gas industry sites. Values in parentheses are for pipeline segments. * = Less than one-half percent.

| Launch Area (Pipeline Segment) | Season of Spill (Duration of Spill) | ERA 55 | ERA 92 | ERA 93 | ERA 94 | ERA 95 | ERA 96 | ERA 100 | LS 85 | LS 97 | LS 102 | LS 107 | LS 138 | LS 144 | LS 145 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| LA 08 (PL 10) | Summer (60 days) | 5 (3) | 5(8) | *(2) | *(*) | *(*) | 1(3) | *(1) | 2(1) | 1(2) | *(*) | *(*) | *(1) | 54(34) | *(*) |
| | Winter (180 days) | 1(1) | 2(3) | *(*) | *(*) | *(*) | *(1) | *(*) | 2(4) | *(1) | *(*) | *(*) | 1(2) | 39(29) | *(1) |
| LA10 (PL 10) | Summer (60 days) | 3(3) | 11(8) | 2(2) | *(*) | *(*) | 4(3) | 1(1) | 1(1) | 5(2) | *(*) | *(*) | 2(1) | 33(34) | *(*) |
| | Winter (180 days) | 1(1) | 2(3) | *(*) | *(*) | *(*) | 1(1) | *(*) | 3(4) | 2(1) | *(*) | *(*) | 2(2) | 29(29) | 1(1) |
| LA 12 (PL 11) | Summer (60 days) | *(2) | 12(12) | 7(3) | 2(1) | 1(*) | 13(6) | 3(2) | *(*) | 7(6) | 1(1) | 1 (1) | 9(3) | 33(29) | 1(*) |
| | Winter (180 days) | 1(1) | 11(8) | 1(*) | 1(*) | *(*) | 12(2) | 1(*) | 3(3) | 4(4) | *(*) | *(*) | 3(2) | 31(28) | 2(1) |
| LA 12 ( PL 12) | Summer (60 days) | *(*) | 12(9) | 7(7) | 2(3) | 1(1) | 13(12) | 3(5) | *(*) | 7(5) | 1(2) | 1(3) | 9(11) | 33(32) | 1(1) |

Definitions of ERAs and LSs, from Tables A.1-13, A.1-20, and A.1-22 (MMS, 2008)
ERA 55: Point Barrow, Plover Islands (Aug–Nov)
ERA 92: Thetis, Jones, Cottle and Return Islands, West Dock (Jan–Dec)
ERA 93: Cross and No Name Island (Aug–Nov)
ERA 94: Maguire Islands, Flaxman Island, Barrier Islands (Jan–Dec)
ERA 95: Arey and Barter Islands and Bernard Spit (Aug–Nov)
ERA 96: Midway, Cross and Bartlett Islands (May–October)
ERA 100: Jago and Tapkaurak Spits (May–October)
Seasonal LS 85: Barrow, Browerville, Elson Lagoon (August–November)
LS 97: Beechey Point, Bertoncini, Bodfish, Cottle and, Jones Islands, Milne Point, Simpson Lagoon
LS 102: Flaxman Island, Maguire Islands, North Star Island, Point Hopson, Point Sweeney, Point Thomson, Staines River
LS 107: Bernard Harbor, Jago Lagoon, Kaktovik, Kaktovik Lagoon
Grouped LS 138: Arctic National Wildlife Refuge (Jan–Dec)
Grouped LS 144: United States Beaufort Coast (Jan–Dec)
Grouped LS 145: Canada Beaufort Coast (Jan–Dec)

Polar bears are most vulnerable to a large oil spill during the open-water period when bears form aggregations onshore. In the Beaufort Sea these aggregations often form in the fall near subsistence-harvested bowhead whale carcasses. Specific aggregation areas include Point Barrow, Cross Island, and Kaktovik. In recent years, more than 60 polar bears have been observed feeding on whale carcasses just outside of Kaktovik, and in the autumn of 2002, NSB and Service biologists documented more than 100 polar bears in and around Barrow. In order for significant impacts to polar bears to occur, (1) a large oil spill would have to occur, (2) oil would have to contact an area where polar bears aggregate, and (3) the aggregation of polar bears would have to occur at the same time as the spill. The risk of all three of these events occurring simultaneously is low.

We identified polar bear aggregations in environmental resource areas and non-grouped land segments (ERA 55, 93, 95, 96, 100; LS 85, 107). Assuming a spill occurs during summer or winter, the OSRA estimates the chance of contacting these aggregations is less than 13 percent (Table 1). The OSRA estimates for LA12 has the highest chance of a large spill contacting ERA 96 (Midway, Cross, and Bartlett islands). Some polar bears will aggregate at these islands during August–October (3 months). If a large oil spill occurred and contacted those aggregation sites outside of the timeframe of use by polar bears, potential impacts to polar bears would be reduced.

Coastal areas provide important denning habitat for polar bears, such as the ANWR and nearshore barrier islands (containing tundra habitat) (Amstrup 1993, Amstrup and Gardner 1994, Durner *et al.* 2006, USFWS unpubl. data). Considering that 65 percent of confirmed terrestrial dens found in Alaska in the period 1981–2005 were on coastal or island bluffs (Durner *et al.* 2006), oiling of such habitats could have negative effects on polar bears, although the specific nature and ramifications of such effects are unknown.

Assuming a large oil spill occurs, and extrapolating the OSRA estimates to tundra relief barrier islands (ERA 92, 93, and 94, LS 97 and 102), these areas have up to a 12 percent chance of a large spill contacting them (a range of less than 0.5 percent to 12 percent) from LA 12 (Table 1). The OSRA estimates suggest that there is an 11 percent chance that oil would contact the coastline of the ANWR (LS 138). The Kaktovik area (ERA 95 and 100, LS 107) has up to a 5 percent chance of a spill contacting the coastline, assuming spills occur during the summer season and contact the coastline within 60 days. The chance of a spill contacting the coast near Barrow (ERA 55, LS 85) would be as high as 5 percent (Table 1).

All barrier islands are important resting and travel corridors for polar bears, and larger barrier islands that contain tundra relief are also important denning habitat. Tundra-bearing barrier islands within the geographic region and near oilfield development are the Jones Island group of Pingok, Bertoncini, Bodfish, Cottle, Howe, Foggy, Tigvariak, and Flaxman islands. In addition, Cross Island has gravel relief where polar bears have denned. The Jones Island group is located in ERA 92 and LS 97. If a spill were to originate from an LA 8 pipeline segment during the summer months, the probability that this spill would contact these land segments could be as great as 8 percent. The probability that a spill from LA 10 would contact the Jones Island group would range from 1 percent to as high as 11 percent. Likewise, for LA 12, PL 11 the range would be from 4 percent to as high as 12 percent, and for LA 12, PL 12 the range would be from 3 percent to as high as 12 percent.

*Risk Assessment From Prior ITRs*

In previous ITRs, we used a risk assessment method that considered oil spill probability estimates for two sites (Northstar and Liberty), oil spill trajectory models, and a polar bear distribution model based on location of satellite-collared females during September and October (68 FR 66744, November 28, 2003;71 FR 43926, August 2, 2006; and 76 FR 47010, August 3, 2011). To support the analysis for this action, we reviewed the previous analysis and used the data to compare the potential effects of a large oil spill in a nearshore production facility (less than 5 mi), such as Liberty, and a facility located further offshore, such as Northstar. Even though the risk assessment of 2006 did not specifically model spills from the Oooguruk or Nikaitchuq sites, we believed it was reasonable to assume that the analysis for Liberty, and indirectly Northstar, adequately reflected the potential impacts likely to occur from an oil spill at either of these additional locations due to the similarity in the nearshore locations.

Methodology of Prior Risk Assessment

The first step of the risk assessment analysis was to examine oil spill probabilities at offshore production sites for the summer (July–October) and winter (November–June) seasons based on information developed for the original Northstar and Liberty EISs. We assumed that one large spill occurred during the 5-year period covered by the regulations. A detailed description of the methodology can be found at 71 FR 43926 (August 2, 2006). The second step in the risk assessment was to estimate the number of polar bears that could be impacted by a large spill. All modeled polar bear grid cell locations that were intersected by one or more cells of a rasterized spill path (a modeled group of hundreds of oil particles forming a trajectory and pushed by winds and currents and impeded by ice) were considered ''oiled'' by a spill. For purposes of the analysis, if a bear contacted oil, the contact was assumed to be lethal. This analysis involved estimating the distribution of bears that could be in the area and overlapping polar bear distributions and seasonal aggregations with oil spill trajectories. The trajectories previously calculated for Northstar and Liberty sites were used. The trajectories for Northstar and Liberty were provided by the BOEM and reported in Amstrup *et al.* (2006). BOEM estimated probable sizes of oil spills from a pinhole leak to a rupture in the transportation pipeline. These spill sizes ranged from a minimum of 125 to a catastrophic release event of 5,912 bbl. Researchers set the size of the modeled spill at the scenario of 5,912 bbl, caused by a pinhole or small leak for 60 days under ice without detection.

The second step of the risk assessment analysis incorporated polar bear densities overlapped with the oil spill trajectories. To accomplish this, in 2004, USGS completed an analysis investigating the potential effects of hypothetical oil spills on polar bears. Movement and distribution information was derived from radio and satellite locations of collared adult females. Density estimates were used to determine the distribution of polar bears in the Beaufort Sea. Researchers then created a grid system centered over the Northstar production island and the Liberty site to estimate the number of bears expected to occur within each 1-$km^2$ grid cell. Each of the simulated oil spills were overlaid with the polar bear distribution grid. Finally, the likelihood of occurrence of bears oiled during the duration of the 5-year incidental take regulations was estimated. This likelihood was calculated by multiplying the number of polar bears oiled by the spill by the percentage of time bears were at risk for each period of the year.

In summary, the maximum numbers of bears potentially oiled by a 5,912 bbl spill during the September open-water

season from Northstar was 27, and the maximum from Liberty was 23, assuming a large oil spill occurred and no cleanup or mitigation measures take place. Potentially oiled polar bears ranged up to 74 bears with up to 55 bears during October in mixed-ice conditions for Northstar and Liberty, respectively. Median number of bears oiled by the 5,912 bbl spill from the Northstar simulation site in September and October were 3 and 11 bears, respectively. Median numbers of bears oiled from the Liberty simulation site for September and October were 1 and 3 bears, respectively. Variation occurred among oil spill scenarios and was the result of differences in oil spill trajectories among those scenarios and not the result of variation in the estimated bear densities. For example, in October, 75 percent of trajectories from the 5,912 bbl spill affected 20 or fewer polar bears from spills originating at the Northstar simulation site and 9 or fewer bears from spills originating at the Liberty simulation site.

When calculating the probability that a 5,912 bbl spill would oil 5 or more bears during the annual fall period, we found that oil spills and trajectories were more likely to affect fewer than 5 bears versus more than 5 bears. Thus, for Northstar, the chance that a 5,912 bbl oil spill affected (resulting in mortality) 5 or more bears was 1.0–3.4 percent; 10 or more bears was 0.7–2.3 percent; and 20 or more bears was 0.2–0.8 percent. For Liberty, the probability of a spill that would affect 5 or more bears was 0.3–7.4 percent; 10 or more bears, 0.1–0.4 percent; and 20 or more bears, 0.1–0.2 percent.

Discussion of Prior Risk Assessment

After reviewing the prior risk assessment, we have concluded that it remains a valid methodology and analysis for use in the current proposed rule. The key conditions and considerations used in the analysis remain valid today. For this reason, we find that it is appropriate to continue to rely on the results of the analysis as it was set forth in 71 FR 43926, August 2, 2006.

The location of Industry sites within the marine environment is important when analyzing the potential for polar bears to contact a large oil spill. Simulations from the prior risk assessment suggested that bears have a higher probability of being oiled from facilities located further offshore, such as Northstar. Northstar Island is nearer the active ice zone and in deeper water than Endicott/Liberty, Oooguruk, and Nikaitchuq, areas where higher bear densities were calculated. Furthermore, Northstar is not sheltered by barrier islands. By comparison through modeling, the land-fast ice inside the shelter of the barrier islands appeared to dramatically restrict the extent of most oil spills in comparison to Northstar, which lies outside the barrier islands and in deeper water. However, it should be noted that while oil spreads more in deep water and breaks up faster in deeper waters where wind and wave action are higher, oil persists longer in shallow waters and along the shore.

Based on the simulations, a nearshore island production site (less than 5 mi from shore) would potentially involve less risk of polar bears being oiled than a facility located further offshore (greater than 5 mi). For any spill event, seasonality of habitat use by bears will be an important variable in assessing risk to polar bears. During the fall season when a portion of the SBS bear population aggregate on terrestrial sites and use barrier islands for travel corridors, spill events from nearshore industrial facilities may pose more chance of exposing bears to oil due to its persistence in the nearshore environment. Conversely, during the ice-covered and summer seasons, Industry facilities located further offshore (greater than 5 mi) may increase the chance of bears being exposed to oil as bears will be associated with the ice habitat.

*Conclusion of Risk Assessment*

In summary, to date documented oil spill-related impacts in the marine environment to polar bears in the Beaufort Sea by the oil and gas Industry are minimal. No large spills by Industry in the marine environment have occurred in Arctic Alaska. Nevertheless, the possibility of oil spills from Industry activities and the subsequent impacts on polar bears that contact oil remain a major concern.

There has been much discussion about effective techniques for containing, recovering, and cleaning up oil spills in Arctic marine environments, particularly the concern that effective oil spill cleanup during poor weather and broken-ice conditions has not been proven. Given this uncertainty, limiting the likelihood of a large oil spill becomes an even more important consideration. Industry oil spill contingency plans describe methodologies in place to prevent a spill from occurring. For example, all current offshore production facilities have spill containment systems in place at the well heads. In the event an oil discharge should occur, containment systems are designed to collect the oil before it contacts the environment.

With the limited background information available regarding oil spills in the Arctic environment, it is unknown what the outcome of such a spill event would be if one were to occur. Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although most polar bears in the SBS population spend a large amount of their time offshore on the pack-ice, it is likely that some bears would encounter oil from a large spill that persisted for 30 days or more.

Although the extent of impacts from a large oil spill would depend on the size, location, and timing of spills relative to polar bear distributions and on the effectiveness of spill response and cleanup efforts, under some scenarios, population-level impacts could be expected. A large spill originating from a marine oil platform could have significant impacts on polar bears if an oil spill contacted an aggregation of polar bears. Likewise, a spill occurring during the broken-ice period could significantly impact the SBS polar bear population in part because polar bears may be more active during this season.

In the event that an offshore oil spill contaminated numerous bears, a potentially significant impact to the SBS population could result. This effect would be magnified in and around areas of polar bear aggregations. Bears could also be affected indirectly either by food contamination or by chronic lasting effects caused by exposure to oil. During the 5-year period of these regulations, however, the chance of a large spill occurring is low.

While there is uncertainty in the analysis, certain factors must align for polar bears to be impacted by a large oil spill occurring in the marine environment. First, a large spill must occur. Second, the large spill must contaminate areas where bears may be located. Third, polar bears must be seasonally distributed within the affected region when the oil is present. Assuming a large spill occurs, BOEM's OSRA estimated that there is up to a 13 percent chance that a large spill from the analyzed sites (LAs 8, 10, and 12 and PLs 10, 11, and 12) would contact Cross Island (ERA 96) within 60 days, as much as an 11 percent chance that it would contact Barter Island and/or the coast of the ANWR (ERA 95 and 100, LS 107 and 138), and up to a 5 percent chance that an oil spill would contact the coast near Barrow (ERA 55, LS 85) during the summer time period. Data from polar bear coastal surveys indicate that polar bears are unevenly and seasonally distributed along the coastal

areas of the Beaufort Sea ITR region. Seasonally only a portion of the SBS population utilizes the coastline between the Alaska/Canada border and Barrow and only a portion of those bears could be in the oil-spill-affected region.

As a result of the information considered here, the Service concludes that the likelihood of an offshore spill from an offshore production facility in the next 5 years is low. Moreover, in the unlikely event of a large spill, the likelihood that spills would contaminate areas occupied by large numbers of bears is low. While individual bears could be negatively affected by a spill, the potential for a population-level effect is low unless the spill contacted an area where large numbers of polar bears were gathered. Known polar bear aggregations tend to be seasonal during the fall, further minimizing the potential of a spill to impact the population. Therefore, we conclude that the likelihood of a large spill occurring is low, but if a large spill does occur, the likelihood that it would contaminate areas occupied by large numbers of polar bears is also low. If a large spill does occur, we conclude that only small numbers of polar bears are likely to be affected, though some bears may be killed, and there would be only a negligible impact to the SBS population.

**Take Estimates for Pacific Walruses and Polar Bears**

*Small Numbers Determination*

The following analysis concludes that only small numbers of walruses and polar bears are likely to be subjected to Level B take by harassment incidental to the described Industry activities relative to their respective populations.

1. The number of walruses and polar bears that will be harassed by Industry activity is expected to be small relative to the number of animals in their populations.

As stated previously, walruses are extralimital in the Beaufort Sea with nearly the entire walrus population found in the Chukchi and Bering seas. Industry monitoring reports have observed no more than 35 walruses between 1995 and 2012, with only a few observed instances of disturbance to those walruses (AES Alaska 2015, USFWS unpublished data). Between those years, Industry walrus observations in the Beaufort Sea ITR region averaged approximately two walruses per year, although the actual observations were of a single or a few animals, often separated by several years. We do not anticipate that seasonal movements of a few walruses into the Beaufort Sea will increase. We conclude that over the 5-year period of these ITRs, Industry activities will potentially result in a small number of Level B takes of walruses.

As we stated previously, from 2010 through 2014, Industry made 1,234 reports of polar bears comprising 1,911 bears. We found that as much as 42 percent of the SBS polar bear population may have been observed by Industry personnel over that time period, though this is likely an overestimate due to the nature of the Industry observation data. When we evaluated the effects upon the 1,911 bears observed, we found that 81 percent (1,549) resulted in instances of non-taking. Over those 5 years, Level B takes of polar bears totaled 338, approximately 18 percent of the observed bears, or 7.5 percent of the SBS population. We conclude that over the 5-year period of these ITRs, Industry activities will result in a similarly small number of Level B takes of polar bears.

2. Within the specified geographical region, the area of Industry activity is expected to be small relative to the range of walruses and polar bears.

Walruses and polar bears range well beyond the boundaries of the proposed Beaufort Sea ITR region. The facts that walruses are extralimital in the Beaufort Sea and polar bears move through the areas of Industry activity seasonally suggest that Industry activities in the geographic area of this proposed rule will have relatively few interactions with walruses and polar bears. As reported by AOGA, the total area of infrastructure on the North Slope as of 2012 was approximately 7,462 ha (~18,439 ac), or approximately 0.1 percent of the Arctic Coastal Plain between the Colville and Canning rivers. The 2012 estimated area of Industry activity was approximately .025 percent of the geographic region of this proposed rule. This area is smaller when compared to the proportion of the range of walruses or the SBS polar bear population. Allowing for Industry activity area growth from 2012 through 2015, and anticipating the level of activity proposed for the 5-year period of this proposed rule, the Service concludes that the area of Industry activity will be relatively small compared to the range of walruses and polar bears.

3. Monitoring requirements and adaptive mitigation measures are expected to significantly limit the number of incidental takes of animals.

Holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce potential impacts of their operations on walruses and polar bears. For Industry activities in terrestrial environments, where denning polar bears may be a factor, mitigation measures will require that den detection surveys be conducted at least a 1.6-km (1-mi) distance from any known polar bear den. A full description of the mitigation, monitoring, and reporting requirements associated with an LOA can be found in 50 CFR 18.128.

Conclusion

We expect that only a small proportion of the Pacific walrus population or the SBS polar bear population are likely to be affected by Industry activities because: (1) Only a small proportion of the walrus or polar bear population will occur in the areas where Industry activities will occur; (2) only small numbers will be impacted because walruses are extralimital in the Beaufort Sea and SBS polar bears are widely distributed throughout their expansive range, which encompasses areas beyond the Beaufort Sea ITR region; and (3) the monitoring requirements and mitigation measures described below will further reduce potential impacts.

*Negligible Impacts Determination*

Based upon our review of the nature, scope, and timing of Industry activities and required mitigation measures, and in consideration of the best available scientific information, we have determined that the proposed activities will have a negligible impact on walruses and polar bears. Factors considered in our negligible effects determination include:

1. The behavior and distribution of walruses and polar bears in areas that overlap with Industry activities are expected to limit interactions of walruses and polar bears with those activities.

The distribution and habitat use patterns of walruses and polar bears indicates that relatively few animals will occur in the proposed areas of Industry activity at any particular time, and, therefore, few animals are likely to be affected. As discussed previously, only small numbers of walruses are likely to be found in the Beaufort Sea where and when offshore Industry activities are proposed. Likewise, SBS polar bears are widely distributed, are most often closely associated with pack-ice, and are unlikely to interact with open-water industrial activities, and their range is greater than the geographic region of the proposed ITRs.

2. The predicted effects of Industry activities on walruses and polar bears

will be nonlethal, temporary takes of animals.

The documented impacts of previous Industry activities on walruses and polar bears, taking into consideration cumulative effects, suggests that the types of activities analyzed for this ITR will have minimal effects and will be short-term, temporary behavioral changes. The vast majority of reported polar bear observations have been of polar bears moving through the oilfields, undisturbed by the Industry activity.

3. The footprint of the proposed Industry activities is expected to be small relative to the range of the walrus and polar bear populations.

The relatively small area of Industry activity compared to the range of walruses and polar bears will reduce the potential of their exposure to and disturbance from Industry activities.

4. Mitigation measures will limit potential effects of Industry activities.

Holders of an LOA will be required to adopt monitoring requirements and mitigation measures designed to reduce the potential impacts of their operations on walruses and polar bears. Seasonal restrictions, early detection monitoring programs, den detection surveys for polar bears, and adaptive mitigation and management responses based on real-time monitoring information (described in these regulations) will be used to avoid or minimize interactions with walruses and polar bears and, therefore, limit potential Industry disturbance of these animals.

Conclusion

We, therefore, conclude that any incidental take reasonably likely to or reasonably expected to occur in association with the proposed Industry activities addressed under these regulations will have no more than a negligible impact on walruses and polar bears within the Beaufort Sea region. We do not expect any resulting disturbance to negatively impact the rates of recruitment or survival for the walrus and polar bear populations. These regulations do not authorize lethal take, and we do not anticipate that any lethal take will occur.

**Findings**

We make the following findings regarding this action:

*Small Numbers*

Pacific Walrus

Walruses are extralimital in the Beaufort Sea, thus, the number of walruses exposed to the impacts of the proposed Industry activities will be inherently small. Between 1995 and 2012 Industry observed no more than 35 walruses in the Beaufort Sea ITRs region, with only a few instances of disturbance to some of those walruses. We do not anticipate the potential for any lethal take from the proposed Industry activities. We estimate that there will be no more than 10 Level B harassment takes of Pacific walruses by Industry activities during the 5-year period of these ITRs.

Polar Bear

Industry observation reports from the period 2010–2014 indicate that on average 383 polar bears were observed annually during Industry activities. Some of these observations are sightings of the same bears on different occasions. While the majority of observations were sightings with no interaction between polar bears and Industry activity (~81 percent of observed bears), takes by harassment do occur. According to Industry monitoring data, the number of Level B takes has averaged 68 per year from 2010 through 2014.

Based on this information, we estimate that there will be no more than 340 Level B harassment takes of polar bears during the 5-year period of these ITRs. All takes are anticipated to be nonlethal Level B harassment involving short-term and temporary changes in bear behavior. The required mitigation and monitoring measures described in the regulations are expected to prevent injurious Level A takes, and, therefore, the number of lethal takes is estimated to be zero.

*Negligible Impact*

Based on the best scientific information available, the results of Industry monitoring data from the previous ITRs, the review of the information generated by the listing of the polar bear as a threatened species and the designation of polar bear critical habitat, the ongoing analysis of the petition to list the Pacific walrus as a threatened species under the ESA, the results of our modeling assessments, and the status of the population, we find that any incidental take reasonably likely to result from the effects of Industry activities during the period of the proposed ITRs, in the Beaufort Sea and adjacent northern coast of Alaska, will have no more than a negligible impact on walruses and polar bears. We do not expect that the total of these disturbances will affect rates of recruitment or survival for walruses or polar bears. In making this finding, we considered the following: The distribution of the species; the biological characteristics of the species; the nature of Industry activities; the potential effects of Industry activities and potential oil spills on the species; the probability of oil spills occurring; the documented impacts of Industry activities on the species, taking into consideration cumulative effects; the potential impacts of climate change, where both walruses and polar bears can potentially be displaced from preferred habitat; mitigation measures designed to minimize Industry impacts through adaptive management; and other data provided by Industry monitoring programs in the Beaufort and Chukchi seas.

We also considered the specific Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information (53 FR 8474, March 15, 1988; 132 Cong. Rec. S 16305 (October. 15, 1986)).

We reviewed the effects of the oil and gas Industry activities on walruses and polar bears, including impacts from noise, physical obstructions, human encounters, and oil spills. Based on our review of these potential impacts, past LOA monitoring reports, and the biology and natural history of walrus and polar bear, we conclude that any incidental take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on the walrus and polar bear populations. Furthermore, we do not expect these disturbances to affect the rates of recruitment or survival for the walrus and polar bear populations. These regulations do not authorize lethal take, and we do not anticipate any lethal take will occur.

The probability of an oil spill that will cause significant impacts to walruses and polar bears appears extremely low. We have included information from both offshore and onshore projects in our oil spill analysis. We have analyzed the likelihood of a marine oil spill of the magnitude necessary to lethally take a significant number of polar bears for offshore projects and, through a risk

assessment analysis, found that it is unlikely that there will be any lethal take associated with a release of oil. In the unlikely event of a catastrophic spill, we will take immediate action to minimize the impacts to these species and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the MMPA.

After considering the cumulative effects of existing and future development, production, and exploration activities, and the likelihood of any impacts, both onshore and offshore, we find that the total expected takings resulting from oil and gas Industry activities will affect no more than small numbers and will have no more than a negligible impact on the walrus and polar bear populations inhabiting the Beaufort Sea area on the North Slope coast of Alaska.

Our finding of negligible impact applies to incidental take associated with the petitioner's oil and gas exploration, development, and production activities as mitigated through the regulatory process. The regulations establish monitoring and reporting requirements to evaluate the potential impacts of authorized activities, as well as mitigation measures designed to minimize interactions with and impacts to walruses and polar bears. We will evaluate each request for an LOA based on the specific activity and the specific geographic location where the proposed activities are projected to occur to ensure that the level of activity and potential take is consistent with our finding of negligible impact. Depending on the results of the evaluation, we may grant the authorization, add further operating restrictions, or deny the authorization.

Within the described geographic region of this rule, Industry effects on walruses and polar bears are expected to occur at a level similar to what has taken place under previous regulations. We anticipate that there will be an increased use of terrestrial habitat in the fall period by polar bears. We also anticipate a continued increased use of terrestrial habitat by denning bears. Nevertheless, we expect no significant impact to these species as a result of these anticipated changes. The mitigation measures will be effective in minimizing any additional effects attributed to seasonal shifts in distribution or denning polar bears during the 5-year timeframe of the regulations. It is likely that, due to potential seasonal changes in abundance and distribution of polar bears during the fall, more frequent encounters may occur and Industry may have to implement mitigation measures more often, possibly increasing polar bear deterrence events. In addition, if additional polar bear den locations are detected within industrial activity areas, spatial and temporal mitigation measures, including cessation of activities, may be instituted more frequently during the 5-year period of the rule.

We have evaluated climate change in regard to walruses and polar bears. Climate change is a global phenomenon and was considered as the overall driver of effects that could alter walrus and polar bear habitat and behavior. Though climate change is a pressing conservation issue for walruses and polar bears, we have concluded that the authorized taking of walruses and polar nears during the activities proposed by Industry during this 5-year rule will not adversely impact the survival of these species and will have no more than negligible effects. The Service is currently involved in research to help us understand how climate change may affect walruses and polar bears. As we gain a better understanding of climate change effects, we will incorporate the information in future actions.

*Impacts on Subsistence Uses*

Based on community consultations, locations of hunting areas, the potential overlap of hunting areas and Industry projects, the best scientific information available, and the results of monitoring data, we find that take caused by oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of walruses and polar bears for taking for subsistence uses during the period of the rule. In making this finding, we considered the following: Records on subsistence harvest from the Service's Marking, Tagging, and Reporting Program; community consultations; effectiveness of the POC process between Industry and affected Native communities; and anticipated 5-year effects of Industry activities on subsistence hunting.

Walruses and polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the communities of Barrow, Nuiqsut, and Kaktovik. However, the low numbers do not mean that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that community consultations have occurred or that an adequate POC has been presented to the subsistence communities. Industry will be required to contact subsistence communities that may be affected by its activities to discuss potential conflicts caused by location, timing, and methods of proposed operations. Industry must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of walruses and polar bear are minimized. Although multiple meetings for multiple projects from numerous operators have already taken place, no official concerns have been voiced by the Native communities with regard to Industry activities limiting availability of walruses or polar bears for subsistence uses. However, should such a concern be voiced as Industry continues to reach out to the Native communities, development of POCs, which must identify measures to minimize any adverse effects, will be required. The POC will ensure that oil and gas activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of walruses and polar bears, as warranted.

The Service has not received any reports and is aware of no information that indicates that walruses or polar bears are being or will be deflected from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of oil and gas activity. If there is evidence during the 5-year period of the regulations that oil and gas activities are affecting the availability of walruses or polar bears for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

**Monitoring and Reporting**

The purpose of monitoring requirements is to assess the effects of industrial activities on walruses and polar bears and to ensure that take is consistent with that anticipated in the negligible impact and subsistence use analyses, and to detect any unanticipated effects on the species. Monitoring plans document when and how bears and walruses are encountered, the number of bears and walruses, and their behavior during the encounter. This information allows the Service to measure encounter rates and trends of walrus and polar bear activity in the industrial areas (such as numbers

and gender, activity, seasonal use) and to estimate numbers of animals potentially affected by Industry. Monitoring plans are site-specific, dependent on the proximity of the activity to important habitat areas, such as den sites, travel corridors, and food sources; however, all activities are required to report all sightings of walruses and polar bears. To the extent possible, monitors will record group size, age, sex, reaction, duration of interaction, and closest approach to Industry onshore. Activities within the geographic region may incorporate daily watch logs as well, which record 24-hour animal observations throughout the duration of the project. Polar bear monitors will be incorporated into the monitoring plan if bears are known to frequent the area or known polar bear dens are present in the area. At offshore Industry sites, systematic monitoring protocols will be implemented to statistically monitor observation trends of walruses or polar bears in the nearshore areas where they usually occur.

Monitoring activities will be summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity, and the applicant must submit a final monitoring report to us no later than 90 days after the expiration of the LOA. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas Industry exploration, development, and production activities on polar bear and walruses prior to issuance of an LOA. Since production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

## Public Comments

### *Clarity of This 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 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 **ADDRESSES**. 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.

### *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 **ADDRESSES**. 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.

## Required Determinations

### *Treaty Obligations*

The ITRs are consistent with the 1973 Agreement on the Conservation of Polar Bears, a multilateral treaty executed in Oslo, Norway among the Governments of Canada, Denmark, Norway, Russia, and the United States. Article II of this Polar Bear Agreement lists three obligations of the Parties in protecting polar bear habitat. Parties are obliged to: (1) Take appropriate action to protect the ecosystem of which polar bears are a part; (2) give special attention to habitat components such as denning and feeding sites and migration patterns; and (3) manage polar bear populations in accordance with sound conservation practices based on the best available scientific data.

This rule is also consistent with the Service's treaty obligations because it incorporates mitigation measures that ensure the protection of polar bear habitat. LOAs for industrial activities are conditioned to include area or seasonal timing limitations or prohibitions, such as placing 1.6-km (1-mi) avoidance buffers around known or observed dens (which halts or limits activity until the bear naturally leaves the den), building roads perpendicular to the coast to allow for polar bear movements along the coast, and monitoring the effects of the activities on polar bears. Available denning habitat maps are provided by the USGS.

### *National Environmental Policy Act (NEPA) Considerations*

We have prepared a draft environmental assessment (EA) in conjunction with this rulemaking. Subsequent to the closure of the comment period for this proposed rule, we will decide whether this rulemaking is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA of 1969. For a copy of the EA, go to *http://www.regulations.gov* and search for Docket No. FWS–R7–ES–2016–0060 or contact the individual identified above in **FOR FURTHER INFORMATION CONTACT.**

### *Endangered Species Act*

In 2008, the Service listed the polar bear as a threatened species under the ESA (73 FR 28212, May 15, 2008) and later designated critical habitat for polar bear populations in the United States, effective January 6, 2011 (75 FR 76086, December 7, 2010). Section 7(a)(1) and (2) of the ESA (16 U.S.C. 1536(a)(1) and (2)) directs the Service to review its programs and to utilize such programs in the furtherance of the purposes of the ESA and to ensure that a proposed action is not likely to jeopardize the continued existence of an ESA-listed species or result in the destruction or adverse modification of critical habitat. In addition, the status of walruses rangewide was reviewed for potential listing under the ESA. The listing of walruses was found to be warranted, but precluded due to higher priority listing actions (*i.e.,* walrus is a candidate species) on February 10, 2011 (76 FR 7634). Consistent with these statutory requirements, the Service's Marine Mammal Management Office has initiated Intra-Service section 7 consultation regarding the effects of these regulations with the Service's Fairbanks' Ecological Services Field Office. Consistent with established agency policy, we will also conduct a conference regarding the effects of these proposed regulations on the Pacific walrus. We will complete the consultation and conference prior to finalizing these proposed regulations.

*Regulatory Planning and Review*

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 proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

OIRA bases its determination upon the following four criteria: (a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government; (b) Whether the rule will create inconsistencies with other Federal agencies' actions; (c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; (d) Whether the rule raises novel legal or policy issues.

Expenses will be related to, but not necessarily limited to: The development of applications for LOAs; monitoring, recordkeeping, and reporting activities conducted during Industry oil and gas operations; development of polar bear interaction plans; and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the proposed rule is not expected to result in additional costs to Industry that it has not already borne under all previous ITRs. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations and LOA requests probably do not exceed $500,000 per year, short of the ''major rule'' threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the proposed rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

*Small Business Regulatory Enforcement Fairness Act*

We have determined that this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*Regulatory Flexibility Act*

We have also determined that this proposed 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.*). Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations, and these potential applicants have not been identified as small businesses. Therefore, neither a Regulatory Flexibility Analysis nor a Small Entity Compliance Guide is required. The analysis for this rule is available from the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

*Takings Implications*

This proposed rule does not have takings implications under Executive Order 12630 because it authorizes the nonlethal, incidental, but not intentional, take of walruses and polar bears by oil and gas Industry companies and, thereby, exempts these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs. Therefore, a takings implications assessment is not required.

*Federalism Effects*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. The MMPA gives the Service the authority and responsibility to protect walruses and polar bears.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

*Government-to-Government Relationship With Native American Tribal Governments*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951, May 4, 1994), Executive Order 13175, Department of the Interior Secretarial Order 3225 of January 19, 2001 (Endangered Species Act and Subsistence Uses in Alaska (Supplement to Secretarial Order 3206)), Department of the Interior Secretarial Order 3317 of December 1, 2011 (Tribal Consultation and Policy), Department of the Interior Memorandum of January 18, 2001 (Alaska Government-to-Government Policy), the Department of the Interior's manual at 512 DM 2, and the Native American Policy of the U.S. Fish and Wildlife Service, January 20, 2016, we readily acknowledge our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Tribes in developing programs for healthy ecosystems, to seek their full and meaningful participation in evaluating and addressing wildlife conservation concerns, to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives.

Furthermore, and in accordance with Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act of 1971 (ANCSA) Corporations, August 10, 2012, we likewise acknowledge our responsibility to communicate and work directly with ANCSA Corporations.

Through the LOA process identified in the proposed regulations, Industry presents a communication process, culminating in a POC, if warranted, with the Native communities most likely to be affected and engages these

communities in numerous informational meetings.

In addition, to facilitate co-management activities, the Service maintains cooperative agreements with the EWC, the ANC, and the Qayassiq Walrus Commission (QWC). The cooperative agreements fund a wide variety of management issues, including: Commission co-management operations; biological sampling programs; harvest monitoring; collection of Native knowledge in management; international coordination on management issues; cooperative enforcement of the MMPA; and development of local conservation plans. To help realize mutual management goals, the Service, EWC, ANC, and QWC regularly hold meetings to discuss future expectations and outline a shared vision of co-management.

The Service also has ongoing cooperative relationships with the NSB and the Inupiat-Inuvialuit Game Commission where we work cooperatively to ensure that data collected from harvest and research are used to ensure that polar bears are available for harvest in the future; provide information to co-management partners that allows them to evaluate harvest relative to their management agreements and objectives; and provide information that allows evaluation of the status, trends, and health of polar bear populations.

*Civil Justice Reform*

The Departmental Solicitor's Office has determined that these proposed regulations do not unduly burden the judicial system and meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

*Paperwork Reduction Act*

This proposed rule contains information collection requirements. 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 Office of Management and Budget (OMB) control number. OMB has reviewed and approved the information collection requirements included in this rule and assigned OMB control number 1018–0070, which expires March 31, 2017. This control number covers the information collection, recordkeeping, and reporting requirements in 50 CFR 18, subpart J, which are associated with the development and issuance of specific regulations and LOAs.

*Energy Effects*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule provides exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration of oil and gas in the Beaufort Sea and adjacent coast of Alaska. By providing certainty regarding compliance with the MMPA, this proposed rule will have a positive effect on Industry and its activities. Although the proposed rule requires Industry to take a number of actions, these actions have been undertaken by Industry for many years as part of similar past regulations. Therefore, this proposd rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

**References**

For a list of the references cited in this proposed rule, see Docket No. FWS–R7–ES–2016–0060, available at *http://www.regulations.gov.*

**List of Subjects in 50 CFR Part 18**

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below.

## PART 18—MARINE MAMMALS

■ 1. The authority citation of 50 CFR part 18 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Amend part 18 by revising subpart J to read as follows:

## Subpart J—Nonlethal Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, Production and Other Substantially Similar Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 Specified activities covered by this subpart.
18.122 Specified geographic region where this subpart applies.
18.123 Dates this subpart is in effect.
18.124 Procedure to obtain a Letter of Authorization (LOA).
18.125 How the Service will evaluate a request for a Letter of Authorization (LOA).
18.126 Authorized take allowed under a Letter of Authorization (LOA)
18.127 Prohibited take under a Letter of Authorization (LOA).
18.128 Mitigation, monitoring, and reporting requirements.
18.129 Information collection requirements.

### § 18.121 Specified activities covered by this subpart.

Regulations in this subpart apply to the nonlethal incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by U.S. citizens (as defined in § 18.27(c)) while engaged in oil and gas exploration, development, production, and/or other substantially similar activities in the Beaufort Sea and adjacent northern coast of Alaska.

### § 18.122 Specified geographic region where this subpart applies.

This subpart applies to the specified geographic region that encompasses all Beaufort Sea waters east of a north-south line through Point Barrow, Alaska (71°23′29″ N., −156 °28′30″ W., BGN 1944), and approximately 322 kilometers (km) (~200 miles (mi)) north of Point Barrow, including all Alaska State waters and Outer Continental Shelf (OCS) waters, and east of that line to the Canadian border.

(a) The offshore boundary of the Beaufort Sea incidental take regulations (ITR) region will match the boundary of the Bureau of Ocean Energy Management (BOEM) Beaufort Sea Planning area, approximately 322 km (~200 mi) offshore. The onshore region is the same north/south line at Barrow, 40.2 km (25 mi) inland and east to the Canning River.

(b) The Arctic National Wildlife Refuge is not included in the Beaufort Sea ITR region. Figure 1 shows the area where this subpart applies.

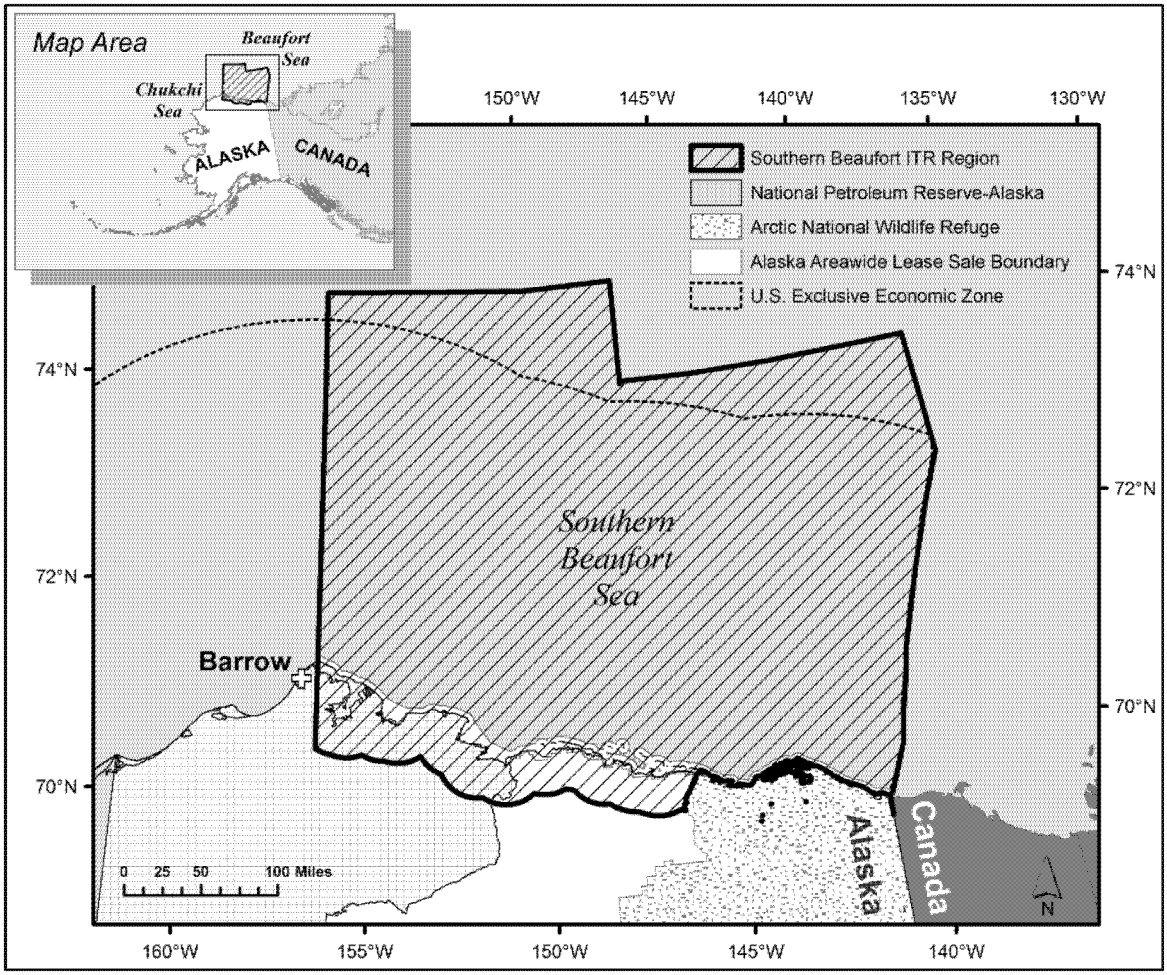


Figure 1. Map of the Beaufort Sea ITR region.

**§ 18.123 Dates this subpart is in effect.**

Regulations in this subpart are effective from August 3, 2016, through August 3, 2021, for year-round oil and gas exploration, development, production and other substantially similar activities.

**§ 18.124 Procedure to obtain a Letter of Authorization (LOA).**

(a) An applicant must be a U.S. citizen as defined in § 18.27(c).

(b) If an applicant proposes to conduct oil and gas industry exploration, development, production, and/or other substantially similar activity in the Beaufort Sea ITR region described in § 18.122 that may cause the taking of Pacific walruses and/or polar bears and wants nonlethal incidental take authorization under the regulations in this subpart J, the applicant must apply for an LOA. The applicant must submit the request for authorization to the Service's Alaska Region Marine Mammals Management Office (see § 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) The request for an LOA must include the following information and must comply with the requirements set forth in § 18.128:

(1) A plan of operations that describes in detail the proposed activity (*e.g.,* type of project, methods, and types and numbers of equipment and personnel, etc.), the dates and duration of the activity, and the specific locations of and areas affected by the activity.

(2) A site-specific marine mammal monitoring and mitigation plan to monitor and mitigate the effects of the activity on Pacific walruses and polar bears.

(3) A site-specific Pacific walrus and polar bear safety, awareness, and interaction plan. The plan for each activity and location will detail the policies and procedures that will provide for the safety and awareness of personnel, avoid interactions with Pacific walruses and polar bears, and minimize impacts to these animals.

(4) A Plan of Cooperation (POC) to mitigate potential conflicts between the proposed activity and subsistence hunting, where relevant. Applicants must provide documentation of communication with potentially affected subsistence communities along the Beaufort Sea coast (*i.e.,* Kaktovik, Nuiqsut, and Barrow) and appropriate subsistence user organizations (*i.e.,* the Eskimo Walrus Commission and the Alaska Nanuuq Commission) to discuss the location, timing, and methods of proposed activities and identify and mitigate any potential conflicts with subsistence walrus and polar bear hunting activities. Applicants must specifically inquire of relevant communities and organizations if the proposed activity will interfere with the availability of Pacific walruses and/or polar bears for the subsistence use of those groups. Applications for Letters of Authorization must include documentation of all consultations with potentially affected user groups. Documentation must include a summary of any concerns identified by community members and hunter

organizations, and the applicant's responses to identified concerns.

**§ 18.125 How the Service will evaluate a request for a Letter of Authorization (LOA).**

(a) We will evaluate each request for an LOA based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that analyzed by us in considering the number of animals likely to be taken and evaluating whether there will be a negligible impact on the species or an adverse impact on the availability of the species for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that the applicant has requested. Depending on the results of the evaluation, we may grant the authorization, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5), we will make decisions concerning withdrawals of an LOA, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stocks of polar bears or Pacific walruses.

**§ 18.126 Authorized take allowed under a Letter of Authorization (LOA).**

(a) An LOA allows for the nonlethal, noninjurious, incidental, but not intentional take by Level B harassment, as defined in § 18.3 and under § 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), of Pacific walruses and/or polar bears while conducting oil and gas industry exploration, development, production, and/or other substantially similar activities within the Beaufort Sea ITR region described in § 18.122.

(b) Each LOA will identify terms and conditions for each proposed activity and location.

**§ 18.127 Prohibited take under a Letter of Authorization (LOA).**

Except as otherwise provided in this subpart, prohibited taking is described in § 18.11 as well as:

(a) Intentional take, Level A harassment, as defined in § 3 of the Marine Mammal Protection Act (16 U.S.C. 1371 *et seq.*), and lethal incidental take of polar bears or Pacific walruses; and

(b) Any take that fails to comply with this subpart or with the terms and conditions of an LOA.

**§ 18.128 Mitigation, monitoring, and reporting requirements.**

(a) *Mitigation measures for all Letters of Authorization (LOAs).* Holders of an LOA must implement policies and procedures to conduct activities in a manner that minimizes to the greatest extent practicable adverse impacts on Pacific walruses and/or polar bears, their habitat, and the availability of these marine mammals for subsistence uses. Adaptive management practices, such as temporal or spatial activity restrictions in response to the presence of marine mammals in a particular place or time or the occurrence of Pacific walruses and/or polar bears engaged in a biologically significant activity (*e.g.,* resting, feeding, denning, or nursing, among others) must be used to avoid interactions with and minimize impacts to these animals and their availability for subsistence uses.

(1) All holders of an LOA must:

(i) Cooperate with the Service's Marine Mammals Management Office and other designated Federal, State, and local agencies to monitor and mitigate the impacts of oil and gas industry activities on Pacific walruses and polar bears.

(ii) Designate trained and qualified personnel to monitor for the presence of Pacific walruses and polar bears, initiate mitigation measures, and monitor, record, and report the effects of oil and gas industry activities on Pacific walruses and/or polar bears.

(iii) Have an approved Pacific walrus and polar bear safety, awareness, and interaction plan on file with the Service's Marine Mammals Management Office and onsite, and provide polar bear awareness training to certain personnel. Interaction plans must include:

(A) The type of activity and where and when the activity will occur (*i.e.,* a summary of the plan of operation);

(B) A food, waste, and other ''bear attractants'' management plan;

(C) Personnel training policies, procedures, and materials;

(D) Site-specific walrus and polar bear interaction risk evaluation and mitigation measures;

(E) Walrus and polar bear avoidance and encounter procedures; and

(F) Walrus and polar bear observation and reporting procedures.

(2) All applicants for an LOA must contact affected subsistence communities and hunter organizations to discuss potential conflicts caused by the proposed activities and provide the Service documentation of communications as described in § 18.124.

(b) *Mitigation measures for onshore activities.* Holders of an LOA must undertake the following activities to limit disturbance around known polar bear dens:

(1) *Attempt to locate polar bear dens.* Holders of an LOA seeking to carry out onshore activities in known or suspected polar bear denning habitat during the denning season (November–April) must make efforts to locate occupied polar bear dens within and near proposed areas of operation, utilizing appropriate tools, such as forward-looking infrared (FLIR) imagery and/or polar bear scent-trained dogs. All observed or suspected polar bear dens must be reported to the Service prior to the initiation of activities.

(2) *Observe the exclusion zone around known polar bear dens.* Operators must observe a 1.6-km (1-mi) operational exclusion zone around all known polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should previously unknown occupied dens be discovered within 1 mi of activities, work must cease and the Service contacted for guidance. The Service will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and the holder of the authorization must comply with any additional measures specified.

(3) *Use the den habitat map developed by the USGS.* A map of potential coastal polar bear denning habitat can be found at: *http://alaska.usgs.gov/science/biology/polar_bears/denning.html.* This measure ensures that the location of potential polar bear dens is considered when conducting activities in the coastal areas of the Beaufort Sea.

(4) *Restrict the timing of the activity to limit disturbance around dens.*

(c) *Mitigation measures for operational and support vessels.*

(1) Operational and support vessels must be staffed with dedicated marine mammal observers to alert crew of the presence of walruses and polar bears and initiate adaptive mitigation responses.

(2) At all times, vessels must maintain the maximum distance possible from concentrations of walruses or polar bears. Under no circumstances, other than an emergency, should any vessel approach within an 805-m (0.5-mi) radius of walruses or polar bears observed on land or ice.

(3) Vessel operators must take every precaution to avoid harassment of concentrations of feeding walruses

when a vessel is operating near these animals. Vessels should reduce speed and maintain a minimum 805-m (0.5-mi) operational exclusion zone around feeding walrus groups. Vessels may not be operated in such a way as to separate members of a group of walruses from other members of the group. When weather conditions require, such as when visibility drops, vessels should adjust speed accordingly to avoid the likelihood of injury to walruses.

(4) The transit of operational and support vessels through the specified geographic region is not authorized prior to July 1. This operating condition is intended to allow walruses the opportunity to disperse from the confines of the spring lead system and minimize interactions with subsistence walrus hunters. Exemption waivers to this operating condition may be issued by the Service on a case-by-case basis, based upon a review of seasonal ice conditions and available information on walrus and polar bear distributions in the area of interest.

(5) All vessels must avoid areas of active or anticipated walrus or polar bear subsistence hunting activity as determined through community consultations.

(6) In association with marine activities, we may require trained marine mammal monitors on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of Industry's activity on polar bear and Pacific walruses.

(d) *Mitigation measures for aircraft.*

(1) Operators of support aircraft should, at all times, conduct their activities at the maximum distance possible from concentrations of walruses or polar bears.

(2) Under no circumstances, other than an emergency, should aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of walruses or polar bears observed on ice or land. Helicopters may not hover or circle above such areas or within 805 m (0.5 mile) of such areas. When weather conditions do not allow a 457-m (1,500-ft) flying altitude, such as during severe storms or when cloud cover is low, aircraft may be operated below this altitude. However, when weather conditions necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known walrus and polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mile) of these areas.

(3) Plan all aircraft routes to minimize any potential conflict with active or anticipated walrus or polar bear hunting activity as determined through community consultations.

(e) *Mitigation measures for sound-producing offshore activities.* Any offshore activity expected to produce pulsed underwater sounds with received sound levels ≥160 dB re 1 μPa will be required to establish and monitor acoustically verified mitigation zones surrounding the sound source and implement adaptive mitigation measures as follows:

(1) *Mitigation zones.*

(i) A walrus monitoring zone is required where the received pulsed sound level would be ≥160 dB re 1 μPa. Walruses in this zone are assumed to experience Level B take.

(ii) A walrus mitigation zone is required where the received pulsed sound level would be ≥180 dB re 1 μPa.

(iii) A walrus or polar bear mitigation zone is required where the received pulsed sound level would be ≥190 dB re 1 μPa.

(2) *Adaptive mitigation measures.*

(i) *Ramp-up procedures.* For all sound sources, including sound source testing, the following sound ramp-up procedures must be used to allow walruses and polar bears to depart the mitigation zones:

(A) Visually monitor the ≥180 dB re 1 μPa and ≥190 dB re 1 μPa mitigation zones and adjacent waters for walruses and polar bears for at least 30 minutes before initiating ramp-up procedures. If no walruses or polar bears are detected, ramp-up procedures may begin. Do not initiate ramp-up procedures when mitigation zones are not observable (*e.g.,* at night, in fog, during storms or high sea states, etc.).

(B) Initiate ramp-up procedures by activating a single, or least powerful, sound source, in terms of energy output and/or volume capacity.

(C) Continue ramp-up by gradually increasing sound output over a period of at least 20 minutes, but no longer than 40 minutes, until the desired operating level of the sound source is obtained.

(ii) *Power down.* Immediately power down a sound source when:

(A) One or more walruses is observed or detected within the area delineated by the pulsed sound ≥180 dB re 1 μPa walrus mitigation zone; and

(B) One or more walruses or polar bears are observed or detected within the area delineated by the pulsed sound ≥190 dB re 1 μPa walrus or polar bear mitigation zone.

(iii) *Shut down.*

(A) If the power down operation cannot reduce the received pulsed sound level to <180 dB re 1 μPa (walrus) or <190 dB re 1 μPa (walrus or polar bear), the operator must immediately shut down the sound source.

(B) If observations are made or credible reports are received that one or more walruses or polar bears within the area of the sound source activity are believed to be in an injured or mortal state, or are indicating acute distress due to received sound, the sound source must be immediately shut down and the Service contacted. The sound source will not be restarted until review and approval has been given by the Service. The ramp-up procedures must be followed when restarting.

(f) *Mitigation measures for the subsistence use of walruses and polar bears.* Holders of Letters of Authorization must conduct their activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of Pacific walruses and polar bears for subsistence uses.

(1) *Community consultation.* Prior to receipt of an LOA, applicants must consult with potentially affected communities and appropriate subsistence user organizations to discuss potential conflicts with subsistence walrus and polar bear hunting caused by the location, timing, and methods of proposed operations and support activities (see § 18.124 for details). If community concerns suggest that the proposed activities may have an adverse impact on the subsistence uses of these species, the applicant must address conflict avoidance issues through a POC as described in paragraph (f)(2) of this section.

(2) *Plan of Cooperation (POC).* When appropriate, a holder of an LOA will be required to develop and implement a Service-approved POC. The POC must include:

(i) A description of the procedures by which the holder of the LOA will work and consult with potentially affected subsistence hunters; and

(ii) A description of specific measures that have been or will be taken to avoid or minimize interference with subsistence hunting of walruses and polar bears and to ensure continued availability of the species for subsistence use.

(iii) The Service will review the POC to ensure that any potential adverse effects on the availability of the animals are minimized. The Service will reject POCs if they do not provide adequate safeguards to ensure the least practicable adverse impact on the availability of walruses and polar bears for subsistence use.

(g) *Monitoring requirements.* Holders of an LOA will be required to:

(1) Develop and implement a site-specific, Service-approved marine mammal monitoring and mitigation plan to monitor and evaluate the effectiveness of mitigation measures and the effects of activities on walruses, polar bears, and the subsistence use of these species.

(2) Provide trained, qualified, and Service-approved onsite observers to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan.

(3) For offshore activities, provide trained, qualified, and Service-approved observers on board all operational and support vessels to carry out monitoring and mitigation activities identified in the marine mammal monitoring and mitigation plan. Offshore observers may be required to complete a marine mammal observer training course approved by the Service.

(4) Cooperate with the Service and other designated Federal, State, and local agencies to monitor the impacts of oil and gas activities on walruses and polar bears. Where information is insufficient to evaluate the potential effects of proposed activities on walruses, polar bears, and the subsistence use of these species, holders of an LOA may be required to participate in joint monitoring and/or research efforts to address these information needs and ensure the least practicable impact to these resources.

(h) *Reporting requirements.* Holders of an LOA must report the results of monitoring and mitigation activities to the Service's Marine Mammals Management Office via email at: *fw7_mmm_reports@fws.gov.*

(1) *In-season monitoring reports.*

(i) *Activity progress reports.* Holders of an LOA must:

(A) Notify the Service at least 48 hours prior to the onset of activities;

(B) Provide the Service weekly progress reports of any significant changes in activities and/or locations; and

(C) Notify the Service within 48 hours after ending of activities.

(ii) *Walrus observation reports.* Holders of an LOA must report, on a weekly basis, all observations of walruses during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(A) Date, time, and location of each walrus sighting;

(B) Number of walruses;

(C) Sex and age (if known);

(D) Observer name and contact information;

(E) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(F) Estimated range at closest approach;

(G) Industry activity at time of sighting;

(H) Behavior of animals sighted;

(I) Description of the encounter;

(J) Duration of the encounter; and

(K) Mitigation actions taken.

(iii) *Polar bear observation reports.* Holders of an LOA must report, within 48 hours, all observations of polar bears and potential polar bear dens, during any Industry activity. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the Service). Information in the observation report must include, but is not limited to:

(A) Date, time, and location of observation;

(B) Number of bears;

(C) Sex and age (if known);

(D) Observer name and contact information;

(E) Weather, visibility, sea state, and sea-ice conditions at the time of observation;

(F) Estimated closest distance of bears from personnel and facilities;

(G) Industry activity at time of sighting;

(H) Possible attractants present;

(I) Bear behavior;

(J) Description of the encounter;

(K) Duration of the encounter; and

(L) Mitigation actions taken.

(2) *Notification of LOA incident report.* Holders of an LOA must report, as soon as possible, but within 48 hours, all LOA incidents during any Industry activity. An LOA incident is any situation when specified activities exceed the authority of an LOA, when a mitigation measure was required but not enacted, or when injury or death of a walrus or polar bear occurs. Reports must include:

(i) All information specified for an observation report;

(ii) A complete detailed description of the incident; and

(iii) Any other actions taken.

(3) *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal monitoring and mitigation plan must be submitted to the Service for review within 90 days of the expiration of an LOA, or for production LOAs, an annual report by January 15th of each calendar year. Upon request, final report data must be provided in a common electronic format (to be specified by the Service). Information in the final (or annual) report must include, but is not limited to:

(i) Copies of all observation reports submitted under the LOA;

(ii) A summary of the observation reports;

(iii) A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

(iv) Analysis of factors affecting the visibility and detectability of walruses and polar bears during monitoring;

(v) Analysis of the effectiveness of mitigation measures;

(vi) Analysis of the distribution, abundance, and behavior of walruses and/or polar bears observed; and

(vii) Estimates of take in relation to the specified activities.

**§ 18.129 Information collection requirements.**

(a) 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 Office of Management and Budget (OMB) control number. OMB has approved the collection of information contained in this subpart and assigned OMB control number 1018–0070. You must respond to this information collection request to obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. We will use the information to:

(1) Evaluate the application and determine whether or not to issue specific Letters of Authorization; and

(2) Monitor impacts of activities and effectiveness of mitigation measures conducted under the Letters of Authorization.

(b) Comments regarding the burden estimate or any other aspect of this requirement must be submitted to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, at the address listed in 50 CFR 2.2.

Dated: May 26, 2016.

**Michael J. Bean,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–13124 Filed 6–6–16; 8:45 am]

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Part III

## Department of Energy

10 CFR Part 850

Chronic Beryllium Disease Prevention Program; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 850**

**[Docket No. AU–RM–11–CBDPP]**

**RIN 1992–AA39**

## Chronic Beryllium Disease Prevention Program

**AGENCY:** Office of Environment, Health, Safety and Security, U.S. Department of Energy.

**ACTION:** Notice of proposed rulemaking and public hearings.

**SUMMARY:** The Department of Energy (DOE or the Department) is proposing to amend its current chronic beryllium disease prevention program regulation. The proposed amendments would improve and strengthen the current provisions and continue to be applicable to DOE Federal and contractor employees who are, were, or potentially were exposed to beryllium at DOE sites.

**DATES:** The comment period for this proposed rule will end on September 6, 2016. Public hearings will be held on:

1. June 28–30, 2016, in Richland, WA, from 9 a.m. to 1 p.m. and 6 p.m. to 9 p.m.;
2. July 12–14, 2016, in Oak Ridge, TN, from 9 a.m. to 1 p.m. and 6 p.m. to 9 p.m.;
3. July 27–28, 2016, in Las Vegas, NV, from 9 a.m. to 1 p.m. and 5 p.m. to 8 p.m.; and
4. August 11, 2016, in Washington, DC, from 9 a.m. to 4 p.m.

Requests to speak at any of the hearings should be made by June 24, 2016, for the Richland, WA hearing; July 8, 2016, for the Oak Ridge, TN hearing; July 25, 2016, for the Las Vegas, NV; and August 10, 2016, for the Washington, DC hearing. Each presentation is limited to 10 minutes.

**ADDRESSES:** You may submit comments, identified by docket number AU–RM–11–CBDPP, and/or Regulation Identification Number (RIN) 1992–AA39 in one of four ways (please choose only one of the ways listed):

1. *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
2. *Email: Rulemaking.850@hq.doe.gov.* Include docket number AU–RM–11–CBDPP and/or RIN 1992–AA39 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment. If you have additional information such as studies or journal articles and cannot attach them to your electronic submission, please send them on a CD or USB flash drive to the address below. The additional material must clearly identify your electronic comments by name, date, subject, and docket number AU–RM–11–CBDPP.
3. *Mail:* Address written comments to Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU–11, Docket Number AU–RM–11–CBDPP, 1000 Independence Ave. SW., Washington, DC 20585 (due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt). If possible, please submit all items on a CD or USB flash drive, in which case it is not necessary to include printed copies.
4. *Hand Delivery/Courier:* Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, 1000 Independence Ave. SW., Washington, DC 20585. Telephone 202–586–4714. If possible, please submit all items on a CD or USB flash drive, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see Section VI 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 *http://www.regulations.gov.* All documents in the docket are listed in the *regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available. A link to the docket Web page can be found at: *http://www.energy.gov/ehss/chronic-beryllium-disease-prevention-10-cfr-850.* This Web page contains a link to the docket for this notice on the *regulations.gov* site. The *regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket. See Section VI of this document for further information on how to submit comments through *www.regulations.gov.*

The public hearings for this rulemaking will be held at the following addresses:

1. Richland, WA: Hammer Federal Training Facility, State Department Room, 2890 Horn Rapids Road, Richland, WA 99354;
2. Oak Ridge, TN: The Pollard Technology Conference Center, 210 Badger Avenue, Oak Ridge, TN 37830;
3. Las Vegas, NV: North Las Vegas Facility, 2621 Losee Road, Building B–03, North Las Vegas, NV 89030–4129; and
4. Washington, DC: U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585. Requests to speak at any of the hearings should be telephoned in to Meredith Harris, 301–903–6061. For more information concerning public participation in this rulemaking proceeding, see Section VI of this proposed rulemaking (Public Participation).

**FOR FURTHER INFORMATION CONTACT:** Jacqueline D. Rogers, U.S. Department of Energy, Office of Environment, Health, Safety and Security, Mailstop AU–11, 1000 Independence Ave. SW., Washington, DC 20585, telephone: (202) 586–4714, or Email: *jackie.rogers@hq.doe.gov.*

For information concerning the hearings, requests to speak at the hearings, submittal of written comments, or to obtain copies of materials referenced in this document, contact Jacqueline D. Rogers, 202–586–4714.

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## I. Introduction

The U.S. Department of Energy (DOE) has a long history of beryllium use because of the element's broad application to many nuclear operations and processes. Beryllium metal and ceramics are used in nuclear weapons, as nuclear reactor moderators or reflectors, and as nuclear reactor fuel element cladding. At DOE, beryllium operations have historically included foundry (melting and molding), grinding, and machine tooling of parts.

The inhalation and exposure to the skin of beryllium particles may cause beryllium sensitization (BeS) and chronic beryllium disease (CBD). BeS is a condition in which a person's immune system becomes highly responsive (allergic) to the presence of beryllium in the body. CBD is a chronic, often debilitating, and sometimes fatal lung condition. There has long been scientific consensus that exposure to airborne beryllium is the only cause of CBD.

The current worker protection permissible exposure limit (PEL) of 2 μg/m³, measured as an 8-hour, time-weighted average (TWA), was adopted by the U.S. Department of Labor's (DOL) Occupational Safety and Health Administration (OSHA) in 1971 and codified in 29 CFR 1910.1000, Tables Z–1 and Z–2, by reference to existing national consensus standards. One of DOE's predecessor agencies, the Atomic Energy Commission, had previously established the same limit of 2 μg/m³ for application at its facilities in 1949, and that limit has remained in effect at DOE's facilities up to the present. In 1977, the National Institute for Occupational Safety and Health (NIOSH), which is part of the U.S. Department of Health and Human Services, classified beryllium as a potential occupational carcinogen. Between the 1970s and 1984, there was a significant reduction in the incidence rate of CBD in the workplace. Coupled with its long latency period, this led to the assumption that CBD was occurring only among workers who were exposed to high levels of beryllium decades earlier; however, DOE medical screening programs continue to discover cases of CBD among workers employed at DOE facilities. These facilities are expected to maintain worker exposures to beryllium at levels below the OSHA PEL, as well as operate with an action level of 0.2 μg/m³ that triggers a number of controls and protective measures designed to protect workers when their exposures are at or above that level.

On December 3, 1998, DOE published a notice of proposed rulemaking (NOPR) to establish a Chronic Beryllium Disease Prevention Program (CBDPP) (63 FR 66940). After considering the comments received, DOE published its final rule establishing the CBDPP on December 8, 1999 (64 FR 68854). DOE now has more than 14 years of job, exposure, and health data, as well as experience implementing the rule. New research related to BeS and CBD has been published in the years since 1999. In addition, on December 23, 2010, DOE published a Request for Information (RFI) (75 FR 80734) to request information and comments on issues related to its current CBDPP. DOE is publishing this NOPR to propose an update to its CBDPP regulations in light of the information it has obtained since December 1999, when the Final Rule was first published. The proposed amendments would strengthen the current CBDPP under 10 CFR part 850, and the worker protection programs established under 10 CFR part 851, *Worker Safety and Health Program.* Consistent with the requirements established in both rules, this proposal would continue to establish a CBDPP designed to reduce the occurrence of CBD among DOE Federal and contractor workers and any other individuals who perform work at a DOE site. The proposed amendments to the CBDPP would continue to accomplish this disease reduction mission through proposed provisions that: (1) Reduce the number of current workers who are exposed to beryllium by clearly identifying and limiting worker access to areas and operations that contain or utilize beryllium; (2) Minimize the potential for, and levels of, worker exposure to beryllium by implementing engineering and work practice controls that prevent the release of beryllium into the workplace atmosphere and/or capture and contain airborne beryllium particles before worker inhalation; (3) Establish medical surveillance to monitor the health of exposed workers and ensure early detection of disease; (4) Establish continual monitoring of the effectiveness of the program in preventing CBD and implementing program enhancements as appropriate, and (5) Require the collection of data to improve the information available to better understand the cause of CBD. The principle proposed amendments would:

- Revise the definitions of beryllium, beryllium worker, and beryllium associated worker, and add new definitions for beryllium sensitization and chronic beryllium disease.
- Lower the action level to 0.05 μg/m³.
- Allow the use portable laboratories.
- Modify the release criteria of formerly beryllium-contaminated equipment or areas without labeling if they contain beryllium in inaccessible locations or embedded in hard-to-remove substances, provided certain levels are not exceeded.
- Allow releasing beryllium-contaminated equipment, items or areas with removable beryllium above 0.2 μg/100 cm² or that have beryllium in material on the surface at levels above the natural level in soil at the point of release.
- Ensure beryllium-associated workers are notified yearly of their right to participate in the medical surveillance program.
- Require mandatory medical and periodic evaluations for beryllium workers.
- Require medical evaluations for beryllium and beryllium-associated workers showing signs and symptoms of beryllium sensitization or chronic beryllium disease when the SOMD determines an evaluation is warranted.
- Require exit medical evaluations for beryllium workers and beryllium-associated workers who voluntarily participated in the medical surveillance program
- Add medical restriction requirements for workers.
- Require mandatory medical removal for workers based on the site occupational medicine director's written opinion.
- Ensure beryllium workers are informed and understand that medical testing is mandatory.
- Revise the training requirements for beryllium-associated workers.
- Revised the wording on beryllium warning signs.
- Require labels for equipment or items containing beryllium in inaccessible locations or embedded in hard-to-remove substances.
- Revised the consent forms for beryllium and beryllium-associated workers.

The proposed rule is estimated to cost from $13.6 million to $17.2 million (annualized first year costs plus annual costs in 2014 dollars, using a 7 percent discount rate and a 10 year period lifetime of investment). This includes first year costs of $41.4 million to $42.7 million, of which $7.8 million to $11.2 million are annually recurring costs. In addition, DOE expects its sites will experience cost-savings attributable to

minor changes and clarifications in the proposed amendments to 10 CFR part 850. As discussed in the Economic Assessment, however, DOE was not able to obtain quantitative estimates of these savings, but anticipates the savings would result from:

- *Reduced controls from currently regulated areas that will no longer be regulated under the proposed definition of beryllium.*
- *Reduced surface sampling for areas that are below 0.05* μ*g/m3 (instead of the current requirement to conduct sampling wherever beryllium is present).*
- *Reduced turnaround time for exposure monitoring results as a result of using a portable laboratory;*
- *Relaxed requirements for transferring contaminated equipment to another area in which beryllium work is performed.*
- *Reduced costs, avoided confusion, reduced liability, and avoided disputes with employees over DOE's legal liability due to clarifications in the medical removal surveillance and removal requirements.*
- *Reduced medical evaluation costs due to allowing the SOMD to determine what exams and tests are needed for each worker.*
- *Reduced training requirements for beryllium-associated workers (who currently have the same training requirements as beryllium workers).*

DOE expects its sites, contractors and workers to experience the following benefits from the proposed amendment:

- *Reduced medical costs.*
- *Reduced mortality.*
- *Increased quality of life.*
- *Increased medical surveillance for workers at risk.*
- *Increased work-life for beryllium workers.*
- *Reduced confusion and dispute over legal liability for DOE and DOE contractors.*
- *Reduced restrictions and costs for the release and transfer of equipment or areas with potential beryllium contamination.*
- *Reduced control of areas where contamination is a result of naturally high levels of beryllium in the soil or surrounding environment.*
- *Reduced turnaround time for sample analysis due to the use of portable laboratories.*
- *Reduced medical costs for periodic evaluations due to the Site Occupational Medicine Director's ability to judge that certain medical tests may be unnecessary for some workers.*

*A. Chemical Identification and Use*

Beryllium (atomic number 4) is a silver-gray metallic element with a density of 1.85 g/cm$^3$ and a high stiffness. The second lightest of the metals, beryllium also has a high melting point (1,285 °C) and high heat absorption capacity.

Beryllium occurs naturally in the earth's surface in about 30 minerals found in rocks, coal and oil, soil, and volcanic dust. Smith et al. report that the concentration of beryllium in surface soils in the United States ranges from 0.09 to 3.4 parts per million (ppm), with a median of 1.2 ppm. Trace levels are present in food, water, and ambient air (ref. 1).[1] Beryllium for industrial use is extracted from beryl and bertrandite ores as beryllium hydroxide, which is the feedstock for production of beryllium oxide, beryllium metal, and beryllium alloys and composite materials (ref. 2). Naturally occurring beryllium containing silicates are mined, processed into feed material, and cut and polished for sale as gemstones. Aquamarine and emerald are examples of gemstone forms of beryl.

Beryllium was not widely used in industry until the 1940s and 1950s. Beryllium can be used as a pure metal, mixed with other metals to form alloys, processed to salts that dissolve in water, and processed to form oxides and ceramic materials. Beryllium is primarily used to stiffen copper into alloys as strong as steel, but which retain copper's corrosion resistance and electrical and thermal conductivity (ref. 2). Copper alloy strip, rod, and wire containing 0.15 to 2.0 percent beryllium is stamped or machined into complex shapes for electrical connectors, clips, springs and molds for plastics. Copper-beryllium alloys are cast and machined into non-sparking tooling, for applications where fire and explosion are a concern, and into bushings, for bearings in landing gear of commercial and military aircraft. Its corrosion resistance has led to its use as housing for undersea cables. High-strength, light weight beryllium-aluminum alloys and composites are used for structural components in aerospace and defense applications. Nickel-beryllium alloys have niche markets as electrical connectors, in jewelry, and in dental prosthetic. The thermal conductivity and transparency to microwaves of beryllium oxide ceramic has led to its use in electronics, microwave and communication equipment.

Beryllium metal has been produced for various industrial uses, especially in the aerospace and defense industries. Both structural and instrument grade materials are manufactured, including windshield frames and other structures in high-speed aircraft and space vehicles, aircraft and space shuttles brakes, X-ray windows, neutron moderators or reflectors in nuclear reactors, and nuclear weapons components. Beryllium salts (*e.g.,* sulfate or fluoride) and beryllium hydroxide are intermediates in production processes and small quantities are sold for use as laboratory reagents. Copper-beryllium is a common substrate for gold plated electrical connectors and may be encountered during precious metal recovery. Other beryllium materials include soluble beryllium salts and oxides. Beryllium soluble salts such as beryllium fluoride, chloride and sulfate, are used in nuclear reactors, in glass manufacturer, and as catalysts for certain chemical reactions. Beryllium oxide is used to make ceramics for electronics, and other electrical equipment. Beneficial properties of beryllium oxide include hardness, strength, excellent heat conductivity, and good electrical insulation.

Beryllium is also found as a trace metal in materials such as aluminum ore, abrasive blasting grit, and coal fly ash. Abrasive blasting grits such as coal slag and copper slag contain varying concentrations of beryllium, usually less than 0.1% by weight. The burning of bituminous and sub-bituminous coal for power generation causes the naturally occurring beryllium in coal to accumulate in the coal fly ash byproduct. Scrap and waste metal for smelting and refining may also contain beryllium (ref. 3).

Occupational exposure to beryllium can occur from inhalation of dusts, fumes, and mists. Beryllium dusts are created during operations where beryllium is cut, machined, crushed, ground, or otherwise mechanically sheared. Mists can also form during operations that use machining fluids. Beryllium fumes can form while welding with or on beryllium components, and from hot processes such as those found in metal foundries.

Occupational exposure to beryllium can also occur from skin, eye, and mucous membrane contact with beryllium particulates or solutions.

*B. Health Effects*

Beryllium exposure is associated with a wide range of health effects such as acute beryllium disease, immune system response and sensitization (BeS), CBD, lung cancer, and other possible systemic effects. The National Toxicology Program, the International Agency for Research on Cancer (IARC) and the American Conference for Governmental

[1] A listing of references is included as appendix A to this **SUPPLEMENTARY INFORMATION** section.

Industrial Hygienists (ACGIH®) classify beryllium and beryllium compounds as human carcinogens (refs. 4, 5, 6). This section focuses, however, on BeS and CBD because they represent the critical effects for beryllium and beryllium-associated workers at DOE sites and are the focus of the CBDPP regulation and this amendment. As noted in the ''Introduction'' section of this NOPR ''DOE now has more than 14 years of job, exposure, and health data, as well as experience implementing the rule. New research related to BeS and CBD has been published in the years since 1999.'' This ''Health Effects'' section largely highlights these newer studies, particularly epidemiological and experimental studies that provide further insights about BeS and CBD—exposure, early disease detection, and disease progression.

1. Beryllium Sensitization (BeS)

BeS is an immune system response triggered by beryllium exposure (ref. 7). BeS can occur quickly or many years after exposure to beryllium, potentially progressing into disease (ref. 8). Only a subset of workers exposed to beryllium ever become sensitized. Reported prevalence of BeS ranges from less than 1% up to 19% (refs. 6, 7). BeS alone does not cause physical symptoms. However, individuals showing evidence of BeS may develop subclinical and clinical CBD, including disabling forms.

Sensitization to beryllium can result from both inhalation and skin exposure (refs. 5, 6, 7). The 2008 National Academy of Sciences review points to the hypothesis that ''penetration of the skin by poorly soluble beryllium particles may be an immunologic route to sensitization, as can occur with skin contact and soluble beryllium salts'' (ref. 7). The authors comment that some exposures may make beryllium more bioavailable to the skin (soluble metals and liquids) and others more bioavailable to the lung (respirable particles, mists and vapors). Tinkle, et al. observed that beryllium particles less than 1 micrometer in diameter, can penetrate intact human skin and reach dermal layers where sensitization can occur (ref. 9). Henneberger et al. found a contrast in chronic beryllium disease between long-term and short-term workers but not a contrast in BeS between these workers (ref. 10). The Henneberger study concludes that short-term workers may have developed beryllium sensitization from skin exposure. Day et al. published a review of the published literature, including epidemiologic, immunologic, genetic, and laboratory-based studies of *in vivo* and *in vitro* models concerning skin exposure to beryllium (ref. 11). The authors hypothesized ''that skin exposure to beryllium may be sufficient to cause sensitization, while inhalation is necessary for progression to lung disease.'' The ACGIH® and IARC have assigned a skin notation for beryllium and compounds, with the goal of preventing dermal exposure and possible sensitization by this route, possible absorption of beryllium through open cuts or wounds, and secondary inhalation of beryllium via the re-suspension of settled dust (refs. 5, 6).

As mentioned earlier, individuals sensitized to beryllium are asymptomatic and are not physically impaired. Once sensitization has occurred, it is medically prudent to prevent additional exposure to beryllium. Physicians generally recommend removing the sensitized individual from future beryllium exposure to reduce the risk of progression, based on experience with other immunologically mediated diseases and evidence that exposure is a risk factor for developing CBD. No published research studies are available, however, examining whether the general practice of recommending removal is a benefit. Moreover, the National Academy of Sciences points out that designing a study that would randomize workers to continue or avoid exposure ''would likely be considered unethical because of the potential severity of CBD'' (ref. 7).

The Beryllium-Induced Lymphocyte Proliferation Test (BeLPT) is used as a diagnostic tool, as well as for medical surveillance and screening for BeS. Currently, it is the most commonly available diagnostic tool for identifying BeS.

2. Chronic Beryllium Disease (CBD)

CBD is an immune-mediated, granulomatous lung disease caused by exposure to airborne beryllium particulate (ref. 8). Granulomas are abnormal tissues that form due to a proliferation of immune system cells known as lymphocytes. In the lung, accumulations of granulomas can interfere with gas exchange between the blood and the lungs. The immune response to beryllium in the lung includes inflammation, which, if it persists, forms scar tissue (fibrosis), resulting in permanent lung damage. This beryllium-induced proliferative and granulomatous response is specific to CBD. CBD pathology is similar to sarcoidosis, a more common disease. Sarcoidosis, however, usually resolves during its normal course, whereas clinically evident CBD generally does not resolve but may reach a steady state condition and may worsen over time.

Frequently reported symptoms of CBD include one or more of the following: dyspnea (shortness of breath) on exertion, cough, fever, night sweats, chest pain, and, less frequently, arthralgias (neuralgic pain in joints), fatigue, weight loss, and appetite loss. On physical examination, a physician may find signs of CBD, such as rales (changes in lung sounds), cyanosis (lack of oxygen), digital clubbing (thickening or widening of the ends of the fingers or toes), or lymphadenopathy (enlarged lymph nodes). A radiograph (X-ray) of the lungs may show many small scars. Patients may also have abnormal breathing and pulmonary function test results. Examination of the lung tissue under the microscope may show granulomas, which are signs of damage due to the body's reaction to beryllium. In advanced cases, there may be manifestations of right-sided heart failure, including cor pulmonale (enlarged right ventricle of the heart caused by blockage in the lungs).

Individuals with CBD may experience mild to severe forms of disease. In severe cases, the affected individuals may be permanently and totally disabled. Mortality of the sensitized individuals directly attributable to CBD and its complications is estimated to be 30% (ref. 12). This estimate is based upon historical data reflecting both the higher levels of exposure that occurred in the workplace prior to regulation of workplace exposure to beryllium in the late 1940s and a tracking of the medical history of subjects of CBD over several decades. DOE's recent experience with improved diagnoses and treatments may result in a lower mortality rate for CBD cases.

The BeLPT is used as a diagnostic tool for patients who present with possible CBD, as well as for medical surveillance and screening for BeS. For individuals with abnormal blood BeLPT screening results, a positive BeLPT conducted on cells washed from a segment of the lung of an individual can help confirm the presence of CBD. In the absence of granulomata or other clinical evidence of CBD, individuals with a positive BeLPT are classified as sensitized to beryllium.

Stange et al. provided estimates of the sensitivity and specificity of the BeLPT for BeS by evaluating paired results from different testing laboratories. The authors examined 20,275 BeLPT results from medical evaluations of 7,820 current and former DOE workers over a 10-year period. The program led to the diagnosis of 117 cases of CBD and the confirmation of 184 cases of BeS

without disease for a combined prevalence of 3.85% (301/7,820) (ref. 13). With borderline BeLPT results included, the sensitivity of the test was estimated to be 68.3% and the specificity was estimated to be 96.9%. In this same population, the percentage of beryllium sensitized individuals found to have CBD by clinical evaluation (positive predictive value) ranged from 71% for 24 sensitized beryllium machinists to 9% for 11 sensitized scientists, with an overall average of 35% for 235 subjects found sensitized by this study (ref. 14).

As noted above, BeS precedes the development of CBD, but the true risk and rate of disease progression is not known based on available study data (refs. 6, 7, 15). Data suggests that CBD can occur at relatively low exposure levels and, in some cases, after relatively brief durations of exposure (ref. 14). However, CBD can take months to years after initial beryllium exposure before signs and symptoms appear (ref. 15).

The clinical course—the latency period, rate of progression, and severity—of CBD is highly variable. A 2008 National Academy of Sciences review states ''CBD has a clinical spectrum that can range from evidence of BeS and granulomas of the lung without clinically significant symptoms or deficits in lung function to end-stage lung disease'' (ref. 7). Individuals who only have evidence of BeS and granulomas may or may not progress to a disabling form of CBD. Some individuals deteriorate rapidly; most experience long, gradual deterioration. Treatment generally consists of oral corticosteroid therapy. If lung damage is evident, CBD is treated with anti-inflammatory medications based on the course of treatment used for sarcoidosis to try to reduce granulomas, improve lung function, and minimize permanent damage from fibrosis. Individuals with impaired gas exchange may require continuous oxygen administration.

The observed variability in the clinical progression of CBD is possibly due to variation in exposure amount, route and type, and genetic and other host susceptibility factors. The factors that affect progression are not understood well enough to allow physicians to provide patients with specific advice on their likely prognosis. Currently, there is no medical therapy to prevent possible progression of BeS to CBD. Diagnostic evaluations are required to determine whether a BeS individual has progressed to CBD. Workers are counseled to seek medical attention if they develop new or worsening respiratory symptoms.

A number of studies suggest that the rate of progression from BeS to CBD may be related to the level of exposure and the form of beryllium (ref. 16). Newman et al. evaluated a group of patients with BeS but no CBD at two-year intervals (ref. 15). Of the 55 patients, 17 (31%) progressed to CBD within an average of 3.8 years. In this group, machinists had a higher risk of progression to CBD. The group of 55 patients was a subset of patients described in a subsequent publication by Mroz et al., which examined 171 beryllium exposed workers with CBD and 229 with BeS to look at risk factors for, and progression of, surveillance-identified CBD over a 20 year period (ref. 16). In addition to being machinists, those diagnosed with CBD, as opposed to BeS only, were more likely to have been exposed in the ceramics industry and less likely to have only bystander exposures, suggesting that the form and dose of beryllium may contribute to development of CBD. It was reported that 8.8% of all workers initially identified as having BeS only developed CBD over the course of the study. The study noted that physiologic changes can occur from within one month of first exposure to beyond 30 years from first exposure. However, the authors note that clinical follow-up was incomplete for this larger cohort.

Rosenman et al. studied 577 former workers from a beryllium processing plant whose first exposure, on average, began in the 1960s (ref. 17). This study involved testing subjects more than 20 years after their last exposure to beryllium. The authors identified 7.6% to have definite or probable CBD and another 7.0% with BeS at the time of the study. Those with BeS had a shorter duration of exposure to airborne beryllium, began work later, worked with beryllium longer ago, had lower measures of cumulative and peak exposure to airborne beryllium, and had lower non-soluble beryllium exposures than those with CBD, again suggesting that exposure variables may affect progression from BeS to CBD.

Two other studies have also reported that individuals with positive blood BeLPTs were less likely to have CBD at the time of their initial evaluation if they had jobs and worked in industries with low airborne beryllium exposures. Welch et al. report a total of 75,000 construction workers potentially available for screening, of which 4,458 were initially screened. Of those, 3,842 completed beryllium testing (BeLPT) (ref. 18). The authors reported that 53 (1.4%) of those tested had two or more abnormal BeLPT results. Of the 33 workers who were clinically evaluated, 5 (15%) were diagnosed with CBD. Arjomandi et al. reported similar results among current and former workers at Lawrence Livermore National Laboratory (LLNL) (ref. 19). Among the 1,875 participants tested, 59 (3.1%) were found with BeS. Of these, 50 accepted the offer of a clinical evaluation and 40 consented to bronchoscopy and bronchoalveolar lavage. Five of the 40 (12.5%) were diagnosed with CBD. The authors compared workroom air monitoring results from LLNL and the DOE Rocky Flats Plant and found the results from LLNL were much lower than those from the DOE Rocky Flats Plant. In addition, the incidence of CBD in workers identified as being sensitized was lower at LLNL (12.5%) than Rocky Flats where 38% of BeS cases were diagnosed with CBD. Therefore, there appears to be a correlation between the level of exposure to airborne beryllium and the incidence of disease.

Studies have shown that some people who are diagnosed with CBD have never been occupationally exposed to beryllium. For example, under the direction of Dr. Thomas Mancuso, 16 cases of CBD were diagnosed by X-ray examination among 20,000 residents living in Lorain, Ohio (ref. 20). Likewise, a 1949 report described 11 patients with CBD who lived near a beryllium extraction plant (ref. 21). Ten of the 11 lived within ¾ of a mile of the plant and exposure from the plant discharges into the air was the suggested cause of their CBD. Measurements of air concentrations of beryllium at various distances from the plant provided the basis for the Environmental Protection Agency's (EPA's) community permissible exposure limit (24-hour ambient air limit of 0.01 microgram of beryllium per cubic meter of air).

In addition, CBD has been reported among family members of beryllium workers who were presumably exposed to contaminated work clothing during the 1940s and 1950s (refs. 22, 23). The virtual disappearance of CBD caused by air pollution or household exposure has been attributed to more stringent control of air emissions and improved work practices, such as mandatory work clothing exchange. However, in 1989, a woman previously diagnosed with sarcoidosis was diagnosed with CBD. The woman had no occupational exposure to beryllium, but her husband was a beryllium production worker. This was the first new case of non-occupational CBD reported in 30 years (ref. 24).

*C. Beryllium Exposure at DOE Facilities*

The Department's medical screening programs discovered cases of CBD among workers who were first exposed after 1970, when DOE facilities were expected to maintain workers' exposure to beryllium below the OSHA PEL. As of September 30, 2014, the DOE Former Worker Medical Screening Program has provided BeLPTs to 64,645 former DOE and DOE contractor employees at least once. Of those, 823 (1.3%) had one abnormal BeLPT; 650 (1.0%) had two abnormal BeLPTs; and 223 (0.03%) had one abnormal and one+ borderline BeLPT result (one+ borderline BeLPT means the individual had more than one borderline BeLPT). Of the 64,645 former DOE and DOE contractor employees initially screened, 19,496 were rescreened. Of those rescreened, 139 (0.7%) had one abnormal BeLPT, 163 (0.8%) had two abnormal BeLPTs, and 71 (0.4%) had one abnormal and one+ borderline BeLPT.

The final rule, issued in 1999, established a Beryllium-Associated Worker Registry (the Beryllium Registry) to gather beryllium task, exposure, and health data for use in identifying trends that inform DOE in how best to continuously improve the Department's CBDPP. In 2002, employers began submitting data to the Beryllium Registry. As of December 2013, a total of 29,869 current beryllium and beryllium-associated workers are listed in the Beryllium Registry. Of those beryllium and beryllium-associated workers, 21,921 (71%) had been screened using BeLPT and 8,416 (28%) were not screened. Of the workers screened, 20,900 (97%) had normal results while 553 (3%) had abnormal results. Of the 553 workers with abnormal results, 407 (74%) had BeS and 146 (26%) had CBD.

Table 1 shows the BeS and CBD rates at DOE sites. Genetic factors have been reported to be a risk factor in determining who will progress from BeS to CBD (ref. 25). This makes a few percent of exposed individuals more sensitive to exposure to beryllium (ref. 26). DOE assumes that the proportion of workers with a genetic predisposition to contract BeS and CBD is essentially the same among the different sites and, therefore, differences in the prevalence of sensitization and disease among the sites are due to differences in exposure levels.

TABLE 1—PREVALENCE OF SENSITIZATION (BeS) AND CHRONIC BERYLLIUM DISEASE (CBD) BY DOE SITE THROUGH 2013

| Site | Employees with BeLPT results | Sensitized employees (no CBD) | | CBD Employees | |
|---|---|---|---|---|---|
| Advance Mixed Waste Treatment Project | 21 | 0 | 0% | 0 | 0% |
| Ames Laboratory | 34 | 2 | 5.9% | 0 | 0% |
| Argonne National Laboratory | 142 | 3 | 2.1% | 0 | 0% |
| Brookhaven National Laboratory | 25 | 1 | 4.0% | 0 | 0% |
| DOE Oak Ridge Office | 93 | 1 | 1.1% | 0 | 0% |
| East Tennessee Technology Plant | 399 | 6 | 1.5% | 4 | 1.0% |
| Fermi National Accelerator Laboratory | 20 | 0 | 0% | 0 | 0% |
| Hanford Site | 7,480 | 91 | 1.2% | 34 | 0.5% |
| Idaho National Laboratory | 355 | 3 | 0.8% | 0 | 0% |
| Kansas City Plant | 1,208 | 41 | 3.4% | 14 | 1.2% |
| Knolls Atomic Power Laboratory | 29 | 0 | 0% | 0 | 0% |
| LATA Environmental Services of Kentucky, LLC (PAD LATAKY) | 112 | 2 | 1.8% | 0 | 0% |
| Lawrence Berkeley National Laboratory | 26 | 1 | 3.8% | 0 | 0% |
| Lawrence Livermore National Laboratory (LLNL) | 1,337 | 41 | 3.1% | 3 | 0.2% |
| LLNL-Clean Harbors Environmental Services | 13 | 0 | 0% | 0 | 0% |
| Los Alamos National Laboratory | 2,474 | 21 | 0.8% | 3 | 0.1% |
| National Strategic Protective Security Services | 10 | 0 | 0% | 0 | 0% |
| Nevada National Security Site | 1,028 | 23 | 2.2% | 4 | 0.4% |
| Oak Ridge National Laboratory | 639 | 14 | 2.2% | 0 | 0% |
| Pacific Northwest National Laboratory | 151 | 0 | 0% | 0 | 0% |
| Pantex | 1,756 | 27 | 1.5% | 15 | 0.9% |
| Sandia National Laboratory | 604 | 1 | 0.2% | 0 | 0% |
| Savannah River Site | 713 | 15 | 2.1% | 6 | 0.8% |
| Stanford Linear Accelerator Center | 47 | 0 | 0% | 1 | 2.1% |
| Y–12 | 2,691 | 114 | 4.2% | 62 | 2.3% |
| Y–12 Navarro-Gem Joint Venture | 18 | 0 | 0% | 0 | 0% |
| Y–12 URS Corporation | 28 | 0 | 0% | 0 | 0% |
| Totals | 21,453 | 407 | 1.9% | 146 | 0.7% |

**Note:** "Sensitized" indicates the number of individuals found sensitized from two or more peripheral blood BeLPTs or from a bronchoalveolar lavage BeLPT, and does not include individuals who have been diagnosed as having CBD.

*D. Value of Early Detection*

Early detection of a disease is of value if it leads to reduced exposure, earlier treatment and a better prognosis for the tested individual. Screening for CBD with the BeLPT of peripheral blood can provide less invasive, earlier detection than is possible with other tests. In some cases, this has led to diagnosis and early treatment of CBD to reduce lung damage that may not have been possible if the CBD remained undiagnosed by other tests. In addition, there is increasing evidence that removal from exposure or reduction in exposure can lower the likelihood of progression from BeS to CBD and disability.

Pappas and Newman compared the lung functions of patients with CBD who had been identified through abnormal chest X-rays or clinical symptoms to those of patients with CBD who had been identified through positive BeLPTs of peripheral blood (ref. 27). Twelve of 21 BeLPT-positive patients were subsequently found to

have lung abnormalities, including reduced exercise tolerance. Fourteen of the 15 patients identified through chest X-rays or clinical symptoms had abnormal lung function, and their abnormalities were more severe than those identified through a positive BeLPT. The authors concluded that screening with the BeLPT of peripheral blood was useful because it permitted detection of CBD earlier in the disease process, when individuals are likely asymptomatic.

Early treatment of CBD may prevent progression of disease to permanent lung damage and disability. Although not providing definitive proof, studies have concluded that the long-standing standard of care for CBD has been shown to reduce the progression of disease in some patients. Marchand-Adams et al. (ref. 28), for example, concluded:

> Corticosteroid treatment in patients suffering from serious chronic beryllium disease improved symptoms, pulmonary function tests and radiology by acting on inflammatory granulomas. The control of inflammatory granulomatosis limited the fibrotic evolution as long as doses were monitored under the control of clinical examination, serum angiotensin-converting enzyme and high resolution computed tomography scanning. However, corticosteroids seemed insufficient to stop this poor evolution for some patients.

Though a small study, the observed effectiveness of corticosteroids in suppressing the growth of granulomas and limiting progressive fibrosis in the majority of patients in the study suggests that proactive treatment may prevent the progression of disease to permanent lung damage and disability. BeS identified via BeLPT screening provides the earliest indication that working conditions and work practices are affecting the health of exposed workers. This allows for an earlier opportunity to initiate corrective actions and possibly to prevent cases of CBD.

## II. Legal Authority and Relationship to Other Programs

This proposed rule continues to establish minimum requirements for the protection of beryllium and beryllium-associated workers, and is being promulgated pursuant to DOE's authority under section 161 of the Atomic Energy Act of 1954, as amended (AEA) to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, specifically including standards for the protection of health and minimization of danger to life or property (42 U.S.C. 2201(i)(3) and (p)). Also, section 3173(a) of the Bob Stump National Defense Authorization Act for 2003, Public Law 107–314, amended the AEA by adding section 234C, and required DOE to ''promulgate regulations for industrial and construction health and safety at Department of Energy facilities that are operated by contractors covered by agreements of indemnification under section 170 d. of the Atomic Energy Act of 1954,'' and authorized DOE to impose civil or contract penalties for violations of such regulations. Additional authority for the rule insofar as it applies to DOE Federal employees, is found in section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668) and Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees* (5 U.S.C. 7902 note), which requires Federal agencies to establish comprehensive occupational safety and health programs for their employees. The Department recognizes that OSHA published a proposed rule, *Occupational Exposure to Beryllium and Beryllium Compounds* (80 FR 47565, August 7, 2015), that may differ from the CBDPP established in 10 CFR 850. The Department published its CBDPP in December 1999, after an extensive public review and comment period that included the DOE regulated community and its stakeholders. This notice proposes amendments to the CBDPP rule that would improve and strengthen the current provisions of the rule based on DOE's more than 14 years of experience implementing the rule. DOE believes the proposed amendment represents a balanced, well thought out approach reflecting the perspective of the DOE regulated community and its stakeholders. To avoid potential confusion between the CBDPP and OSHA's proposed beryllium rule, the Department has amended 10 CFR 851, *Worker Safety and Health Program* (80 FR 69564, November 10, 2015), to clarify its intent to only apply OSHA's 8-hour time weighted average permissible exposure limit (TWA PEL) for beryllium, and that DOE and DOE contractors are not subject to any other beryllium-specific OSHA requirements, including the ancillary provisions (*e.g.,* exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) OSHA has recently proposed to add to its health standard, if adopted by OSHA.

## III. Issues on Which DOE Requests Information and Seeks Comment

### *A. Request for Information*

The Department is considering additional requirements in other areas covered by the NOPR. It is especially interested in comments supported by technical evidence, rationale, and cost whenever possible, regarding the following areas:

1. *Surface action level.* It appears that not all individuals who become sensitized progress to disease, but individuals with CBD are sensitized, which suggests that sensitization must occur before disease can occur. Preventing sensitization should, therefore, prevent disease.

DOE has found no studies that have determined a threshold of beryllium surface contamination that results in skin contact that, in turn, results in beryllium sensitization although a number of epidemiology studies and reviews of studies suggest that skin contact causes sensitization. DOE, therefore, is relying upon operational experience, rather than a demonstrated relationship between surface levels and health effects, in considering to propose a surface action level which would require employers to implement specified provisions of the rule.

DOE is considering adding in the final rule a surface action level of 1.5 μg/100 $cm^2$ as a preventive approach to control the beryllium health risk. This level is based on the assumption that surface contamination is a potential source of exposure through re-entrainment from energetic tasks. The Department requests that interested parties submit comments regarding the validity of a 1.5 μg/100 $cm^2$ surface action level. If an alternate level is suggested, provide the rationale and associated cost implications for choosing the alternate surface action level.

2. *Beryllium restricted areas.* Currently, part 850 provides for ''regulated areas'', which are areas demarcated by the employer in which the airborne concentration of beryllium is at or above, or can reasonably be expected to be at or above, the action level. However, part 850 contains no provision for demarcating areas designating specified *surface* levels of beryllium. The Department is considering requiring in the final rule the establishment of beryllium restricted areas where the surface levels of beryllium are at or above a surface action level of 1.5 μg/100 $cm^2$, restricting access to authorized persons, and requiring employers to demarcate and control restricted areas from the rest of the workplace in a manner that alerts

workers to the boundaries of such areas. The Department requests that interested parties provide information on the feasibility and effect of requiring such restricted areas.

3. *Medical screening for individuals conditionally hired for beryllium work.* When part 850 was issued in December 1999, DOE viewed the value of medical evaluations for beryllium-induced medical conditions in informing placement decisions to be limited by the fact that sensitization could not occur prior to initial exposure to beryllium. However, DOE has learned from experience that individuals working at DOE sites often have a history of employment at several sites. Their qualifications, such as having security clearances, radiation worker training, and hazardous waste site worker training, make them attractive candidates for positions around the entire DOE complex. As a result, newly hired beryllium workers may have previously been exposed to beryllium at a different DOE site and may have already developed BeS or CBD. It is also possible that newly hired beryllium workers were previously exposed to beryllium while working for other employers.

DOE believes the early detection, made possible with medical evaluations is essential for ensuring that individuals who have been adversely affected by beryllium are not placed in a job where they will be exposed to beryllium at or above the action level. In addition, given that under this NOPR, current beryllium workers with BeS and CBD will be subject to medical removal, and current beryllium workers with another medical condition for which exposure to beryllium at or above the action level would be contraindicated will be subject to medical restriction, the Department does not believe it is reasonable to place newly hired individuals with such conditions into jobs where the airborne concentration of beryllium is at or above the action level if they too would be subject to removal or restriction once hired. Under Section 161 of the AEA, the Department has broad authority to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life. Accordingly, DOE is considering including a requirement for mandatory medical screening of individuals conditionally hired for beryllium work to determine if such individuals have a medical condition for which exposure to beryllium at or above the action level is contraindicated. An ''individual conditionally hired for beryllium work'' would be an individual who has been offered a job as a beryllium worker (either a new hire or a current worker being transferred into a new job as a beryllium worker), but such offer would be subject to the outcome of a medical evaluation. DOE would require as part of these provisions that the employer inform applicants that any job offer would be conditional pending outcome of a medical evaluation, thus, candidates would have the option of not accepting the conditional offer.

In those cases where the medical screening indicates the individual conditionally hired for beryllium work has CBD, BeS, or another medical condition for which exposure to airborne concentrations of beryllium at or above the action level would be contraindicated, and the employer determines that no reasonable accommodation is available to enable the conditionally hired individual to work in an area where the airborne concentration of beryllium is at or above the action level, the employer would not be permitted to retain the individual as a beryllium worker. Such conditionally hired individuals would not be eligible for medical removal benefits under 10 CFR 850.36. Currently, under 10 CFR part 851, appendix A section 8(g)(2)(i), the occupational medical provider *may* require ''[a]t the time of employment entrance or transfer to a job with new functions and hazards, a medical placement evaluation of the individual's general health and physical and psychological capacity to perform work'' to ''establish a baseline record of physical condition and assure fitness for duty.'' Therefore, the Department is considering including in § 850.34(b)(1)(iii) a provision that would require employers to use the medical evaluation provided to conditionally hired individuals as the baseline medical evaluation for newly hired beryllium workers.

For consistency in the examinations provided to conditionally hired individuals, the Department is considering adding a provision requiring the identification of the elements of such examinations. In such cases, the Department is considering adding in § 850.34(c) the following:

- Employers would be required to provide individuals conditionally hired for beryllium work the required medical evaluations and procedures at no cost, and at a time and place that is reasonable and convenient for the conditionally hired individual.
- Employers would be required to inform applicants for jobs where exposure to airborne concentration of beryllium is at or above the action level, that:
  - The job involves a beryllium activity at or above the action level, includes a medical qualification, and requires a medical evaluation;
  - Any job offer would be conditional pending the outcome of the medical evaluation;
  - The employer would not be permitted to retain the individual as a beryllium worker if the Site Occupational Medical Director (SOMD) diagnosis indicates the individual has CBD, BeS, or another medical condition for which exposure to beryllium at or above the action level would be contraindicated, and the employer determines that no reasonable accommodation is available to enable the conditionally hired individual to work in a beryllium activity; and
  - Once conditionally hired, no work or training may be performed prior to the worker being cleared by the SOMD for beryllium work.
- Employers would be prohibited from asking or requiring a conditionally hired individual to have a medical evaluation performed before making the conditional job offer.
- Employers would be required to ensure both the SOMD and the conditionally hired individual complete the consent form included in an appendix, before any medical evaluations of the conditionally hired individual are performed.
- Medical evaluations for conditionally hired individuals would be required to include:
  - A detailed medical and work history with emphasis on exposure or potential exposure to beryllium;
  - A respiratory symptoms questionnaire;
  - A physical examination, with special emphasis on the respiratory system, skin, and eyes;
  - A chest radiograph (posterior-anterior, 14 x 17 inches) or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist;
  - Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume at one second ($FEV_1$);
  - Two peripheral blood BeLPTs; and
  - Any other tests that would be deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

The Department is considering adding a new § 850.34(d)(3), which would provide the requirements for the medical opinion and determination for individuals conditionally hired for beryllium work. This proposed new

section would require, with respect to a conditionally hired individual, that:

- The SOMD's written opinion to the employer would:
  - Be delivered within 10 working days after the SOMD received the results of the medical evaluation performed pursuant to proposed § 850.34(c)(5); and
  - Contain a determination of whether the conditionally hired individual is sensitized to beryllium, has CBD, or has another medical condition for which exposure to beryllium at or above the action level would be contraindicated.
- The employer would not be permitted to retain the conditionally hired individual as a beryllium worker, if the SOMD determines that the individual conditionally hired for beryllium work has CBD, BeS, or another medical condition for which exposure to beryllium at or above the action level would be contraindicated, and the employer determines that no reasonable accommodation is available to enable the conditionally hired individual to work in a beryllium activity.

The Department is considering including in part 850 an appendix with a new mandatory form for conditionally hired individuals to ensure they receive consistent information on the medical testing required prior to working in a beryllium area. This proposed new form would be similar to the proposed mandatory form in appendix A and entitled: *Conditionally Hired Individual Chronic Beryllium Disease Prevention Program Consent Form,* and include sections for consent, medical evaluation consent, and the physician's review of the medical evaluation results. DOE is aware that the term ''informed consent'' has a different meaning when used in other contexts (*e.g.,* human subject research). The Department, however, used this term in the original 10 CFR part 850 published in December 1999 to ensure beryllium associated workers were informed of the medical evaluation process before medical evaluations were performed. However, DOE is proposing to not use ''informed consent'' but would use the term ''consent'' and expand it to address consent for medical evaluations for conditionally hired individuals. See part A of the proposed mandatory form in appendix A.

The Department is requesting that interested parties provide their comments supported by technical evidence, rationale, and cost information whenever possible, on the feasibility and the effect of mandatory medical qualification for conditionally hired individuals for beryllium work. Alternatively, the Department is considering allowing conditionally hired individuals and current beryllium workers who are sensitized to beryllium but who do not have CBD to work in a beryllium job after signing an acknowledgment stating the worker has been informed of the risks of continued exposure to beryllium and has voluntarily elected to work in a beryllium job. The Department is also requesting that interested parties provide their comments supported by technical evidence, rationale, and cost information whenever possible, on the feasibility and the effect of allowing workers who are sensitized to beryllium to work in a beryllium job.

4. *Mandatory medical evaluations and removals.* DOE is proposing both mandatory medical evaluations and mandatory medical removal provisions under this proposed amendment based on its commitment to the health and safety of its workers and the understanding that early detection and removal from beryllium exposure is important to prevent harm to workers at risk for developing CBD. Based on these considerations, DOE believes that these provisions are responsible and prudent measures in protecting the health of DOE and contractor workers. DOE recognizes that its proposed lower action level may result in an increased number of activities or work areas that pose the potential for airborne concentrations of beryllium at or above the action level with a corresponding increased number of beryllium workers subject to mandatory medical evaluations and the potential for mandatory medical removals. DOE believes, however, that the additional protections (triggered by the action level) available to workers at a lower action level would result in reduced worker exposures and fewer workers developing BeS or CBD. Since medical removal would be triggered by a BeS or CBD diagnosis, this would result in fewer workers being subject to medical removal.

DOE received several comments concerning whether to continue to require a worker's consent for medical removal, or instead require mandatory medical removal in response to its RFI. The majority of commenters recommended that DOE establish a mandatory medical removal practice (see discussions on proposed § 850.34(c) in the section-by-section analysis). In this NOPR, the Department requests that interested parties provide information on proposing the use of mandatory medical evaluations and medical removal for its beryllium workers, including evidence of their effectiveness, feasibility and appropriateness relative to voluntary approaches.

5. *Site Occupational Medicine Director's written medical opinion.* DOE is aware of the increased concerns about protection of confidential medical information that have arisen since December 1999, when the current Final Rule was published. DOE is also aware that employers are not necessarily covered entities under the Health Insurance Portability and Accountability Act Privacy Rules, and that the American College of Occupational and Environmental Medicine has stated that ''Physicians should disclose their professional opinion to both the employer and the employee when the employee has undergone a medical assessment for fitness to perform a specific job. However, the physician should not provide the employer with specific medical details or diagnoses unless the employee has given his or her permission.'' In light of this, DOE requests comment on the proposed requirement for Site Occupational Medicine Directors (SOMDs) to provide employers with a written medical opinion that includes any diagnosis of the worker's condition related to exposure to beryllium (*i.e.,* BeS, CBD or any other medical condition for which exposure to beryllium at or above the action level would be contraindicated). See proposed § 850.34, Medical Surveillance.

*B. 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 the definitions of beryllium and beryllium-associated workers. See proposed § 850.3.

2. DOE is requesting comments on the proposed definition of beryllium. DOE believes that soluble forms of beryllium are not used at its beryllium sites, and is proposing to exclude soluble forms of beryllium from the definition of beryllium. See proposed § 850.3.

3. DOE requests information on the different forms of beryllium (*i.e.,* soluble and insoluble) and the health effects associated with each form. See the definition of ''beryllium'' in proposed § 850.3. DOE is requesting comments on and evidence to support the following statement: DOE has learned by experience that common conditions and practices at DOE facilities—such as accumulations of wind-blown dust, abrasive blasting of brick surfaces with coal slag, and drilling into and

demolishing concrete structures—can result in breathing zone and surface levels at or above the proposed action level and release criteria, but with forms of beryllium that are not believed to cause BeS or CBD or with activities with work practices in place that mitigate the risks. See discussion on the definition of ''beryllium'' in proposed § 850.3.

5. DOE is requesting comment on its proposal to lower the action level which triggers key worker protection measures, from 0.2 μg/m³ to 0.05 μg/m³. See proposed § 850.23.

6. DOE summarized various studies to address the major adverse health effects associated with exposure to beryllium. Are there additional studies or other data DOE should consider in evaluating the health effects of beryllium exposure? What is known or not known about factors influencing disease progression (including continued exposure and varying forms of beryllium) and the reported limitations and challenges in interpreting available study data (*e.g.,* small study sizes, limited exposure data, variability in susceptibility). See Health Effects and References sections of the preamble.

7. DOE recognizes that the potential for developing contact dermatitis, chronic ulcerations, and conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds. DOE believes that soluble forms of beryllium are not used at its beryllium sites. Is DOE correct in this assumption? If soluble forms of beryllium are used, please indicate so and provide the operations where they are in use. See proposed § 850.29.

8. DOE estimated the compliance costs of the proposed rule by using data from the 1999 Economic Analysis (EA), Beryllium Registry, and an Economic Assessment Questionnaire (EAQ). The EAQ is a questionnaire administered by DOE to its sites potentially affected by the proposed rule in order to solicit the per-site cost of compliance with each provision of the proposed rule. DOE is requesting interested parties to provide comments on the per-site cost data used to prepare the EA for this proposed rule, and to provide alternate estimates where available. See Economic Assessment, section 3.

## IV. Section-by-Section Analysis

### *Overview of the Proposed Rule*

The provisions of the proposed rule are presented in three main subparts: A, B, and C. Subpart A of the proposed rule would describe the scope and applicability of the proposed rule, defines terms that are critical to the proposed rule's application and implementation, provides its proposed enforcement and dispute resolution provision. Subpart B would establish administrative requirements to develop and maintain a CBDPP and to perform all beryllium-related activities according to the CBDPP. Subpart C would establish requirements for the content and implementation of the CBDPP by focusing on protecting workers from being exposed to airborne beryllium, preventing BeS and CBD and providing benefits for workers with BeS or CBD who are or were removed from work assignments where the exposure to airborne beryllium is or was at or above the action level. Some of the proposed provisions of Subpart C apply only when it is determined that the airborne concentration of beryllium in a specific workplace or operation rises above the specified limit. Table 2 summarizes these provisions and indicates the levels of beryllium at which the provisions would apply.

TABLE 2—LEVELS AT WHICH THE PROPOSED PROVISIONS OF THE CBDPP WOULD APPLY

| Proposed provisions | Worker exposure or potential exposure levels (8-Hour TWA) | | |
|---|---|---|---|
| | Be operation/ location [a] | ≥ Proposed action level (0.05 μg/m³) | ≥ PEL (8-hr TWA) (2.0 μg/m³) |
| Baseline Inventory (850.20) | X | | |
| Hazard Assessment and Abatement (850.21) | X | | |
| Initial Exposure Monitoring (850.24) | X | | |
| Periodic Exposure Monitoring (850.24) | | X | |
| Exposure Reduction (850.25) | X [b] | X | |
| Beryllium Regulated Areas (850.26) | | X | |
| Hygiene Facilities and Practices (850.27) | | X | |
| Respiratory Protection (850.28) | | X | X [c] |
| Protective Clothing and Equipment (850.29) | X [d] | X | |
| Housekeeping (850.30) | X [e] | X | |
| Release and Transfer Criteria (850.31) | X [f] | | |
| Medical Surveillance (850.34) | X [g] | X | |
| Medical Restriction (850.35) | X [h] | X | |
| Training and counseling (850.38) | X [i] | | |
| Warning signs and labels (850.39) | | X | |

[a] Would apply to beryllium operations and other locations where there is a potential for beryllium contamination.
[b] Employers would be required to establish a formal hazard prevention and abatement program.
[c] Employers would be required to provide respirators that comply with 10 CFR part 851.
[d] Employers would be required to provide protective clothing and equipment where surface contamination levels are above 3 μg/100 cm².
[e] Housekeeping efforts would be required to maintain removable surface contamination at or below 3 μg/100 cm² during non-operational hours.
[f] Would establish contamination criteria for equipment, items, or areas to be removed, released, or transferred from beryllium regulated areas.
[g] Employers would be required to provide medical surveillance to beryllium and beryllium-associated workers.
[h] Employers would be required to medically restrict certain workers from working in area at or above the action level.
[i] Training would be required for all workers who could be potentially exposed. Counseling would be required for beryllium and beryllium-associated workers diagnosed with BeS or CBD.

This section-by-section analysis describes the proposed changes in subparts A, B, C and the appendixes that the Department is proposing to make to the current CBDPP regulation (10 CFR part 850) that was published in December 1999.

*A. Subpart A—General Provisions*

Proposed § 850.1—Scope

Proposed § 850.1 would continue to establish the CBDPP for DOE employees and DOE contractor employees and clarifies that the CBDPP would also supplement and be an integral part of the worker safety and health program requirements under 10 CFR part 851 for DOE contractor employees. The Department would continue to structure the proposed rule this way to take advantage of existing and effective comprehensive worker protection programs at DOE facilities, and to minimize the burden on DOE contractors by clarifying that contractors need not establish redundant worker protection programs to comply with the proposed rule. Proposed § 850.1 also clarifies that if there is a conflict between the requirements of this part, and part 851, this part controls.

The Department recognizes that, except at the few DOE-operated sites, DOE Federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium; however, in performing management and oversight duties, DOE Federal workers sometimes must enter areas where beryllium is handled. The health and safety provisions of 29 CFR part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters,* as well as Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees,* protect Federal workers. DOE's intent is to supplement these general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE Federal workers may have the potential for beryllium exposure at or above the action level.

Proposed § 850.2—Applicability

Proposed § 850.2(a)(1) and (2) continue to specify that the rule would apply to DOE Federal offices and DOE contractors with responsibility for operations or activities that involve present or past exposure to beryllium at DOE sites. It would also continue to apply to any current DOE employee, DOE contractor employee, or any other current worker at a DOE site who is or was exposed or potentially exposed to beryllium at a DOE site, regardless of which organization currently employs the worker.

Except at a few DOE-operated sites, DOE Federal workers are not usually directly involved in production tasks or other activities in which they would be exposed to airborne beryllium. However, in performing management and oversight duties, DOE Federal workers may enter sites where beryllium is handled. Federal agencies are required to ensure the protection of Federal workers under the health and safety provisions of 29 CFR part 1960, *Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters,* as well as Executive Order 12196, *Occupational Safety and Health Programs for Federal Employees.* DOE's intent in proposed § 850.2(a)(1) and (2) would be to continue to supplement those general worker protection requirements with specific beryllium-related requirements in the limited instances where DOE Federal workers may have the potential for beryllium exposure.

In the current rule the term ''DOE facility'' is used instead of DOE sites. DOE is proposing to delete the term ''DOE facility'' and use in its place ''DOE sites'' to be consistent with the term used in 10 CFR part 851. A DOE site would continue to mean a DOE-owned or -leased area or location controlled by DOE where activities and operations are performed at one or more facilities or locations by a contractor in furtherance of a DOE mission. This definition is provided in 10 CFR 851 and includes all sites where DOE exercises regulatory control under the AEA, even if DOE does not own or lease the site. Changing the terminology in this proposed amendment does not affect the number of potentially regulated facilities. The Department will still have 22 beryllium sites.

As proposed in the definition of ''contractor,'' found in § 851.3 and in § 850.3 of the proposed rule, DOE's intent is that contractors covered under this rule include any entity, including affiliated entities, such as a parent corporation, under contract with DOE, and any subcontractor at any tier, that has responsibility for performing beryllium work at a DOE site in furtherance of a DOE mission. The requirements of the CBDPP would apply only to contractors and subcontractors who work in areas or on activities in which there is a potential for beryllium exposure at or above the action level.

As with the current rule, the proposed rule would not apply to former DOE Federal and contractor workers. When workers terminate their employment at a DOE site, they are eligible to have health monitoring through the Former Worker Medical Screening Program. The Former Worker Medical Screening Program was established following the issuance of the Fiscal Year (FY) 1993 National Defense Authorization Act (Pub. L. 102–484), which called for DOE to assist workers with determining whether they had health issues related to their prior work with DOE. Workers eligible for this program include all former DOE Federal, contractor, and subcontractor employees from all DOE sites. In FY 2005, DOE initiated a separate beryllium sensitization screening effort for employees who worked for now defunct DOE beryllium vendors, and who were employed with these companies while the vendor or company was under contract with DOE. These individuals typically have no other access to the beryllium sensitization screening, because their employers are no longer in business. Additional information on the Former Worker Medical Screening Program may be found on the Department's Web site located at: *http://energy.gov/hss/information-center/worker/former-worker-medical-screening-program.* The provisions of this rule would not apply to activities not conducted at a DOE site, such as the off-site laundering of beryllium-contaminated clothing from a DOE site.

DOE is proposing to add § 850.2(a)(3) to clarify that the Site Occupational Medicine Director (SOMD) would be responsible for providing the overall direction and operation of the employer's beryllium medical surveillance program.

Proposed § 850.2(b)(1) and (2) would continue to exempt activities involving beryllium articles and specify the rule would not apply to DOE laboratories that meet the definition of laboratory scale use of hazardous chemicals in OSHA's *Occupational Exposure to Hazardous Chemical in Laboratories* standard, 29 CFR 1910.1450. In § 1910.1450(b) of that standard, OSHA defines a laboratory as a workplace where relatively small qualities of hazardous chemicals are used on a nonproduction basis. Laboratory scale is defined as work with substances in which the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one person. Workplaces whose function is to produce commercial quantities of materials are excluded. Also, the term laboratory scale of hazardous chemical is defined as the handling of such

chemicals where all of the following conditions are met: (1) Chemical manipulations are carried out on a laboratory scale; (2) multiple chemical procedures or chemicals are used; (3) the procedures involved are not part of a production process, nor in any way simulate a production process; and (4) protective laboratory practices and equipment are available and in common use to minimize the potential for employee exposure to hazardous chemicals.

The Department continues to believe OSHA's regulation is adequate to protect workers from beryllium exposures in facilities that meet the definition of laboratory use of hazardous chemicals. The requirements set forth in OSHA's regulation are made applicable to DOE contractors performing work on a DOE site in § 851.23(a)(3).

The exemption of laboratory use of hazardous chemicals would continue to apply only in instances where relatively small quantities of beryllium are used in a non-production activity. In addition, OSHA's laboratory standard has specific provisions to ensure protective laboratory practices are followed. Many of the provisions in OSHA's laboratory standard are the same as, or similar to, those in this proposed rule. For instance, OSHA's laboratory standard establishes provisions for identifying the presence of hazardous chemicals (baseline inventory), establishing a chemical hygiene plan (hazard assessment), performing periodic monitoring at the action level, implementing exposure reduction measures at the PEL, training employees on related hazards, and providing employees with the opportunity for medical consultation and examination. In part because each of these aspects of the proposed beryllium rule is already included in the OSHA laboratory standard, DOE is retaining the laboratory operations exemption.

Proposed § 850.3—Definitions

Proposed § 850.3(a) would continue to apply traditional industrial hygiene terminology to define key terms used throughout the proposed rule. The following discussion explains the definitions in the proposed rule.

*Action level* would mean the airborne concentration of beryllium at which, or above which, the implementation of certain provisions of the proposed rule would be required. Using an action level to trigger certain provisions of the proposed rule ensures additional appropriate workplace precautions are taken and training and medical evaluations are provided, in situations where worker exposures could significantly increase the risk of workers developing CBD. Additional information on the application of the action level is presented in the discussion on proposed § 850.23, *Action level,* and in the discussions of other provisions that would continue to be triggered by airborne concentration of beryllium being at or above the proposed action level. Note that several provisions of the proposed rule would continue to apply independent of the action level. Specifically, the CBDPP requirement (10 CFR 850.10), the inventory requirement (10 CFR 850.20), the voluntary protective clothing and equipment requirement (10 CFR 850.29(a)(3)), the housekeeping requirements related to the cleaning of surfaces with removable beryllium (10 CFR 850.30(b) through (d)), the release or transfer requirements (10 CFR 850.31(c)), the waste disposal requirements (10 CFR 851.32), the beryllium emergencies requirement (10 CFR 850.33), the medical surveillance and restriction requirements as they relate to beryllium associated workers (10 CFR 850.34 and 850.35), the training and counseling requirements (10 CFR 850.38), the warning labels requirements (10 CFR 850.39(b)), and the recordkeeping and use of information requirements (10 CFR 850.40).

*Authorized person* would continue to mean any person required by their work duties to be in a beryllium regulated area. Authorized individuals would be required to be trained and experienced in the hazards of beryllium, and the means of protecting themselves and those around them against such hazards. Proposed training requirements are specified in § 850.38 of this proposed rule. The concept of authorized person continues to be consistent with OSHA standards and with contractor practice at many DOE sites, and is intended to ensure that the population of potentially exposed individuals is reduced to the lowest possible number and that workers who are granted access to beryllium regulated areas have the knowledge they need to protect themselves and other workers.

*Beryllium* would be revised to mean elemental beryllium, beryllium oxide, and alloys containing 0.1 percent or greater beryllium by weight that may be released as an airborne particulate. Though uncertainty exists, studies investigating the health effects of exposures to elemental beryllium, beryllium oxide, and beryllium alloy suggest no compelling evidence that BeS or CBD is caused by exposure to particulates that contain beryllium in forms other than elemental, oxide and alloys. An important consequence of this proposed change is to exclude mineral forms of beryllium from the definition of beryllium. The American Conference of Governmental Industrial Hygienists (ACGIH®) (ref. 29) reports, for example, that: ''Beryllium occurs naturally as the silicate, bertrandite, and the aluminosilicate, beryl. Exposure to bertrandite and beryl dust occurs during ore crushing and grinding; however, the ores are not considered sources of beryllium sensitization.'' While mineral forms of beryllium do not appear to be linked with BeS or CBD, these forms can be at or above the action level when samples are analyzed by currently available methodologies. This occurs because materials containing mineral forms of beryllium—such as clays, and concrete—are ubiquitous on many DOE sites, and the most common currently used analysis methods analyze all the beryllium in a sample without distinguishing the different forms of beryllium. DOE has learned by experience that common conditions and practices at DOE facilities—such as accumulations of wind-blown dust, abrasive blasting of brick surfaces with coal slag, and drilling into and demolishing concrete structures—frequently result in breathing zone levels at or above the proposed action level and release criteria, but with forms of beryllium that are not believed to cause BeS or CBD. Studies by Stefaniak *et al.* of dissolution rates of beryllium in various beryllium containing materials in airway and phagolysosomal fluids suggest that dissolution rates of beryllium metal and oxide in lungs are in a range that is relatively slow in lung airways fluid to prevent removal by dissolution and is sufficiently fast in phagolysosomal fluid to compete with removal by phagocytosis. The range of dissolution rates of beryllium-containing minerals (*e.g.,* beryl ore) are slow in phagolysosomal fluid, indicating the persistence of these particles until removed by mechanical clearance which may alter its capacity to influence development of CBD (ref. 30). DOE's proposal to eliminate beryllium-containing minerals from the definition of beryllium would greatly reduce the burden on its missions without diminishing worker safety and health protection.

The definition would continue to exclude soluble forms of beryllium, such as beryllium salts, from the definition of beryllium. High exposures to soluble beryllium compounds cause acute beryllium disease (*i.e.,* inflammation of the upper and lower respiratory tract), but this exposure

essentially has been eliminated by compliance with OSHA's PEL.

Cummings *et al.* reported in 2009 on two cases of production plant employees who in the 1980s were exposed to both highly and poorly soluble forms of beryllium and developed skin conditions, acute beryllium disease, and eventually CBD. The exposure monitoring results associated with these cases indicate levels were well above the OSHA PEL. Included in this article is the following statement: ''More recently, insoluble beryllium metal and oxide have been shown to have dissolution lifetimes of hundreds of days to years in lung airway epithelial lung fluid and alveolar macrophage phagolysosomal fluid (ref. 31, 32). Autopsy studies have confirmed that beryllium particles are identifiable in granulomas formed in the lungs of individuals with CBD years after exposure ceased (Butnor et al. 2003; Sawyer *et al.* 2005; Williams and Wallach 1989). Thus, Stefaniak *et al.* (2003, 2008) hypothesized that exposure aerosol physical properties, chemical properties, and physicochemical properties control development of beryllium lung burdens, and that the ongoing presence of a lung reservoir of beryllium may be necessary for the development of CBD'' (ref. 33). Moreover, ACGIH® states, ''Exposure to soluble beryllium salts (sulfate, ammonium carbonate, beryllium carbonate, and to a lesser extent, beryllium hydroxide) may occur during extraction of the metals from the ore (Deubner *et al.*, 2001). These salts are considered the main source of beryllium sensitization during beryllium extraction'' (ref. 29).

DOE recognizes that inhalation and skin exposure to soluble beryllium compounds may create risk for BeS, however, DOE believes that soluble forms of beryllium are not used at its beryllium sites and, therefore, do not warrant regulation under this rule.

*Distinguishing the forms of beryllium.* DOE believes it is feasible to distinguish the forms of beryllium specified in DOE's proposed definition of beryllium. The Department recognizes that the most common analytical techniques for determining the beryllium content of a sample begin with digesting all the beryllium into ions in solution. These techniques do not distinguish the form the beryllium was in before the digestion step. However, DOE believes Qualified Individuals (as defined in § 850.3 of this proposed rule) can make the determination that the beryllium at a DOE site is in a metal, oxide, or alloy form based on knowledge of the processes conducted at that site and matching the composition of certain constituents of air and surface samples with the composition of possible source materials. Another approach for distinguishing the form of beryllium is to demonstrate that the source of beryllium contamination is in infiltrated background soil. One technique that has been used successfully at DOE sites to determine if the beryllium in indoor settled particulates consists of beryllium that has infiltrated indoors, as a constituent of background soil, is to demonstrate that the concentration of beryllium in the accumulated indoor ''dust'' is not higher than the concentration in the outside background soil. Another technique is based on demonstrating that the ratio of atoms of beryllium to the atoms of a constituent of soil is the same in background soil and indoor dust. Other techniques may be available to determine whether beryllium is in an elemental, oxide, or alloy form. DOE believes the methods its sites use to determine the form of beryllium are technically defensible, which is important when the site determines that the source is a form of beryllium, such as background soil or coal fly ash, not included in the proposed definition of beryllium.

*Beryllium activity* would mean an activity taken for or by DOE at a DOE site that can expose workers to airborne concentrations of beryllium at or above the action level, including any activity involving the disturbance of legacy beryllium-containing dust.

*Beryllium article* would be revised to mean a ''commercially available, off-the-shelf'' item composed of beryllium that is formed to a specific shape or design during manufacture, has end-use functions that depend in whole or in part on its shape or design during end use, and does not release airborne beryllium at or above the action level under normal conditions of use. The proposed definition would revise the current definition from stating that it ''does not release beryllium'' to stating that it ''does not release particulate beryllium at or above the action level under conditions of normal use.''

DOE is modifying this definition since some of its sites have found surface contamination associated with items that met the definition of ''articles'' but were part of the weapons systems. The identification of surface contamination on ''articles'' or manufactured products is not new. While the risk of airborne exposure is negligible, there have been Occurrence Reporting and Processing System reports and/or Lessons Learned, which highlight the need to reexamine the article definition and use around the DOE complex.

DOE recognizes the existence of weapon components that are categorized as articles, and they are exempt from the requirements of the beryllium program. Several weapons programs include operations involving beryllium-containing components classified as articles. The components are processed during weapon assembly, dismantlement, stockpile maintenance, and other operations. The operations involve routine handling, and may include light wiping of the components with a dry disposable wipe or a disposable wipe moistened with a solvent. These operations involving those alloy components do not result in measurable concentrations of airborne beryllium and are exempted from the requirements of this rule. However, the article exemption does not apply to these parts if they are processed in a more aggressive manner that might lead to the release of beryllium from the component.

*Beryllium-associated worker* would be clarified to mean a current worker who was exposed or potentially exposed to airborne concentrations of beryllium at a DOE site. DOE is proposing to clarify the definition of beryllium-associated worker by removing the term ''beryllium workers'' (*i.e.,* workers who are currently exposed or potentially exposed to beryllium at or above the action level). DOE has learned from experience in implementing this part, as issued in 1999, that including ''beryllium worker'' in the definition caused confusion and different interpretations of the term by individuals responsible for implementing this provision.

The term ''beryllium-associated worker'' would continue to apply to current workers whose work history showed they may have been exposed to airborne concentrations of beryllium at a DOE site; or a worker who exhibits signs and symptoms of beryllium exposure. The definition clarifies that current workers who have been removed from beryllium exposure as part of the medical removal process and are receiving medical removal benefits are beryllium-associated workers under the proposed rule, but they are not ''beryllium workers'' (see definition of ''beryllium worker''). Beryllium-associated workers may be DOE Federal or contractor workers, or employees of subcontractors to DOE contractors who perform work at DOE sites in furtherance of a DOE mission.

*Beryllium emergency* would continue to mean any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an

unexpected and significant release of beryllium at a DOE site. This definition is particularly important when determining appropriate emergency response procedures that fall within the scope of OSHA's *Hazardous Waste Operations and Emergency Response* standard, 29 CFR 1910.120. This definition continues to be based on OSHA's use of the term ''emergency'' as applied in 29 CFR 1910.120 and refers to any event, such as a major spill of powdered beryllium or an unexpected upset, that results in a significant release of beryllium into the workplace atmosphere.

*Beryllium-Induced Lymphocyte Proliferation Test (BeLPT)* would remain unchanged from its current definition as an in vitro measure of the beryllium antigen-specific, cell-mediated immune response to beryllium. However, the Department is adding language to clarify that a split sample BeLPT (where one blood draw is split and sent to two different testing facilities) would constitute two tests for purposes of diagnosing BeS.

This test measures the extent to which lymphocytes, a class of white blood cells, respond to the presence of beryllium. Medical personnel use the blood Be-LPT to identify workers who have become sensitized to beryllium through their occupational exposure.

*Beryllium-induced medical condition* would be added to provide a term in the rule that refers to CBD and BeS. Other diseases may resemble CBD, but are not attributable to beryllium. Medical tests, such as the lung lavage BeLPT, can help a physician decide if a person has CBD or another disease.

*Beryllium Registry* would be added as a new term and refers to the DOE Beryllium-Associated Worker Registry, which is a collection of health and exposure information of individuals potentially at risk for CBD due to their work at DOE-owned or leased sites. The data from the Beryllium Registry is analyzed to better understand CBD and to identify those at risk. Reported data are cumulative through calendar year and are located at: *http://energy.gov/ehss/beryllium-associated-worker-registry.* The Beryllium Registry is also a risk management tool for sites to use in managing their CBDPP and other risk management operations. Sites are encouraged to use their Beryllium Registry data to evaluate beryllium exposure risks.

*Beryllium regulated area currently known as ''regulated area,''* would be clarified to mean an area established, demarcated, and managed by the employer where the airborne concentration of beryllium is at or above, or can reasonably be expected to be at or above, the action level. Employees working in beryllium regulated areas would be authorized by their employer to work in the area, and trained, and equipped with protective clothing and equipment. The purpose of such areas is to limit exposure to beryllium to as few workers as possible. The use of these ''regulated areas'' is consistent with OSHA's expanded health standards for toxic particulates.

*Beryllium sensitization or sensitivity (BeS)* would be added as a new term to ensure consistency within the Department in how BeS is diagnosed. BeS would mean a condition diagnosed by the SOMD based on any of the following: (1) Two abnormal blood BeLPT results; (2) One abnormal and one borderline blood BeLPT; or (3) One abnormal BeLPT test of alveolar lung lavage cells. This definition would also make clear that it is the SOMD who makes the diagnosis of BeS.

The Department recognizes that OSHA has proposed slightly different criteria for BeS diagnosis in its proposed rule, *Occupational Exposure to Beryllium and Beryllium Compounds.* Specifically, OSHA proposed a BeS diagnosis based on two abnormal tests performed after two separate blood draws. DOE does not believe this slight difference in proposed approaches will create confusion because the Department would only be subject to the permissible exposure limit established in the current OSHA beryllium standard and any new OSHA beryllium standard when promulgated, and would not be subject to the ancillary provisions (*e.g.,* definitions, exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access control) of the new rule. Therefore, DOE workplaces will only be subject to the DOE provisions. The Department expects DOE and DOE contractors to continue to implement the provisions of 10 CFR part 850 at DOE sites.

*Beryllium worker* would be revised to mean a current worker exposed or potentially exposed to airborne concentrations of beryllium that are at or above the action level in the course of the worker's employment in a DOE beryllium activity. Incorporation of the action level is necessary, as beryllium is ubiquitous in small amounts, and DOE's experience has been that ''potentially exposed'' has been misunderstood to refer to all workers on a site regardless of whether they were exposed to levels of beryllium of any consequence to their health.

This definition would also clarify potential confusion over what it means to be ''regularly employed in a DOE beryllium activity'' and to include those persons who are exposed to airborne concentrations of beryllium at or above the action level as part of their employment, such as supervisors or others who are authorized to enter beryllium regulated areas. The employer would be required under this proposed rule to provide the SOMD with a list of all beryllium workers, as well as beryllium-associated workers. Former workers would not be included in the definition of beryllium workers. The Department established the Former Worker Medical Screening Program and offers medical examinations to former (retired and separated) workers who are at risk for developing CBD due to their work at a DOE site.

*Breathing zone* would continue to mean the hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches. This definition applies specifically to proposed § 850.24, *Exposure Monitoring,* which requires employers to determine the worker's exposures to beryllium by monitoring for the presence of contaminants in the worker's personal breathing zone. This definition is consistent with sound and accepted industrial hygiene practices, and ensures that samples collected for personal exposure monitoring represent the air inhaled by workers while performing their duties in their work areas.

*Chronic beryllium disease (CBD)* would be added as a new term to ensure consistency within the Department in how CBD is diagnosed. CBD would mean a condition diagnosed by the SOMD based on the worker having the following: (1) BeS as defined in this section; and (2) a lung biopsy showing non-caseating granulomas or a lymphocytic process consistent with CBD, or radiographic (including computed tomographic (CT) scans) and pulmonary function testing results consistent with pulmonary granulomas.

*Cognizant Secretarial Officer (CSO)* would be added as a new term by adopting the definition from 10 CFR part 851, *Worker Safety and Health Program.* The definition would clarify that the CSO would mean, with respect to a particular situation, the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor, or any other official to whom the CSO delegates in writing a particular function under this part.

*Contractor* would be revised from the current term ''DOE contractor'' by adopting the definition from 10 CFR part 851, *Worker Safety and Health Program,* but specifying that the definition applies to contractors performing beryllium work. This change would reflect DOE's intent that contractors covered under this rule includes any entity, including affiliated entities, such as parent corporation, under contract with DOE, and any subcontractor at any tier, that has responsibilities for performing beryllium work at a DOE site in furtherance of a DOE mission.

*DOE* would continue to mean the United States Department of Energy, including the National Nuclear Security Administration.

*DOE site* would be added as a new term by adopting the definition from 10 CFR part 851, and the current term ''DOE facility'', would be deleted. The definition would clarify that a DOE site would mean a DOE-owned or -leased area or location or other location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission. This definition would include all locations where DOE exercises regulatory control under the Atomic Energy Act of 1954, as amended (AEA), even if DOE does not own or lease the site.

*Employer* would replace the term ''responsible employer'' because DOE recognizes that ''responsible'' is self-evident in the context of this part. Therefore, an employer would be, (1) for DOE contractor employees, the DOE contractor that is directly responsible for the safety and health of employees while performing a beryllium activity or other activity at a DOE site; (2) for DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal employees while performing a beryllium activity or other activity at a DOE site; or (3) any person acting directly or indirectly for the contractor or DOE office with respect to terms and conditions of employment of beryllium workers and beryllium-associated workers.

*Final medical determination* would be added to the definitions section and would mean the final written medical determination of the SOMD as to whether the beryllium worker should be permanently removed because of BeS or CBD. The final medical determination to permanently remove a worker must be made by the SOMD based on a diagnosis of BeS or CBD as defined in this section. If the worker is eligible, and has elected the multiple physician review or alternate physician's determination, the SOMD must issue the final medical determination at the conclusion of such process.

The current rule provides in § 850.35(a)(1)(i) that ''final medical determination'' is the ''outcome of the multiple physician review process or the alternate medical determination process,'' and thus temporary removal is only available pending this independent review. This proposed rule would be intended to permit the SOMD to determine that a worker should be put on temporary medical removal based on tests, recommendations, or any other symptoms that the SOMD deems medically sufficient, pending the SOMD's final medical determination as to whether the worker should be permanently removed. For example, if a SOMD evaluates a worker and believes the worker needs to undergo additional testing before a final determination can be made, the SOMD may determine that the worker should be temporarily removed pending the outcome of that testing. In instances where the worker does not request multiple physician review or alternate physician determination, the SOMD's initial determination may also be the final determination.

*Head of DOE Field Element* would be revised by adopting the definition from 10 CFR part 851. This change would reflect DOE's intent that the Head of DOE Field Element is the individual who is the manager or head of the DOE operations office or field office.

*High-efficiency particulate air (HEPA) filter* would continue to mean a filter capable of trapping and retaining at least 99.97% of 0.3 micrometer mono-dispersed particles.

*Medical removal benefits* (currently medical removal protection benefits) is being revised to mean the employment benefits that would be established by § 850.36 of this proposed rule for beryllium workers temporarily or permanently removed from beryllium activities in which the workers can be exposed to airborne concentrations of beryllium at or above the action level following a recommendation by the SOMD. This proposed definition would clarify that only beryllium workers are eligible for medical removal benefits. Medical removal provisions give contractors an incentive to make reasonable efforts to find and offer alternate employment to beryllium workers who have suffered negative health effects due to exposure to beryllium. The proposed definition of medical removal benefits and the proposed requirements in proposed § 850.36 would ensure that permanently removed beryllium workers would suffer no reductions in total earnings, or other worker rights and benefits for up to two years after permanent medical removal, and up to one year for temporary removal. During this time the contractor would be required to make reasonable efforts to find alternate employment for a removed beryllium worker. Alternative employment may also be found through job retraining and out-placement programs operated by many sites during this two-year period. For workers who are removed, medical removal benefits would continue for the designated period, even where the employee has, during that period of removal, received a notice of and is subsequently laid-off.

*Medical restriction* would be added and refer to the outcome of the process under § 850.35 in which the worker is not suffering from CBD or has not been sensitized to beryllium, but the SOMD determines that exposure to beryllium is nonetheless contraindicated due to other medical conditions of the worker and thus, the SOMD recommends that the worker be restricted from a job that involves an exposure to beryllium at or above the action level. For beryllium workers with BeS or CBD, this proposed rule would require medical removal—not medical restriction—if the SOMD determines that a beryllium worker should be removed from a beryllium job.

*Qualified Individual* would be added and defined to mean an individual, designated by the employer, who possesses the knowledge, skills, and abilities needed to implement an industrial hygiene program (*i.e.,* an individual who is either a certified industrial hygienist or has a college degree in industrial hygiene or a related scientific, engineering, or technical degree); who has completed special studies and training in industrial hygiene; and who has at least five years of full-time employment in the professional practice of industrial hygiene.

*Site Occupational Medical Director (SOMD)* would continue to mean the licensed physician responsible for the overall direction and operation of the site occupational medicine program. However, DOE believes the physician should be qualified to diagnose beryllium-induced medical conditions. Specifically, DOE expects the medical evaluations and procedures required to diagnose CBD will be performed or validated by a specialist in pulmonary medicine or occupational medicine, or by another physician familiar with the specialized equipment and examination protocols required to definitively

differentiate between CBD and other lung diseases.

*Surface levels of beryllium* would replace the term ''removable contamination,'' and the definition would be revised by deleting the words ''nondestructive'' and ''washing.'' The word ''nondestructive'' gives the erroneous impression that actions to remove contamination can be very aggressive as long as the surface is not damaged. Washing is inconsistent with casual contact. The intent of the definition of ''surface levels of beryllium'' would be to describe the material that could be transferred to an individual by casual contact, such as brushing by the contaminated surface.

*Unique identifier* would continue to mean the part of a paired set of labels used in records that contain confidential information that does not identify individuals except by using the matching label.

*Worker* would be revised to mean an employee of DOE or a DOE contractor, or subcontractor, at any tier, who performs work in furtherance of a DOE mission at a DOE site.

*Terms and definitions deleted and not explained above.* The definitions of ''DOE facility,'' ''immune response,'' ''operational area,'' and ''worker exposure'' would be deleted, as these terms are either not used in this proposed notice or are fully explained as established in § 850.24 (Exposure monitoring).

Proposed § 850.3(b) would be amended to provide that undefined terms shall have the same meanings as used in the AEA and 10 CFR part 851, *Worker Safety and Health Program.*

§ 850.4—Enforcement

Proposed § 850.4 would continue to preserve the section as amended on February 9, 2006 (71 FR 6858, 6931). That amendment provides that DOE may take appropriate steps pursuant to 10 CFR part 851, *Worker Safety and Health Program,* to enforce compliance by contractors with this part, and any DOE-approved contractor's CBDPP. This provision would continue to allow DOE to employ contractual mechanisms such as a reduction in fees, or to assess a civil penalty when a contractor fails to comply with the provisions of the proposed rule.

§ 850.5—Dispute Resolution

Proposed § 850.5 would continue to establish that any adversely affected worker may refer a dispute regarding compliance with the rule to the Office of Hearings and Appeals (OHA) for resolution; however, employees who are represented by a labor organization are required first to exhaust any grievance-arbitration procedure that is available for resolving disputes over terms and conditions of employment. The rule would continue to provide that a worker will be deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed after the filing of a grievance and a final decision on it has not been issued. This provision is consistent with 10 CFR part 708, *DOE Contractor Employee Protection Program,* at § 708.13(a)(2). Proposed § 850.5(b) would permit OHA to ''elect not to accept a petition from a worker unless the worker had requested that the employer correct the violation,'' rather than prohibit the petition from being accepted by OHA unless the worker had requested his employer correct the violation.

§ 850.6—Interpretations, Binding Interpretive Rulings and Requests for Information

Proposed § 850.6 would be added to establish and clarify that requests for legal interpretations under this proposed rule would be in accordance with 10 CFR 851.6, *Petitions for generally applicable rulemaking,* requests for binding interpretive rulings would be in accordance with § 851.7, *Requests for a binding interpretative ruling,* and informal requests for information would be made pursuant to 10 CFR 851.8, *Informal requests for information.* Informal requests for information and inquiries regarding technical requirements in this proposed rule would be directed to the Office of Environment, Health, Safety and Security (AU). The responses given by AU would be advisory only and would not be binding on DOE. In addition, to assist the DOE community in understanding the technical meaning or application of a specific requirement in this proposed rule, AU would continue to operate the DOE Response Line (1–800–292–8061) to provide information to DOE, DOE contractor and DOE subcontractor employees.

*B. Subpart B—Administrative Requirements*

Subpart B of the proposed rule would establish general and administrative requirements to develop, implement, and maintain a CBDPP and to perform all beryllium related activities according to the CBDPP.

Proposed § 850.10—Development and Approval of the CBDPP

Proposed § 850.10 would continue to establish the requirements for development and approval of the CBDPP. Proposed § 850.10(a)(1) would continue to require each employer engaged in beryllium activities at a DOE site to prepare and submit a CBDPP for review and approval as indicated in proposed § 850.10(b). DOE would expect its employers to perform the beryllium inventory and hazard assessment as would be required by proposed §§ 850.20 and 850.21 and then prepare and submit for approval a CBDPP that is warranted by the results of the beryllium inventory and hazard assessment.

Proposed § 850.10(a)(1) would also establish a 90 day timeframe from the effective date of the final rule for employers' submissions of the CBDPP. DOE is aware of the burden of documentation that can be generated by new programs. However, most employers have already developed CBDPPs in response to the current rule. DOE expects the additional effort required to refine the existing CBDPPs to meet the requirements of the proposed rule will be minimal.

Proposed § 850.10(a)(2) would require employers that employ beryllium-associated workers at a DOE site, but which are not engaged in beryllium activities, to submit a CBDPP with the provisions appropriate for its workers [*e.g.,* medical surveillance (§ 840.34), training and counseling (§ 840.38), and recordkeeping (§ 840.40)] for review and approval. This section clarifies that DOE does not expect employers to prepare and submit a CBDPP that includes all the provisions of this proposed rule if they do not employ beryllium workers. This proposed section would establish a 90-day timeframe from the effective date of the final rule for the employers' submission of a CBDPP to the appropriate Head of DOE Field Element. 10 CFR 851.26, *Recordkeeping and reporting,* requires documentation of all hazard inventory and hazard assessment results, so employers would be required to have records to support the conclusion that a CBDPP would not be required.

Proposed § 850.10(a)(3) would continue to require a single CBDPP be submitted to encompass all beryllium-related activities at a site, as currently provided in § 850.10(a)(2). Because DOE recognizes that one site may encompass multiple contractors and numerous work activities, this proposed sections would continue to clarify that the CBDPP for a given site may include specific sections for individual contractors or work tasks. DOE believes that this allowance for a segmented CBDPP structure would minimize the burden associated with the CBDPP update and approval requirements because it allows individual contractors

to update and submit for approval only the section of the CBDPP pertaining to their specific activities. If multiple contractors are involved, the DOE contractor designated by the Head of the DOE Field Element must take the lead in compiling the overall CBDPP and coordinating the input from various contractors, subcontractors, or work activities. This proposed section further clarifies that in such cases the designated contractor would be required to review the sections of the CBDPPs prepared by the other contractors engaged at the site before a consolidated CBDPP could be submitted to the Head of DOE Field Element for final review and approval.

Proposed § 850.10(a)(4) would require multiple employers at a DOE site to share relevant assessment information gathered under proposed § 850.41(a) of this proposed rule, to ensure the safety and health of their workers.

Proposed § 850.10(b)(1) would continue to require the Heads of DOE Field Elements to review and provide approval or rejection of the CBDPPs. However, the proposed section would amend the current rule by requiring that approvals or rejections of the CBDPP be provided in writing. DOE believes that its review and approval of CBDPPs is necessary to ensure that each contractor's CBDPP is consistent with the requirements and objectives of the rule. The Head of DOE Field Element is not only responsible for operations within his or her jurisdiction, but also is familiar with the operations and any related special circumstances or unique situations that may affect implementation or effectiveness of the CBDPP. Thus, DOE believes the Head of DOE Field Element is the most appropriate DOE approval authority for CBDPPs. This proposed section would establish a 90 working day period for DOE to review and either approve or reject the CBDPP or any updates to the CBDPP. During its review, DOE may direct the contractors to modify the CBDPP. DOE established this 90 working day period to facilitate timely implementation of program elements by employers and to ensure that Heads of DOE Field Elements respond to employers' submissions.

Proposed § 850.10(b)(2) would require the appropriate CSO to review and provide a written approval or rejection of the CBDPPs or any updates to the CBDPP for DOE Federal offices with beryllium workers or beryllium-associated workers. This proposed section would establish a 90 working day period for the CSO to review and either approve or reject the CBDPP. During its review, the CSO may direct the DOE Federal office to modify the CBDPP.

Proposed § 850.10(b)(3) clarifies that the CBDPP is would be deemed approved 90 working days after submission to the Head of DOE Field Element or the CSO if it has not been approved or rejected earlier.

Proposed § 850.10(b)(4) would amend § 850.10(b)(2) to require employers to give a copy of the approved CBDPP, upon request, to the Office of Environment, Health, Safety and Security, DOE program offices, affected workers, and their designated worker representatives. This section ensures that workers and their representatives have access to information related to the protection of their health.

Proposed § 850.10(c) would continue to require employers to update the written CBDPP for review and approval within 30 working days in two circumstances: (1) Whenever a significant change or addition to the CBDPP is made or warranted, and (2) whenever a contractor changes. DOE believes that such updates are appropriate to ensure that the CBDPP accurately reflects workplace conditions and addresses specific workplace beryllium exposure hazards. This section would also require the Head of DOE Field Elements, or appropriate CSO, if applicable, to review CBDPPs at least annually and, if appropriate, require the employers to update CBDPPs. DOE considers the annual review cycle to be appropriate and necessary to ensure that CBDPPs remain up-to-date and that they accurately reflect workplace conditions and required control procedures.

Proposed § 850.10(d) would continue to require employers to notify any associated labor organization of the development and implementation of the CBDPP plan and updates, and upon request, bargain with the labor organization on implementation of part 850 in a manner that is consistent with Federal labor laws and this part. This section continues to ensure that CBDPPs are developed and implemented consistently with the requirements imposed by the National Labor Relations Act (NLRA), 29 U.S.C. 151–169, and that they do not create obligations in excess of those that would be found in such circumstances under the NLRA.

Proposed § 850.11—General CBDPP Requirements

Proposed § 850.11 would continue to establish the general requirements of the CBDPP. Proposed § 850.11(a) would continue to specify that the CBDPP would be expected to address the existing and planned beryllium activities. Also, proposed § 850.11(b) continues to require employers to tailor the scope and content of the CBDPP to the specific hazards associated with the beryllium activities being performed, but would no longer require that the CBDPP augment or be integrated into existing Worker Safety and Health Programs. The existing provision is considered unnecessary because § 850.1, *Scope,* already provides that the CBDPP supplements, and is deemed an integral part of, the worker safety and health program under 10 CFR part 851, for DOE contractor employees. In addition, proposed § 850.11(b)(1) would require that the CBDPP include formal plans outlining how the employer would ensure that beryllium exposures are maintained below the level prescribed in proposed § 850.22 of this part. Proposed § 850.11(b)(2) would make clear that the plans must, at a minimum, satisfy each requirement in subpart C of the rule (*Specific Program Requirements*). Proposed § 850.11(b)(3) would clarify that the CBDPP provisions must contain provisions for minimizing the number of workers exposed to airborne levels of beryllium at or above the action level, and the instances in which workers are exposed to beryllium.

DOE proposes to delete the requirement in the existing rule at § 850.11(b)(3)(iii) to minimize the disability and lost work time of workers due to beryllium-induced medical conditions and associated medical care, because DOE recognizes that this specific requirement has no practical effect and its intent is met by the other requirements in the CBDPP regulations.

DOE also proposes to delete the requirements in the existing rule at § 850.11(b)(3)(iv), which require the CBDPP to include specific exposure reduction and minimization goals to further reduce exposures below the PEL prescribed in proposed § 850.22, *Permissible exposure limit,* DOE is proposing this change because its experience in implementing this part indicates that the open-ended expression ''further reduce exposures'' is problematic to implement because beryllium is ubiquitous in small amounts. In addition, DOE believes the actions required when workers are exposed to airborne levels of beryllium at or above the proposed action level are protective and expects that few workers will develop CBD from future exposures.

Proposed § 850.12—Implementation

Proposed § 850.12(a) would require employers to manage and control

beryllium activities consistent with the approved CBDPP. Proposed § 850.12(b) [currently § 850.12(c)] would provide that tasks involving potential exposure to airborne levels of beryllium at or above the action level, that are not covered under the CBDPP may only proceed with the written approval from the Heads of DOE Field Elements, or appropriate CSO, as applicable.

Proposed § 850.12(c) [currently § 850.12(b)], would continue to establish that no person employed by DOE or a DOE contractor may take or cause any action that is inconsistent with the requirements specified in this part, an approved CBDPP, or any other applicable Federal statute or regulation concerning the exposure of workers to levels of beryllium at a DOE site. This section clarifies that DOE and contractor personnel would be required to follow applicable requirements of the rules as well as applicable requirements in other applicable Federal statutes and regulations concerning exposure of workers to beryllium.

As with the existing § 850.12(d), proposed § 850.12(d) would continue to recognize that, depending on the circumstance of the work, employers may choose to take additional actions to protect their workers. In implementing this part of the rule, the Department has learned that in certain instances, some sites took actions they felt were more protective of workers, but which in fact conflicted with the requirements of the rule. This provision makes it clear that while employers may take additional actions to protect their workers, employers would be required to first comply with the requirements of this part. DOE recognizes that individuals responsible for implementing CBDPP activities must use their professional judgment in protecting the safety and health of workers. Proposed § 850.12(e) would continue to provide that nothing in the rule is intended to diminish the responsibilities of DOE officials under 29 CFR part 1960 and related requirements for Federal workers.

Proposed § 850.13—Compliance

Proposed § 850.13(a) would revise existing § 850.13(a) to allow contractors or DOE offices, as applicable, who already have CBDPPs that have been approved by a Head of DOE Field Element, or appropriate CSO, as applicable, to continue to use them for one year after the effective date of the final rule. Thereafter, proposed § 850.13(b) would mandate that employers conduct beryllium activities in compliance with their approved CBDPP under this proposed rule.

Proposed § 850.13(c) would continue to require contractor employers responsible for a beryllium activity to be responsible for complying with the proposed rule. When no contractor is responsible for the beryllium activity and Federal employees perform the activity, this proposed section would require DOE to be responsible for compliance.

*C. Subpart C—Specific Program Requirements*

Subpart C of the proposed rule would continue to establish performance-based requirements for the CBDPP. These proposed requirements would focus on preventing CBD by requiring specified protective actions, reducing the number of workers exposed to beryllium, and continuous monitoring to ensure that workplace controls are sufficiently protective. DOE would expect implementation of the rule to continue to increase its understanding of the development, course and prevention of CBD.

Proposed § 850.20—Beryllium Inventory

Proposed § 850.20 would continue to require employers to take specific actions in order to develop a beryllium inventory, and would also provide that employers must update the inventory at least annually and when significant changes to beryllium activities occur.

DOE intended that the current version of § 850.20 include the requirement to maintain an up-to-date inventory. Proposed § 850.20(a)(1) through (4) would require employers to develop their beryllium inventory by reviewing current and historical records, interviewing workers, conducting air, surface and bulk sampling as appropriate to characterize the beryllium and its locations and documenting the locations of beryllium at or above the action level at a site. Characterizing the beryllium and identifying the locations of beryllium are necessary to assess and control beryllium workplace hazards. Employers should conduct the sampling that is appropriate for the specific workplace conditions and the suspected types and locations of beryllium contamination. Sampling techniques could include collecting area and wipe samples and collecting personal breathing zone samples.

By maintaining a beryllium inventory, employers will accomplish the following functions that are critical to the success of the CBDPP: (1) Identification of locations and operations that should be physically isolated from other areas to prevent the spread of contamination, (2) identification of areas in which worker access should be restricted to minimize the number of workers who could be exposed to beryllium at or above the action level, (3) identification of beryllium contamination that must be controlled in areas that are scheduled for decontamination and decommissioning, and (4) identification of beryllium contamination in areas that are being used for non-beryllium activities, to determine the need for cleanup.

Surface level data obtained with dry wipes before the effective date of the final rule will be acceptable for meeting the beryllium inventory requirements for conducting surface sampling in proposed § 850.20(a)(3). However, subject to § 850.20(b), employers that previously used dry wipe sampling would have to convert to wet wipe sampling for new surface exposure monitoring after the effective date of the final rule to comply with the requirements of proposed § 850.24(a)(2)(ii), unless the use of wet wipes would have an undesired effect on the surface being sampled or is not technically feasible.

DOE is proposing to delete from § 850.20(a) the requirement that employers identify workers that were exposed or potentially exposed to beryllium at the inventoried locations. DOE has found that identifying workers is more effectively accomplished by listing the identified locations, using surveys to ask workers about their activities in those locations, and looking at the work histories workers provide when undergoing medical evaluations. Also, proposed § 850.34(a)(3) and (4) would require employers to provide information related to workers' beryllium exposures, to facilitate the SOMD's determination of which workers should receive mandatory medical evaluations and which workers should be offered voluntary medical evaluations.

Proposed § 850.20(b) would permit employers to use inventory results obtained within 12 months prior to the effective date of the final rule to satisfy the requirements set forth in § 850.20(a) if a Qualified Individual determines that conditions represented by the results have not changed in a manner that would warrant changes in the beryllium inventory. While wet wipe data would replace the dry wipe beryllium data in inventories as surfaces are monitored as part of the employer's ongoing CBDPP activities, DOE believes that repeating surface measurements solely for updating the inventory as of the effective date of the final rule would not be cost-effective or justified based on

the amount of reduced risk of beryllium disease that would be realized. Proposed § 850.20(b) would also require employers to update their beryllium inventory at least annually and when significant changes occur to beryllium activities, which is consistent with the common practice at DOE sites.

Proposed § 850.20(c) would continue to require the employer to ensure that the beryllium inventory is managed by a Qualified Individual. DOE believes this provision is necessary to ensure that the inventory is accurate and complete.

Proposed § 850.21—Hazard Assessment and Abatement

Because the identification of the possible presence of beryllium in a workplace does not, in and of itself, suffice to determine whether a hazard exists or whether and, if so, what control measures must be employed, proposed § 850.21(a) would continue to require employers to conduct a beryllium hazard assessment if the inventory establishes the presence of beryllium. This section, as proposed, would limit the requirement to conduct hazard assessments to areas where the airborne concentration of beryllium is potentially at or above the action level. This requirement allows each site the flexibility to determine the appropriate risk-based approach for assessing beryllium-related hazards in its worksites. Flexibility is important because operations, conditions, and the potential for exposure may vary greatly from operation to operation and site to site.

Proposed § 850.21(b) would require employers to conduct the beryllium hazard assessment in accordance with the requirements in 10 CFR 851.21, *Hazard Identification and Assessment.* 10 CFR 851.21 establishes the employer's duty to enact procedures for identifying the hazards and assessing the related risk in the workplace. This section lists the activities employers would perform as part of their hazard and risk assessment procedures (*e.g.,* conducting workplace monitoring, evaluating operations).

Proposed § 850.21(c) would be added to require employers to abate beryllium hazards in accordance with the requirements in 10 CFR 851.22, *Hazard Prevention and Abatement.* This section requires employers to develop and implement a process for preventing, prioritizing and abating beryllium hazards using the hierarchy of controls, starting with elimination (or substitution of the hazard, if appropriate and feasible) and ending with personal protective equipment.

Proposed § 850.21(d) would be added to provide that employers ensure paragraphs (a) through (c) of this section, are managed by a Qualified Individual as defined in this proposed rule.

Proposed § 850.22—Permissible Exposure Limit

DOE received several comments in response to its Request for Information (RFI) concerning the adoption of the OSHA PEL for beryllium. Approximately two-thirds of the commenters favored DOE no longer adopting the OSHA PEL and pointed out that even OSHA recognizes that the current OSHA PEL may not be adequate to prevent the occurrence of CBD (ref. 34).

In response to the Department's RFI concerning whether DOE should adopt the 2010 ACGIH® threshold limit value (TLV®) of 0.05 μg/m³ (ref. 6) as its PEL, approximately two-thirds of the commenters rejected its adoption. Several commenters pointed out that TLVs® are not developed with technical or economic feasibility in mind and that TLVs®, quoting from the ACGIH®, ''are not developed for use as legal standards and ACGIH® does not advocate their use as such.'' Others suggested DOE adopt the 2010 ACGIH® TLV® as its PEL because it is the most protective and conservative published level.

Proposed § 850.22(a) would continue to retain OSHA's 8-hour TWA PEL for airborne exposure to beryllium (2 μg/m³), as measured in the worker's breathing zone by personal monitoring, but allows for the adoption of a stricter standard should OSHA establish one through its rulemaking process. As in the current rule, the PEL would supplement the action level by establishing an absolute 8-hour TWA level above which, no worker may be exposed. Engineering or work practice controls would be required to bring exposures to at or below the PEL.

OSHA has published the beryllium PELs in Tables Z–1 and Z–2 of 29 CFR 1910.1000. The values in Table Z–2 were American National Standards Institute (ANSI) standards that existed when OSHA was created and were adopted by OSHA. Tables Z–1 and Z–2 both list 2 μg/m³ as an 8-hour TWA. In addition, Table Z–2 lists 5 μg/m³ as an ''acceptable ceiling concentration'' and 25 μg/m³ as an ''acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift'', where workers may be exposed above 5 μg/m³ (but never above 25 μg/m³)'' for a maximum cumulative period of 30-minutes during an eight hour shift (ref. 35).

The proposed requirement in § 850.22(b) would provide that when OSHA promulgates a lower PEL, DOE would notify its contractors through a notice in the **Federal Register**.

While DOE is proposing to continue to adopt the OSHA PEL, the Department believes that provisions to minimize worker exposure to beryllium in DOE facilities by lowering the action level (proposed § 850.23) and to encourage and require regular medical monitoring of workers (proposed § 850.34) will ensure an adequate level of protection for workers engaged in beryllium activities.

DOE considered adopting a short term exposure limit (STEL) of 10 μg/m³, averaged over a 15-minute sampling period (the ACGIH STEL at the time) in its original rule in 1999, however, because the STEL of 10 μg/m³ would not provide any added protection for the worker given that the action level of 0.2 μg/m³ would be exceeded in less than 15 minutes where exposure levels are at 10 μg/m³, the Department elected not to establish a STEL. The ACGIH dropped its STEL in 2009 when it lowered its 8-hour TWA TLV to 0.05 μg/m³.

DOE recognizes that OSHA has included a STEL of 2 μg/m³ in its proposed rule, *Occupational Exposure to Beryllium and Beryllium Compounds* (80 FR 47565, August 7, 2015), however, similar to the 1999 comparisons (between the DOE action level and ACGIH STEL), DOE's proposed action level of 0.05 μg/m³ would be exceeded in less than 15 minutes where exposure levels are at 2 μg/m³. Accordingly, the Department has elected to continue to not propose a STEL in this amendment.

Proposed § 850.23—Action Level

Proposed § 850.23(a) would continue to require employers to include in their CBDPPs an 8 hour time weighted average action level for beryllium and would change the action level from 0.2 μg/m³ to 0.05 μg/m³ (8-hour TWA of 0.05 microgram of beryllium, per cubic meter of air), as measured in the worker's breathing zone by personal monitoring. Due to the number of workers who have been identified as being sensitized to beryllium or having CBD, the Department feels that it is prudent to lower the action level. The 0.05 μg/m³ action level was chosen based on the Department's review of epidemiological studies and the ACGIH® TLV® (refs. 6–28). Lowering the action level to 0.05 μg/m³ would result in greater protection for the affected work force because it would lower the trigger that requires the use of controls and protective measures designed to prevent worker exposure to

beryllium. DOE does not anticipate that the lower action level will require the use of new or different types of equipment; it will just require implementation of the controls at a lower level.

*Benefits of lowering the action level.* As specified in this proposed rule, being at or above the action level triggers the requirements to use a number of controls and protective measures designed to protect employees from exposures to beryllium. Employers at DOE sites where exposure levels are at or above the action level would be required to implement these controls at DOE's proposed lower action level.

Lowering the action level would increase the number of workers afforded the protective measures. DOE believes there are still a number of workers exposed to concentrations of beryllium between 0.05 μg/m³ and 0.2 μg/m³, but who are never exposed to levels above 0.2 μg/m³. Under an action level of 0.2 μg/m³, these workers would not be provided the protective measures triggered by that action level. Under an action level of 0.05 μg/m³, however, these workers would be provided the additional protective measures specified in proposed § 850.23(b). These additional protective measures would potentially reduce the exposures experienced by these workers, leading to a reduction in their risk of developing a beryllium-induced medical condition.

As stated earlier, several provisions of the proposed rule would continue to apply independent of the action level. Specifically, these are the CBDPP requirement (10 CFR 850.10), the inventory requirement (10 CFR 850.20), the voluntary protective clothing and equipment requirement (10 CFR 850.29(a)(3)), the housekeeping requirements related to the cleaning of surfaces with removable beryllium (10 CFR 850.30(b) through (d)), the release or transfer requirements (10 CFR 850.31(c)), the waste disposal requirements (10 CFR 851.32), the beryllium emergencies requirement (10 CFR 850.33), the medical surveillance and restriction requirements as they relate to beryllium associated workers (10 CFR 850.34 and 850.35), the training and counseling requirements (10 CFR 850.38), the warning labels requirements (10 CFR 850.39(b)), and the recordkeeping and use of information requirements (10 CFR 850.40).

Proposed § 850.23(b) would continue to require employers to implement a number of protective measures designed to protect workers from beryllium exposures when the levels are at or above the action level, including:

- Periodic exposure monitoring (10 CFR 850.24(c));
- Additional exposure monitoring (10 CFR 850.24(d));
- Exposure reduction (10 CFR 850.25);
- Beryllium regulated areas (10 CFR 850.26);
- Hygiene facilities and practices (10 CFR 850.27);
- Respiratory protection (10 CFR 850.28);
- Protective clothing and equipment (10 CFR 850.29);
- Housekeeping (10 CFR 850.30); and
- Warning signs and labels (10 CFR 850.39).

Thus, DOE sites where exposure levels are at or above the action level would be required to implement these protective measures to provide further protection to workers exposed at or above the action level. These additional protections would reduce the exposure levels experienced by these workers, potentially reducing their risk of developing a beryllium-induced medical condition.

Proposed § 850.24—Exposure Monitoring

Proposed § 850.24 would continue to establish the worker exposure monitoring requirements of the CBDPP. The exposure monitoring provisions in this section are necessary to determine the extent of exposure at the worksite; prevent worker overexposure; identify the sources of exposure to beryllium; collect exposure data so that the employer can select the proper control methods to be used; evaluate the effectiveness of selected protective measures; and provide continual feedback on the effectiveness of the program in controlling exposures.

Exposure monitoring is important not only to determine the level of beryllium to which workers are exposed and the frequency at which workers should be monitored, but also to determine whether other protective provisions of the rule need to be implemented. The employer's obligation to provide protective clothing and equipment, for example, is triggered by monitoring results showing that a worker is exposed to airborne concentrations of beryllium at or above the action level.

Proposed § 850.24(a)(1) would continue to require employers to ensure that exposure monitoring be managed by a qualified individual, and add the requirement for monitoring to be conducted in accordance with the approved CBDPP. Proposed § 850.24(a)(2) would require employers to determine the beryllium exposure of workers by collecting personal breathing zone samples that reflect a worker's exposure to airborne concentrations of total beryllium averaged over an 8-hour period. This is a measurement of the exposure that would occur if the worker was not using respiratory protection equipment. Breathing zone is defined in § 850.3(a) as ''a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.'' Thus, a breathing zone sample should be taken as close as practical to the nose and mouth of the worker and must be taken within a 6 to 9 inch radius.

*Surface level monitoring.* DOE received several comments in response to its RFI concerning how current wipe sampling protocols aid exposure assessments and protect beryllium workers. The commenters' general view is that wipe sampling is effective at determining the presence of beryllium and can be used to define contaminated spaces, and that wipe sampling remains a valuable method to ensure that work areas are kept clean and equipment is properly released from controls. In addition, wipe samples aid in the identification of beryllium that could potentially become airborne and are therefore an important tool that should be used when assessing potential beryllium hazards. A few commenters suggested that measuring surface levels is not sufficiently exact and that surface levels do not correlate with health effects. Those commenters suggested that surface sampling should not be used to measure worker exposure or demonstrate regulatory compliance; that workers and the media have inappropriately focused attention on wipe sampling results as the indicator of what is ''safe''; that DOE facilities have come under scrutiny for surface sampling results that do not accurately represent the potential for BeS or development of CBD; and that surface sampling is prohibitively expensive when used for the release of equipment.

DOE also received several comments in response to its RFI concerning how reliable and accurate current sampling and analytical methods are for beryllium wipe samples. Commenters pointed out that there is a high level of variability in measured surface loadings within and between individuals collecting wipe samples from the same surface. Studies have shown that a number of factors affect the reliability and accuracy of current wipe sampling methods, and recovery of material from surfaces is highly dependent on the skill, training, and work practices of the individual collecting the samples. Concerning analysis of wipe samples, however, commenters suggested that the

issues associated with the reliability and accuracy of analytical methods used for beryllium wipe samples are no different from those encountered in obtaining good results for airborne samples, and the current sampling and analytical protocols are reliable and accurate.

DOE has considered the commenters' suggestions, along with other available information, and proposes to amend this section by including requirements for monitoring the levels of beryllium on surfaces. Monitoring surface levels is necessary for implementing requirements applying to surfaces that have a potential for exceeding the release criteria established in proposed § 850.31.

DOE received several comments in response to its RFI concerning whether the Department should require the use of wet wipes for surface monitoring. Many of the commenters supported DOE requiring the use of wet wipes but also recommended allowing the use of dry wipes where necessary. These commenters also recommended that DOE specifically identify the standard wipe test method that employers must use. A few commenters recommended that DOE continue not to specify how surfaces are sampled for beryllium.

In the preamble to the final rule, DOE had encouraged the use of wet wipes rather than dry wipes for surface monitoring, but did not require this in the rule itself. DOE's experience with wipe testing since December 1999, when the final rule was issued, supported by the suggestions of commenters to its RFI, as well as published (ref. 36) and unpublished studies demonstrating that wet wipes recover more of the surface contamination than do dry wipes, leads to proposed § 850.24(a)(2)(ii)(A) and (B). The proposed section would require the use of wet wipes with certain exceptions. This will also allow DOE to achieve greater comparability of results across the DOE complex. DOE intends for wetting agents to be selected such that wipe test results would be representative of removable beryllium (*e.g.,* DOE would not expect employers to use aggressive solvents that would remove beryllium embedded in sticky cutting fluid on machine surfaces).

DOE recognizes that surface wipe sampling using wet wipes could have an undesirable effect on some potentially contaminated surfaces, or surfaces surrounding the target surface, and that it is not technically feasible on some textured surfaces. Proposed § 850.24(a)(2)(ii)(B) would allow dry surface wipe sampling for those situations. DOE recognizes that any type of wipe testing may not be technically feasible on highly textured surfaces and proposes in § 850.24(a)(2)(ii)(C) to allow vacuum sampling for those situations. DOE also recognizes that surface wipe testing does not recover a high proportion of heavy accumulations of materials on surfaces and is therefore not appropriate for measuring concentrations of beryllium on such surfaces. Proposed § 850.24(a)(2)(ii)(D) would allow bulk sampling for heavy accumulations of materials on surfaces.

Proposed § 850.24(a)(3) would not require surface monitoring in the interior of installed closed systems such as enclosures, glove boxes, chambers, ventilation systems, or normally inaccessible surfaces (*e.g.,* under fixed cabinets, on the tops of overhead structural beams), as beryllium in those locations normally is not accessible to workers. DOE expects that employers will consider the hazards posed by those sources of beryllium exposure in work planning or operating procedures that may involve disturbing the beryllium.

Proposed § 850.24(b)(1) would continue to require employers to perform initial exposure monitoring of workers who perform work in areas that may have airborne concentrations of beryllium, as shown by the inventory and hazard assessment that are at or above the action level, or have the potential to be at or above the action level. However, DOE is proposing to revise this section to make an exception for employers in paragraphs (b)(2) and (3) of this section. In implementing this part, as issued in December 1999, DOE has identified a great many stable situations at its sites in which beryllium has been effectively inventoried, controlled, and conditions have not changed for many years. DOE recognizes that many employers have performed initial exposure monitoring in areas that are accessible to workers and shown by the inventory and hazard assessment as part of their compliance with the current rule. DOE sees no value in repeating exposure monitoring if prior monitoring results are adequate under the proposed rule. Accordingly, proposed § 850.24(b)(2) would allow employers to use the monitoring results obtained within 12 months prior to the effective date of the final rule to satisfy this requirement when a qualified individual has determined that the conditions represented by the results have not changed in a manner that would necessitate changes in beryllium controls.

Proposed § 850.24(b)(3) would be added to clarify that no initial monitoring is required in cases where the employer has relied upon objective data that demonstrates that beryllium is not capable of being released in airborne concentrations at or above the action level under the expected conditions of processing, use, or handling.

Proposed § 850.24(c)(1)(i) would continue to require employers to conduct periodic exposure monitoring of workers in a manner and at a frequency necessary to represent workers' exposures in locations where the airborne concentration of beryllium is at or above the action level. Periodic monitoring provides employers with the assurance that workers are not experiencing higher exposures that might require the use of additional controls. In addition, periodic monitoring reminds workers and employers of the continued need to protect against the hazards associated with exposure to beryllium. Proposed § 850.24(c)(1)(ii) would require employers to conduct exposure monitoring at least quarterly for the first year of operation.

DOE is proposing to add § 850.24(c)(2) to allow employers, after the first year of conducting periodic monitoring, and subject to paragraph (d) of this section, to reduce or terminate monitoring if the employer can demonstrate for 6 months that the airborne concentration of beryllium is below the action level. Employers would be required to base their decision on an analysis of monitoring results and of any activities, controls, or other conditions that would affect beryllium levels. If the employer cannot demonstrate that the airborne concentration of beryllium is below the action level, then periodic monitoring must continue on a quarterly basis.

Proposed § 850.24(d) would require that employers conduct additional exposure monitoring whenever there has been a production, process, control or other change that may result in an exposure to beryllium at or above the action level. DOE is proposing this requirement to address a condition at several DOE sites in which beryllium controls usually keep exposure levels below the action level, but beryllium sources are still present, or could be present such as in waste streams exhumed from legacy sites—and could result in exposures if the controls fail. DOE would require periodic monitoring on a quarterly basis for those conditions so that monitoring results are available to verify the continued effectiveness of the controls.

Proposed § 850.24(e)(1) would be revised to require that samples that are collected be analyzed in a laboratory that is accredited for beryllium analysis by the American Industrial Hygiene Association's Laboratory Accreditation

Programs, LLC (AIHA–LAP, LLC) or an equivalent organization. Currently, § 850.24(f) requires samples to be analyzed in a laboratory accredited for metals by the AIHA–LAP, LLC or a laboratory that demonstrates quality assurance for metals analysis that is equivalent to AIHA–LAP, LLC accreditation. The proposed language is intended to correct the problem DOE has experienced in which laboratories, currently accredited by AIHA–LAP, LLC for metals, may not be aware that a significant amount of beryllium in samples (in the form of beryllium oxide) may not be recovered in the laboratories' sample preparation processes. DOE anticipates that AIHA–LAP, LLC, and perhaps other accrediting or certifying organizations, will have proficiency testing programs specifically for beryllium oxide and potentially other forms of beryllium-containing materials of interest which are present in field samples, to ensure that a high percentage of those forms of beryllium in the sample are recovered in the sample preparation step and are included in the analysis results. Such proficiency testing programs also would assist laboratories in using some of the strategies for distinguishing forms of beryllium as discussed in this preamble regarding proposed § 850.3.

Proposed § 850.24(e)(2) would require a number of additional changes dealing with the quality assurance of the sample analysis results. DOE proposes to delete the requirement that the method of sample monitoring and analysis has an accuracy of not less than plus or minus 25%, with a confidence level of 95%, because that data quality objective is superseded by requirements of the AIHA laboratory quality assurance program. Also, proposed § 850.24(e)(2)(i) would permit employers to use a field or portable laboratory that is accredited in an AIHA or equivalent quality assurance program, to support increasing the speed with which exposure results are delivered so that employers can more quickly identify and control beryllium hazards. DOE anticipates that this will also increase mission productivity.

Proposed § 850.24(e)(2)(ii) would allow employers to use results that are below laboratory reporting limits, which would enhance the usefulness of these results for determining if specified levels are exceeded.

DOE is proposing to delete existing § 850.24(f) because its subject matter is proposed to be included in § 850.24(e). Proposed § 850.24(f) would amend the requirement in existing § 850.24(g) for notification of results to clarify DOE's intent that the employer notify all the workers in the same work area of the monitoring results that represent those workers' exposures rather than only notifying the workers that were monitored. This clarification addresses DOE's observation that some DOE sites have interpreted the notification requirement to mean that workers are notified only of their individual airborne monitoring results. When this happens, it means that the group of unmonitored workers in the same work area failed to receive useful feedback regarding potential exposures and the need for various levels of exposure controls. Accordingly, proposed § 850.24(f)(1) would require employers to notify workers of their exposure monitoring results within 10 working days after receipt of the results. Proposed § 850.24(f)(1)(i) and (ii) would require employers to provide notification of exposure monitoring in written or electronic format and posted in locations or in electronic systems that are readily accessible to workers, but not in a manner that would identify an individual or workers. Employers would be required to give directly to individuals that were sampled their results in written or electronic format.

Proposed § 850.24(f)(2)(i) and (ii) would specify the form of notification required for monitoring results at or above the action level. Employers would be required to include in the notification a statement that exposures were at or above the specified action level, a descriptions of the controls being implemented to address those exposures. In addition, proposed § 850.24(f)(3) would continue to require employers to provide a notification to the SOMD, and a notification to the Head of DOE Field Element or their designee. DOE believes that the SOMD should be informed of such exposures in order to refine, as appropriate, the medical surveillance protocol for affected workers to ensure effective monitoring and early detection of beryllium-related health effects.

Proposed § 850.25—Exposure Reduction

Proposed § 850.25 would continue to establish the exposure reduction and minimization provisions of the CBDPP that reflect DOE's goal of achieving aggressive reduction and minimization of worker exposures to airborne beryllium. However, this section would be revised to require employers, where exposures and the action level, to establish a formal exposure reduction program in accordance with 10 CFR 851.22, *Hazard Prevention and Abatement,* to reduce exposure levels to below the action level.

DOE is proposing to delete the requirement to continue reducing and minimizing exposures that already are below the action level because DOE believes that the measures required at or above the proposed action level are protective. DOE would also delete the specific exposure reduction actions that are required of responsible employers in the current version of 10 CFR 850.25 because DOE expects employers to understand how to establish a formal exposure reduction program, and listing certain specific steps could constrain employers in unproductive ways.

Proposed § 850.26—Beryllium Regulated Areas

Beryllium regulated areas typically are areas in which activities that involve beryllium are conducted. Proposed § 850.26 would continue to establish beryllium regulated areas at DOE sites. Accordingly, proposed § 850.26(a) would continue to require employers to establish beryllium regulated areas in facilities at DOE sites where the airborne concentration of beryllium is at or above the action level.

Proposed § 850.26(b)(1) would require employers to demarcate beryllium regulated areas from the other workplace areas in a manner that alerts workers to the boundaries of such areas. This would allow employers the flexibility to determine the most appropriate means of identifying each beryllium regulated area based on specific worksite conditions.

Proposed § 850.26(b)(2) would continue to require employers to limit access to beryllium regulated areas to authorized persons only. DOE intends that only individuals who are essential to the performance of work in the beryllium regulated area will be authorized to enter beryllium regulated areas. Employers will have to evaluate the affected operation and determine which personnel (including managers, supervisor, and workers) are necessary for the performance of the work and authorized to enter. Methods for preventing unauthorized persons from entering a regulated area may include posting a sign indicating that only authorized persons may enter, using locked access doors, and employing other security measures, as required by worksite conditions. DOE believes that employers are best equipped to determine whether any access control methods are needed in addition to warning signs specified in proposed § 850.39 of this part.

Proposed § 850.26(b)(3) would continue to require employers to keep record of all individuals who enter beryllium regulated areas. The record

must include the name of the person who entered, the date of entry, the time in and time out, and the type of work performed. DOE believes that recordkeeping must be adequate to permit DOE to monitor the effectiveness of each employer's compliance activities and to provide information regarding each worker's history of potential exposures. This information will assist the employer's occupational medicine staff in establishing appropriate medical evaluations and will aid in DOE's efforts to establish links between working conditions and potential health outcomes.

Proposed § 850.27—Hygiene Facilities and Practices

Proposed § 850.27 would continue to provide requirements regarding hygiene facilities and practices of the CBDPP. Accordingly, proposed § 850.27(a)(1) and (2) would continue to require employers to ensure that beryllium workers observe prohibitions on the use of cosmetics and tobacco products, and consumption of food and beverages in beryllium regulated areas. Proposed § 850.27(a)(3) would require employers to prevent beryllium workers from exiting areas that contain beryllium with contamination on their bodies or their personal clothing. DOE believes these provisions would promote sound workplace hygiene practices that may protect workers from exposure to other substances present in the workplace as well as beryllium.

Proposed § 850.27(b)(1) would continue to require employers to provide a separate changing room or area for workers to change into and store personal clothing and clean protective clothing and equipment. DOE believes that such provisions are necessary to prevent cross-contamination between work and personal clothing and the subsequent spread of beryllium into clean areas of the site and workers' private automobiles and homes. These provisions also address the need to prevent contamination of clean protective clothing and equipment, ensuring that protective clothing and equipment actually protect workers rather than contribute to their exposure.

Proposed § 850.27(b)(2) would continue to require that the changing-rooms used to remove beryllium-contaminated clothing and protective equipment be maintained under negative pressure, or be located in a manner or area that prevents dispersion of beryllium contamination into clean areas. DOE believes that providing changing rooms for workers who work in beryllium-regulated areas is the most effective method for preventing workers from carrying beryllium contamination on their work clothes and bodies from beryllium regulated areas to other areas of the DOE site, and to their private automobiles and homes.

Consistent with the goal of preventing the spread of contamination into adjacent work areas and into workers' homes and automobiles, proposed § 850.27(c) continues to require employers to provide handwashing and shower facilities for workers in beryllium regulated areas. In addition to controlling the spread of contamination, showering also reduces the worker's period of exposure to beryllium by removing any beryllium that may have accumulated on the skin and hair. Requiring workers to change out of work clothes that are segregated from their street clothes, leave work clothing at the workplace (see § 850.29), and shower before leaving the plant, significantly reduces the movement of beryllium from the workplace. These steps ensure that the duration of beryllium exposure does not extend beyond the work shift and, thus, protect workers and their families from off-site exposures.

Proposed § 850.27(d) would continue to require employers to provide beryllium workers working in beryllium regulated areas with readily accessible lunchroom facilities. Employers must also ensure that workers in beryllium regulated areas do not enter the lunchroom wearing protective clothing unless the clothing is cleaned beforehand. Employers have discretion to choose the method for removing surface beryllium from the clothing, including HEPA vacuuming, so long as the method does not disperse the dust into the air.

Proposed § 850.27(e) would continue to require change rooms or areas, showers and handwashing facilities, and lunchroom facilities to comply with 29 CFR 1910.141, *Sanitation.*

Proposed § 850.28—Respiratory Protection

Proposed § 850.28 would continue to establish the respiratory protection provisions of the CBDPP. However, proposed § 850.28(a) would be revised for consistency with part 851 to require employers to establish a respiratory program in accordance with 10 CFR 851.23, *Safety and Health Standards,* and appendix A, section 6, *Industrial Hygiene,* for workers exposed, or potentially exposed to airborne concentrations of beryllium at or above the action level. The standards listed in 10 CFR 851.23 include 29 CFR 1910.134 ''Respiratory Protection'' and ANSI Z88.2 ''American National Standard for Respiratory Protection (1992). The requirements in appendix A, section 6, *Industrial Hygiene,* cover the DOE Respirator Acceptance Program. Note that the requirements established in 10 CFR 851.23 are set forth as minimum requirements. DOE contractors may elect to implement alternative provisions (*e.g.,* newer versions of consensus standards such as ANSI/ASSE Z88.2–2015) if they determine the alternative provisions are more appropriate and provide an equivalent or improved level of protection, and if the provisions are included in their CBDPP that has been approved by DOE.

Proposed § 850.29—Protective Clothing and Equipment

Proposed § 850.29 would continue to establish the protective clothing and equipment provisions (other than respirator use) of the CBDPP. The objectives of this section would be to provide clothing and equipment that protects workers against the hazards of skin and eye contact with dispersible forms of beryllium and to prevent the spread of contamination outside work areas that could occur from the improper handling of beryllium-contaminated clothing and equipment. In addition, the requirement for handling protective clothing and equipment used for protecting workers from beryllium exposure in beryllium regulated areas would be clarified.

The proposed rule would continue to require employers to provide protective clothing and equipment where skin or eye contact with dispersible forms of beryllium is possible. Proposed § 850.29(a) would continue to require employers to provide protective clothing and equipment to beryllium workers where dispersible forms of beryllium may contact workers skin, enter openings in workers' skin or contact workers' eyes.

An opening in workers' skin could include fissures, cuts, and abrasions. DOE recognizes that the potential for the development of contact dermatitis, chronic ulcerations, and conjunctivitis is mainly associated with contact with soluble forms of beryllium compounds that are not included in the definition of ''beryllium'' in this proposed rule because DOE believes that soluble forms of beryllium are not used at its beryllium sites. Insoluble beryllium, however, has also been shown to cause chronic ulcerations if introduced into or below the skin via cuts or abrasions (ref. 37). DOE believes that it is prudent practice to avoid skin or eye contact with a material that causes chronic ulcerations and, therefore, continues to include the protection of workers' skin and eyes from contact with insoluble

beryllium in proposed § 850.29(a). The protective equipment required by this proposed section could include coveralls, overalls, jackets, footwear, headwear, face shields, goggles, gloves, and gauntlets, depending on the nature of operations and the related skin and eye exposure hazard.

Proposed § 850.29(a) would continue to require employers to provide protective clothing and equipment and ensure its appropriate use and maintenance by workers where dispersible forms of beryllium may contact workers' skin or eyes or may enter openings in which workers' skin, including where:

- Exposure monitoring has established that the airborne concentration of beryllium is at or above the action level [proposed § 850.29(a)(1)];
- Surface contamination levels measured or presumed prior to initiating work are at or above the level prescribed in proposed § 850.30 of this part [proposed § 850.29(a)(2)];
- Surface contamination level results obtained to confirm housekeeping efforts are above the level prescribed in proposed § 850.30 of this part [proposed § 850.29(a)(3)]; and where;
- A worker requests the use of personal protective clothing and equipment for protection against airborne beryllium, regardless of the measured exposure level [proposed § 850.29(a)(4)].

Proposed § 850.29(b) would continue to require employers to comply with 29 CFR 1910.132, *Personal Protective Equipment General Requirements,* when workers use personal protective clothing and equipment. This requirement to comply with 29 CFR 1910.132 is consistent with the general worker protection provisions of 10 CFR part 851.

Proposed § 850.29(c) would continue to require employers to establish procedures for donning, doffing, handling, and storing protective clothing and equipment that prevent beryllium workers from exiting beryllium regulated areas with contamination on their bodies or personal clothing [proposed § 850.29(c)(1)]. Proposed § 850.29(c)(2) would require these procedures include a requirement that workers exchange their personal clothing for full-body protective clothing and footwear (work shoes or booties) before beginning work in beryllium regulated areas. This change from personal clothes into protective work clothing must occur in a changing room that protects the worker's personal clothes and clean protective clothing from beryllium contamination. DOE believes the use of full-body protective clothing in lieu of personal clothes in beryllium regulated areas is necessary to prevent the spread of beryllium contamination into adjacent work areas and to preclude the possible transport of beryllium onto workers' private property.

Proposed § 850.29(d) would require employers to ensure that workers do not remove beryllium-contaminated protective clothing and equipment from beryllium regulated areas, except for workers authorized to launder, clean, maintain or dispose of the clothing and equipment.

Proposed § 850.29(e) would require employers to prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other means that might disperse beryllium particulates into the air. Although DOE generally believes that employers should have the flexibility to determine the most appropriate methods to clean contaminated clothes based on their own specific worksite conditions, DOE continues to include this well-recognized and accepted industrial hygiene control to prevent the dispersion of beryllium particles into the workplace atmosphere.

Proposed § 850.29(f) would continue to require employers to ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness. This section allows employers flexibility in determining the required frequency for laundering protective clothing based on specific work conditions and the potential for contamination.

Proposed § 850.29(f)(1) would continue to require employers to ensure that protective clothing and equipment removed for laundering, cleaning, maintenance, or disposal are placed in containers that prevent the dispersion of beryllium particulates and that these containers are labeled in accordance with proposed § 850.39(b)(1). These warning labels would help ensure appropriate subsequent handling of materials contaminated with beryllium and may prevent inadvertent exposures that could result if laundry, maintenance, or disposal personnel are not aware of the contamination and the prescribed methods to prevent the release of airborne beryllium.

Proposed § 850.29(f)(2) would continue to require employers to ensure that organizations that launder or clean DOE beryllium-contaminated clothing or equipment are informed that exposure to beryllium is harmful, and that clothing and equipment should be laundered or cleaned in a manner preventing the dispersion of beryllium. This section would require informing onsite cleaning and laundry services, as well as off-site cleaning and laundry vendors because employees performing the work may not know about the presence and hazards of beryllium on the clothing and equipment unless the employer informs them.

Proposed § 850.30—Housekeeping

Proposed § 850.30 would continue to establish the housekeeping provisions of the CBDPP. Good housekeeping practices are necessary to prevent the accumulation of beryllium contamination on surfaces in operational areas where beryllium is used or handled. Such accumulations, if not controlled, may lead to the spread of beryllium contamination on surfaces and the re-suspension of beryllium particles into the air, both in the area where beryllium dust was originally generated and in other work areas. In addition, monitoring surface contamination levels is an indispensable tool for ensuring that beryllium emissions from operations are under control. The uncontrolled accumulation of beryllium-contamination on equipment in the workplace increases the potential for worker exposure to beryllium during the performance of equipment maintenance, handling, and disposal tasks. Accordingly, proposed § 850.30(a) would continue to establish that the removable contamination housekeeping level on surfaces must not exceed 3 μg/0;100 $cm^2$ during non-operational periods to reduce the potential for beryllium to become re-suspended in the workplace or spread to non-controlled areas. Employers must conduct routine surface sampling to determine if operational work areas are compliant with the rule. Sampling should not be carried out during a normal work shift, but rather it should be undertaken after normal clean-up and during non-operational periods. As with the current § 850.30(a), the sampling requirement would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems.

The performance of housekeeping tasks can, in and of itself, lead to worker exposures to beryllium-contaminated dust. Therefore, this section would continue to seek to prevent the spread and re-suspension of dust during housekeeping activities.

Proposed § 850.30(b) would continue to require vacuuming using HEPA filters, wet methods, or other cleaning methods that avoid the dispersion of dust, and prohibits the use of

compressed air or dry methods that may disperse beryllium particulates. The use of wet methods for reducing or minimizing the dispersal of dust during general housekeeping tasks is a common industrial hygiene practice. The purpose of using these methods is to reduce or eliminate the potential for re-suspension of beryllium dust into the air and breathing zone of the worker.

Proposed § 850.30(c) would require the use of HEPA filters in all vacuuming operations used to clean beryllium-contaminated surfaces, and further requires filter replacement, as needed, to maintain the capture efficiency of the vacuum system. HEPA filters must be used to prevent the spread of dust by effectively gathering the dust that is collected by vacuum systems. Employers should adhere to procedures for cleaning or replacing filters that ensure minimum employee exposure to beryllium dust.

The movement of contaminated equipment from a regulated area to a non-regulated area may result in the spread of beryllium contamination to the non-regulated area. To prevent the potential spread of contamination from performing housekeeping activities, proposed § 850.30(d) would continue to require that cleaning equipment used in areas where surfaces are contaminated with beryllium be labeled, controlled, and not used for other non-hazardous materials. These procedures are similar to those required under OSHA's asbestos standard for equipment used during cleanup or removal of asbestos from buildings.

Proposed § 850.31—Release and Transfer Criteria

Proposed § 850.31 would continue to establish beryllium contamination levels and other requirements that must be met before equipment and other items used in beryllium regulated areas may be released or transferred. However, DOE is proposing to amend the criteria for the release and transfer of beryllium-contaminated equipment and items, and add provisions for the release and transfer of ''areas'' (*i.e.,* real property, an area of a building, or a work area) at or above the specified level to this section. DOE's experience with managing beryllium-contaminated areas, as well as recent literature suggesting that surface contamination is a risk factor for BeS, motivated DOE to include release and transfer criteria for beryllium-contaminated areas.

This part, as issued in December 1999, included requirements to label decontaminated equipment and items and obtain a commitment from their recipients to implement safety controls to prevent exposure to beryllium. At that time, DOE's focus was on the typical machine shop equipment on which work with beryllium was reported to have caused cases of BeS and CBD. The machines in these shops contain many areas that were not accessible for decontamination and, therefore, considered potential sources of exposure to downstream users of the machines. DOE's wording in this part did not make allowances for equipment and items of simple construction that can be conclusively demonstrated to have all surfaces adequately decontaminated, or for equipment and items suspected but subsequently determined to not have been contaminated with beryllium, and that do not pose a risk to downstream users. Very few potentially interested parties were willing to accept equipment, items, or areas that were decontaminated, or found not to have been contaminated in the first place, that came with a warning label and required the commitment to implement controls.

DOE's proposed amendments would allow for the release without restriction of equipment, items, and areas that are demonstrably decontaminated at or below specified levels or were suspected but subsequently shown not to have been contaminated. DOE expects that potential downstream users will be more willing to accept decontaminated equipment, items, and areas that do not include these unwarranted warnings.

In this proposed section, the term ''items'' would be intended to cover tools, supplies, documents, etc., and any personal property in beryllium regulated areas that may not be encompassed by the term equipment. The terms ''equipment'' and ''items'' do not include real property or buildings. However, the term ''area'' would be intended to include real property, buildings or work areas.

Proposed § 850.31(a) would amend the requirements for releasing from beryllium regulated areas equipment, items, and areas contaminated at or below the levels specified in this subsection.

Proposed § 850.31(a)(1) would amend the existing regulation to require that, prior to the general release or transfer of equipment and items, or areas, employers ensure that for formerly beryllium-contaminated equipment and items, or areas (except those that only contain beryllium in normally inaccessible locations or embedded in hard-to-remove substances), the removable contamination level of beryllium is at or below 0.2 μg/100 $cm^2$.

Beryllium inventories of older sites that uncover records or other information indicating past beryllium activities are required by existing § 850.20(b)(4) and would be required by proposed § 850.20(a)(3) to be surveyed to determine if legacy contamination is present. Such surveys would include sampling accumulated material on the surfaces of infrequently cleaned equipment and items, and in areas that may contain beryllium because of the trace quantities in soils and building materials (*i.e.,* below 0.1% beryllium pursuant to the definition of beryllium in this proposed rule). For example, concentrations of beryllium range from 0.09 to 3.4 parts per million (ppm) in U.S. soils (ref. 18). Proposed § 850.31(a)(2) recognizes that concentrations of beryllium in accumulated indoor material that is not greater than the concentration of beryllium in surrounding soil provides convincing evidence that the area is not contaminated. A variety of approaches may be used to compare beryllium concentrations in soil collected from a reference area to the concentration in settled dust in such reference area. The National Institute for Science and Technology Engineering Statistics Handbook provides methods used to demonstrate that the difference between two sets of samples is significant (ref. 38).

In response to its RFI, DOE received several comments concerning whether the Department should establish both surface level and aggressive air sampling criteria (modeled after Environmental Protection Agency (EPA)'s aggressive air sampling criteria to clear an area after asbestos abatement) for releasing areas in a facility, or instead whether the Department should consider establishing only the aggressive air sampling criteria. Commenters' suggestions varied considerably in response to this question, with some recommending only surface sampling, some recommending only aggressive air sampling, and some recommending use of both for the area considered for release. Some commenters suggested that aggressive sampling in buildings that previously had known areas of beryllium use was not able to remove beryllium from structural beams, even though multiple fans were blowing large volumes of air. In addition, these commenters indicated that there is no need to assign a lower airborne level (*i.e.,* lower than the action level) if the surface level is below 0.2 μg/100 $cm^2$. Others suggested use of aggressive air sampling as a means to release an area

where beryllium is suspected in hard to reach places, and that aggressive air sampling would be more representative than surface sampling for a worker's airborne exposure, which is the route of exposure of greater concern.

DOE has considerable experience with repeat cycles of cleaning and verifying that decontaminated equipment, items, and areas have achieved either the 0.2 μg/100 cm² or 3 μg/100 cm² release criteria by wipe testing alone. DOE's experience includes decontaminating areas, even though there were no provisions regarding the release of such areas in the final rule, as issued in December 1999. The use of wipe testing to demonstrate completeness of decontamination often is very time consuming and costly, with diminishing reduction in health risk as the cycles are repeated, especially for surfaces that are many-faceted, rough, highly textured, or difficult to access (*e.g.,* around many-faceted and complex utility surfaces). DOE's objective in this part is to establish an effective method for assuring that decontaminated surfaces no longer present a beryllium health risk of concern.

Proposed § 850.31(a)(3) would establish that the airborne concentration of beryllium in an enclosure of the smallest practical size surrounding the equipment or item, or in an isolating enclosure of the area could not exceed 0.01μg/m³. In such cases, DOE is not requiring, but believes its contractors would be able to demonstrate achieving this level by borrowing from EPA's 40 CFR part 763, subpart E, *Asbestos-Containing Materials in Schools,* approach to clearing an area after asbestos abatement. This approach involves enclosing the equipment or item, or creating an enclosure of the area, and demonstrating by aggressive air sampling that air levels in the enclosure do not exceed a specified level. Aggressive air sampling refers to the method of using leaf blower-equivalents and large fans to dislodge and keep suspended particles that were on a surface, and then sampling the air for the suspended particles. In proposed § 850.31(a)(3), DOE selected 0.01 μg/m³ as the clearance level because it is the same as EPA's limit for beryllium emissions, as specified in ''*National Emission Standards for Hazardous Air Pollutants,*'' 40 CFR part 61. EPA's limit is a 30-day average in ambient air and is an around-the-clock exposure; therefore, applying that level to workers' hours of potential exposure provides a significant safety factor. Aggressive air sampling maximizes the amount of surface material entrained in the air and consequently, the amount of airborne material captured in the sample as well. Aggressive sampling, therefore, creates a ''worst-case'' contamination condition and a ''best-case'' for measuring the cleanliness of the equipment, item, or area.

DOE included in this proposal the provision that the enclosure surrounding equipment or items must have as small a size as practical to prevent the use of unnecessarily large enclosures that would facilitate meeting the 0.01 μg/m³ criteria simply by dilution. DOE believes clearance for release of equipment and items, and areas by aggressive air sampling would ensure that surfaces are not sufficiently contaminated to present a risk of BeS. This belief is based on the assumption that, under all realistic conditions, removable beryllium levels sufficient to present a risk of BeS would be entrained in the air and shown by the clearance air samples to exceed 0.01 μg/m³. This approach would also more directly demonstrate that removable surface beryllium does not present an inhalation hazard, as opposed to making an assumption about a possible inhalation risk caused by the re-suspension of surface contamination. Finally, this approach would allow for a potentially more cost-effective process than wipe testing for demonstrating completeness of decontamination for clearance of release of some types of surfaces.

Proposed § 850.31(b) would allow the release or transfer of equipment, items, or areas in which surface contamination is inaccessible or has been sealed with hard-to-remove substances (*e.g.,* paint), and the requirements in paragraphs (a)(1) through (3) of this section are met. In this case, the employer would be required to ensure that the labeling requirements in 850.39(b)(2) are met as specified in proposed § 850.31(b)(1). Proposed § 850.31(b)(2) would require the employer to condition the release of equipment, item, or area based on the recipients' commitment to implement controls to ensure that exposure does not occur. Such a commitment should be based on the nature and possible use of the equipment or item, the nature of the beryllium contamination, and whether exposure to beryllium is foreseeable.

Proposed § 850.31(c) would be amended to allow for conditional release or transfer of equipment, items, or areas with levels that exceed 0.2 μg/100 cm². For equipment, items, or areas that have removable beryllium above 0.2 μg/100 cm², or that have beryllium in material on the surface at levels above the levels in soil at the point of release, the employer would be required to:

- Provide the recipient with a copy of this part [proposed § 850.31(c)(1)];
- Condition the release of the equipment, item, or area on the recipient's commitment to control foreseeable beryllium exposures from the equipment, item, or area considering its future use [proposed § 850.31(c)(2)];
- Label, or post signs on, as applicable, the equipment, item, or area in accordance with proposed § 850.39(a) or (b)(1) of this part to warn recipients of potential beryllium hazards [proposed § 850.31(c)(3)];
- Place equipment or items in sealed, impermeable bags or containers, or have a sealant applied to prevent the release of beryllium during handling and transporting [proposed § 850.31(c)(4)]; and
- Ensure that the beryllium that remains removable on the surfaces in areas that are being released do not exceed the 3 μg/100 cm² surface contamination level [proposed § 850.31(c)(5)].

Proposed § 850.32—Waste Disposal

Proposed § 850.32 would continue to establish the waste disposal provisions of the CBDPP. Like many of the provisions of the rule (*e.g.,* beryllium regulated areas, protective clothing and equipment, housekeeping), the waste disposal provisions are designed to minimize the spread of beryllium contamination on the site or beyond the site boundaries.

Proposed § 850.32(a)(1) would require employers to dispose of beryllium waste in sealed, impermeable bags, containers, or enclosures to prevent the release of beryllium during handling and transportation.

Proposed § 850.32(a)(2) would require employers to label the bags, containers, or enclosures for disposal in accordance with § 850.39(b)(1) of this part.

DOE is proposing to delete existing § 850.32(a), which is the requirement for employers to control the generation of beryllium-containing waste, beryllium-contaminated equipment, and other items through the application of waste minimization principles, because waste minimization is outside the scope of this part and is addressed in the Department's environmental policy documents.

Proposed § 850.33—Beryllium Emergencies

Proposed § 850.33 would continue to establish the beryllium-related emergency provisions of the CBDPP. Such provisions continue to be particularly important in light of the possibility that a single high-level beryllium exposure may be the cause of

CBD among workers thought to have had no previous exposure or only incidental low-level exposure to beryllium. However, proposed § 850.33(a) would be revised for consistency with part 851 to require employers to establish provisions for beryllium-related emergencies in accordance with 10 CFR 851.23, *Safety and Health Standards.* The standards listed in 10 CFR 851.23 include 29 CFR 1910.120(l) for emergency response activities related to hazardous waste cleanup operations, and 29 CFR 1910.120(q) for emergency response activities related to all other operations.

Proposed § 850.34—Medical Surveillance

Proposed § 850.34 would continue to establish the medical surveillance provisions for the CBDPP. Accordingly, proposed § 850.34(a) would continue to require employers to establish and implement a medical surveillance program for beryllium and beryllium-associated workers. However, DOE proposes to make the surveillance program mandatory for beryllium workers and voluntary for beryllium-associated workers.

*a. Public policy and legal issues related to mandatory medical evaluations, mandatory restrictions and mandatory removal.* The Department proposes several changes in part 850 that make certain actions mandatory rather than voluntary. These include the following:

- Proposed § 850.34(a) and (b)(1)(i) would require that medical evaluations be mandatory rather than voluntary for beryllium workers. In the final rule, as issued in 1999, § 850.34(b) required employers to provide medical evaluations to beryllium-associated workers (which included beryllium workers); however, the final rule did not make participation in the medical surveillance program mandatory for those workers.
- Proposed § 850.36(a)(3) would require the SOMD to recommend temporary removal of a beryllium worker pending the outcome of the medical evaluations conducted pursuant to § 850.34(b), or pending the outcome of the multiple physician review process pursuant to § 850.34(e) or the alternate physician review process pursuant to proposed § 850.34(f), if the beryllium worker is showing signs or symptoms of BeS or CBD, and the SOMD believes that further exposure to beryllium may be harmful to the worker's health. Similarly, proposed § 850.36(a)(4) requires the SOMD to recommend permanent removal of a beryllium worker if the SOMD makes a final medical determination that the worker should be permanently removed from exposure to beryllium at or above the action level, based on a diagnosis of BeS or CBD. The SOMD may not recommend medical restriction instead of medical removal if the SOMD determines that the beryllium worker should not work in an area where the airborne concentration of beryllium is at or above the action level, due to BeS or CBD. While both medical restriction and medical removal are means to ensure a worker is not exposed further to a work environment which would be harmful to the worker's health, medical removal under part 850 was conceived as a form of medical restriction specifically for those working with beryllium and provides additional protection and benefits to such workers. Medical restriction, however, is for workers with medical conditions (other than BeS or CBD) for which, exposure to beryllium would be contraindicated and, as indicated in 10 CFR 851, appendix A, section 8(h), is intended as a provision to facilitate a workers rehabilitation and return to work. Medical restrictions would be lifted by the SOMD when determined appropriate; medical removal, however, would be temporary pending final diagnosis, or permanent upon final diagnosis of BeS or CBD. The final rule, as issued in 1999, was silent on the issue of medical restriction. As a result, the Department has learned that there was some confusion about whether the SOMD could place beryllium workers on medical restriction instead of medical removal when the SOMD determined that the beryllium worker should not work in an area where the airborne concentration of beryllium is at or above the action level. The Department would clarify in the proposed rule that medical removal must be recommended if the SOMD determines that the beryllium worker with BeS or CBD should not work in an area where the airborne concentration of beryllium is at or above the action level.
- Proposed § 850.36(c) would require an employer to remove a beryllium worker from a job that involves an activity where the airborne concentration of beryllium is at or above the action level within 15 working days after receiving the SOMD's written opinion pursuant to § 850.36(b)(2) stating that it is medically appropriate to remove the worker. Section 850.35(a) of the final rule, as issued in 1999, required the responsible employer to *offer* a beryllium-associated worker removal from exposure to beryllium if the SOMD determined in a written medical opinion that the worker should be removed from exposure to beryllium, but did not require the worker to be removed.

The changes in the requirements above are based on the Department's commitment to the health and safety of its workers, and the understanding that early detection and removal from beryllium is important to prevent harm to workers at risk for developing CBD. These proposed changes are consistent with the Department's authorities under the AEA to prescribe such regulations as it deems necessary to govern any activity authorized by the AEA, including standards for the protection of health and minimization of danger to life.

*b. Overview of the medical surveillance program.* DOE continues to believe the medical surveillance program is important for: (1) Identifying workers at higher risk of adverse health effects from exposure to beryllium; (2) linking health outcomes to the beryllium tasks; and (3) making possible the early treatment of beryllium-induced medical conditions.

The medical surveillance program is designed to ensure the prompt identification, and make possible the proper treatment and prevention of future exposures, of workers who become sensitized to beryllium or develop CBD. In addition to determining the incidence of CBD in the workforce, the medical surveillance program continues to fulfill a critical information development function, including identifying the risk factors associated with the development of CBD and beryllium sensitization. This proposed rule continues to require that medical surveillance be provided to the workers who are at the greatest risk from continued exposure. The determination that a worker should be included in the medical surveillance program should be made on the basis of the air monitoring results, the SOMD's recommendation, and any other relevant information the employer may possess, such as past medical or air monitoring records, workers' past job duties and work history, etc.

Proposed § 850.34(a)(1) would continue to require employers to designate an SOMD who will be responsible for administering the medical surveillance program.

Proposed § 850.34(a)(2) would require employers to ensure that medical evaluations and procedures are performed by, or under the supervision of, a licensed physician who is qualified to diagnose beryllium-induced medical conditions. Although a licensed physician is the appropriate person to

supervise and evaluate a medical evaluation, proposed § 850.34(a)(2) would continue to permit certain required elements of the evaluation to be performed by another appropriately qualified person under the supervision of the physician. The licensed physician is required to be qualified to diagnose beryllium-induced medical conditions. DOE expects the medical evaluations and procedures required to diagnose CBD will be performed or validated by a specialist in pulmonary medicine or occupational medicine, or by another physician familiar with the specialized equipment and examination protocols required to definitively differentiate between CBD and other lung diseases. DOE believes that this is necessary due to the unusual nature of CBD and the fact that not all physicians are familiar with the evaluation of patients exposed to beryllium in their workplace.

Proposed § 850.34(a)(3) would require employers to establish and maintain a list of all beryllium and beryllium-associated workers. The list should be based on the hazard assessments, exposure records, and any other information that will identify such workers.

Proposed § 850.34(a)(4)(i)–(vii) would require employers to provide the SOMD with the information needed to administer the medical surveillance program. This information includes the list of workers required by proposed § 850.34(a)(3); hazard assessment and exposure monitoring data; the identity and nature of the activities that are covered in the CBDPP; a description of the workers' duties as they pertain to exposures to beryllium that are at or above the action level; records of the workers' beryllium exposures; a description of the personal and respiratory protective equipment used by the workers; and a copy of the final rule. DOE believes that this information is necessary to ensure that the SOMD can make informed decisions regarding the required content of the medical evaluation and the subsequent development of recommendations related to each beryllium and beryllium-associated worker.

Proposed § 850.34(a)(5) would be added to clarify that employers are required to ensure that the SOMD and beryllium or beryllium-associated workers complete the consent form in appendix A or appendix B of this part, before performing any medical evaluations for beryllium or beryllium-associated workers.

DOE has learned from implementing the rule as issued in December 1999, there was confusion regarding how often the employer should offer participation in the medical surveillance program to beryllium-associated workers, and when a worker would be eligible to participate in the program if he or she initially decline the offer. To clarify the confusion, DOE would propose to add § 850.34(a)(6) to require employers to notify beryllium-associated workers yearly of their right to participate in the medical surveillance program. If the beryllium-associated worker declines at that time, he or she may elect to participate at any time during the year, but the worker is required to notify the employer in writing of the intent to participate in the program.

Proposed § 850.34(b) would continue to require employers to provide, without cost to the worker, all of the medical evaluations and procedures required under this section. The proposed rule would add a requirement that the procedures be provided to workers without loss of pay. It is necessary that examinations and procedures be performed at a place convenient to the employee, and without loss of pay, which means the employee should not be required to use vacation or sick leave, in order to maximize the likelihood that beryllium and beryllium-associated workers will participate in the medical evaluations. This proposed provision is consistent with OSHA's health standards [*e.g.,* Asbestos, 29 CFR 1910.1001(l)(1)(ii)(A); Arsenic, 29 CFR 1910.1018(n)(1)(ii); and Cadmium 29 CFR 1910.1027(l)(1)(iii)].

*c. Mandatory medical evaluations.* The purposes of baseline medical evaluations are to: (1) Establish the current health status of the worker and determine whether it is appropriate to assign the worker to a job where the worker will be exposed to airborne concentrations of beryllium at or above the action level; (2) initially determine what level of medical surveillance the employer must provide to the workers; and (3) establish essential baseline data for the worker which is used to assess subsequent health changes attributable to beryllium exposure.

DOE recognizes the potential negative consequences that medical evaluations for beryllium disease may have with respect to a worker's employability and insurability; work restrictions; and risk of complications from the medical evaluation. Nonetheless, it is DOE's considered determination that the early detection possible with medical evaluations is essential for removing workers at risk for CBD from further exposure to beryllium, thereby potentially reducing risk of symptomatic beryllium disease and the magnitude of symptoms that may occur—as well as for providing early opportunities for effective treatment. In 2008, researchers in France published results of a study of corticosteroid therapy in CBD cases and confirmed that the long-standing standard of care for CBD—corticosteroid therapies—was beneficial in treating CBD (ref. 28). Corticosteroids were effective in suppressing granulomatous lesions in all cases and in stopping the evolution to pulmonary fibrosis in six of eight patients.

Physicians who diagnose a worker with BeS or CBD generally recommend that their patients stop working with beryllium. The National Academy of Sciences recently published a study for the U.S. Air Force (ref. 7) that contains the following recommendations for physicians conducting diagnostic evaluations:

> Workers with CBD should discontinue work in areas that have beryllium exposure because of concern about worsening the disease. Although the effect of continuing exposure to beryllium at relatively low concentrations has not been clearly shown, the potential for CBD to become serious suggests that, given the current state of knowledge, it is prudent to avoid further beryllium exposure. Workers with CBD should continue to receive regular medical followup. Workers with CBD who discontinue work with beryllium should receive medical removal protection.

The prudent practice to have workers with BeS or CBD avoid additional exposure is based on the knowledge that, as is the case of other immune-system mediated diseases, continued exposure to the antigen may worsen the outcome. Observation that the rate of conversion from BeS to CBD appears to vary in a consistent manner with workers' exposures supports avoidance of additional exposure. Sensitized workers with low exposures appear to have relatively low rates of conversion, and sensitized workers with high exposures appear to have relatively high rates of conversion. A study published in 2004 of DOE construction workers thought to have intermittent and presumed low exposures, provides an example of a low rate of conversion. In this study, 15% of the workers with sensitization who underwent clinical evaluations were found to have CBD (ref. 18). Examples of medium rates of conversion of workers with presumed medium exposures are provided by the findings of two studies at DOE plants. First, a DOE plant that fabricated beryllium metal components reported that of 301 sensitized workers evaluated, 117 (39%) had CBD (ref. 13). Second, a DOE plant that fabricated beryllium ceramic components reported

that 23 of 56 (41%) sensitized workers had CBD (ref. 39). Examples of high rates of conversion of workers with presumed high exposures are provided by a study of former workers at beryllium production plants in Pennsylvania in which 19 of 29 (66%) of sensitized workers were diagnosed as having CBD, and by a study of former workers at a Colorado ceramics fabrication plant in which 100% of seven sensitized workers were diagnosed with CBD (refs. 40, 41).

The importance of early detection of beryllium sensitization in workers cannot be ignored in light of the fact that the existing studies provide support for the importance of early detection of beryllium sensitization. Proposed § 850.34(b)(1)(i)(A) would require employers to make baseline medical evaluations mandatory rather than voluntary for beryllium workers. Proposed § 850.34(b)(1)(i)(B) provides that baseline medical evaluations for beryllium-associated workers are voluntary. DOE believes that participation in the medical evaluation program should not be mandatory for beryllium-associated workers because these workers are not currently performing work in beryllium regulated areas. This approach would continue to ensure the early identification of those workers most at risk for health effects from exposure to beryllium, provide the greatest protection of worker health, and provide a more complete documentation of beryllium exposures.

Proposed § 850.34(b)(1)(ii)(A) through (G) is intended to ensure consistency among baseline medical evaluations in order to detect, at an early stage, any pathological changes that could lead to CBD or be aggravated by beryllium exposure. By detecting abnormalities early, workers may be medically removed to prevent further beryllium exposure. Therefore, each baseline medical evaluation would be required to include the following:

- A detailed medical and work history, particularly emphasizing exposures to levels of beryllium [proposed § 850.34(b)(1)(ii)(A)];
- A respiratory symptoms questionnaire [proposed § 850.34(b)(1)(ii)(B)];
- A physical examination with special emphasis on the respiratory system, skin and eyes [proposed § 850.34(b)(1)(ii)(C)];
- A chest radiograph (posterior-anterior, 14 x 17 inches) or a standard digital chest radiographic image interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist, unless there is an existing baseline chest radiograph that may be used to meet this requirement. The use of a digital radiographic image is new, and reflects the development of technology [proposed § 850.34(b)(1)(ii)(D)];
- Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume ($FEV_1$) at one second [proposed § 850.34(b)(1)(ii)(E)];
- Two peripheral blood BeLPTs [proposed § 850.34(b)(1)(ii)(F)];
- Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions [proposed § 850.34(b)(1)(ii)(G)]. DOE believes it is important that the SOMD have such discretion because individuals may exhibit different responses to beryllium exposures.

For purposes of the medical evaluations in this part (baseline, periodic and exit), two peripheral blood BeLPTs would be required. In the final rule, as issued in December 1999, only one BeLPT is required for the baseline and periodic evaluations. The reason for this change is that in the proposed rule, a diagnosis of BeS requires either: Two abnormal blood BeLPT results; or one abnormal and one borderline blood BeLPT; or one abnormal BeLPT of alveolar lung lavage cells. Employers are required to provide two peripheral blood BeLPTs to the worker in order to permit a proper diagnosis to be made by the SOMD. As set forth in the definition of BeLPT, a split sample BeLPT (where one blood draw is split and sent to two different testing facilities) would constitute two peripheral blood BeLPTs. If the SOMD determines that additional BeLPTs or other tests are required in order to diagnosis a worker, then the SOMD may order additional tests as part of the medical evaluation.

*d. Use of Beryllium-induced Lymphocyte Proliferation Test (BeLPT).* DOE concludes there is a general consensus that medical surveillance that includes screening with the BeLPT on peripheral blood cells provides an opportunity for timely worker removal from exposure which may reduce the chances of progression of BeS to CBD, and from sub-clinical CBD to significant lung damage and disability. In addition, positive BeLPT results lead to increased medical monitoring and therapy. This may also reduce an individual's chance of progressing to more severe disease.

The peripheral blood BeLPT was included as a component of medical evaluations in this part of the final rule, as issued in December 1999. DOE is aware that concerns have been expressed over shortcomings of the peripheral blood BeLPT, but DOE continues to consider the test to be an effective tool for screening individuals for BeS (refs. 42, 43, 44).

A published evaluation of the commonly used blood BeLPT method used for 12,194 current and former workers at 18 DOE sites found the test to have a positive predictive value that is comparable to other widely accepted medical tests and that it was, therefore, effective in the medical surveillance of beryllium-exposed workers (ref. 13). Epidemiology researchers commonly rely on peripheral blood BeLPT results in workforce medical surveillance data as an indicator of beryllium disease risk, as exemplified by Mroz, et al.: ''This longitudinal study demonstrated that workforce medical surveillance with the blood BeLPT identifies individuals at significant risk of disease progression and future impairment with sufficient time since first exposure'' (ref. 16). A National Academy of Sciences' study concluded, ''Despite some issues regarding the reproducibility, sensitivity, and specificity of the BeLPT, the committee judged it to be an adequate assay for use in a surveillance program'' (ref. 7). The authors note that BeS is ''a valuable indicator'' in a medical surveillance program in identifying high risk workers, though they acknowledge that quantitative predictions on the magnitude of the risk of disease progression are not possible based on available data. Further, the United Kingdom's Health and Safety Executive (HSE) recently published a review of the use of the BeLPT for screening or surveillance of beryllium workers (ref. 45). That review concludes:

> If the intent of health surveillance is to identify early beryllium sensitisation as a marker of those at risk of progressing to CBD (or as a minimum to characterise sensitisation in a group of exposed workers), then by definition the programme must include the BeLPT with an appropriate occupational health policy to deal with positive results, including educating the workforce about the implications of a positive test. The natural history of beryllium sensitisation is not fully understood, but in theory offers an early opportunity to identify early immune responses, to decrease exposure and hence intervene to improve prognosis.

HSE ultimately concludes that BeLPT represents the currently most sensitive screening test available, samples are easy to obtain, and the test provides the potential to identify subclinical disease and allow exposures to be modified.

DOE believes that the use of the peripheral blood BeLPT in medical evaluations is justified for its workforce, even for groups with low prevalence rates of beryllium disease. This belief is

based on DOE's experience in identifying and removing BeS workers from additional exposure and on the supportive findings of the literature referenced above in using BeLPT as an effective medical surveillance tool (refs. 7, 13, 16, 45).

DOE welcomes improvements to the efficacy of the peripheral blood BeLPT. DOE has published a technical standard that can be used to reduce variation among laboratories in the procedures used in performing the test (ref. 46), and the Department expects that BeLPTs will be evaluated by laboratories that are certified by the College of American Pathologists. Furthermore, researchers continue to develop alternatives to the tritiated thymidine method currently used for counting proliferated lymphocytes (*e.g.,* counting lymphocytes by flow cytometry), which may further improve the efficacy of the peripheral blood BeLPT (ref. 47).

DOE has evaluated the consistency of imposing mandatory blood BeLPTs in the medical evaluations of DOE Federal and contractor workers with public policy established in Public Law 110–233, *Genetic Information Nondiscrimination Act of 2008.* The blood BeLPT is not a ''genetic test'' for the purposes of that statute, as section 201(7)(B) of the statute states that ''the term 'genetic test' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.''

Proposed § 850.34(b)(2), would continue to require employers to provide periodic medical evaluations. Employers would be required to provide periodic medical evaluations in order to detect, at an early stage, any pathological changes that could lead to CBD or be aggravated by beryllium exposure. By detecting abnormalities early, workers may be medically removed to prevent further beryllium exposure. Specifically, proposed § 850.34(b)(2)(i) (A)–(B) would require employers to provide periodic medical evaluations annually to beryllium workers, and every three years to beryllium-associated workers who voluntarily participate in the program. Proposed § 850.34(b)(2)(i)(C) would require employers to provide a medical evaluation to beryllium workers, or beryllium-associated workers who voluntarily participate in the program, and who exhibit signs and symptoms of BeS or CBD, if the SOMD determines that an evaluation is warranted. This change was made in recognition of the fact that a worker may show signs or symptoms of beryllium sensitization or CBD before he or she is due for a periodic review, and requires the employer to provide an evaluation if the SOMD determines that it is warranted.

Proposed § 850.34(b)(2)(ii) would continue to require employers to provide periodic medical evaluations to beryllium workers, and beryllium-associated workers who voluntarily participate in the program, which would include the following:

- A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement [proposed § 850.34(b)(2)(ii)(A)];
- Updates to the worker's medical and work history with emphasis on exposures to levels of beryllium [proposed § 850.34(b)(2)(ii)(B)];
- A respiratory symptom questionnaire [proposed § 850.34(b)(2)(ii)(C)];
- A physical examination, with special emphasis on the respiratory system, skin, and eyes [proposed § 850.34(b)(2)(ii)(D)];
- Two peripheral blood Be-LPTs [proposed § 850.34(b)(2)(ii)(E)]; and
- Any other test deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions [proposed § 850.34(b)(2)(ii)(F)].

Proposed § 850.34(b)(3) would continue to require employers to provide medical evaluations for workers when a beryllium emergency occurs as defined in proposed § 850.3 in this proposed rule. In these cases, medical evaluations would include the tests and examinations required as part of periodic medical evaluations provided pursuant to paragraph (b)(2)(ii) of this section.

Proposed § 850.34(b)(4) is being added to require employers to provide an exit medical evaluation to a beryllium worker, or offer an exit medical evaluation to a beryllium-associated worker who voluntarily participates in the medical surveillance program, if a baseline or periodic evaluation had not been performed within the previous six months at the time of separation from employment. The purpose of the exit medical evaluation is to determine and document the worker's health status at the time of separation. While 10 CFR part 851, appendix A, section 8(g)(2)(v) provides for a health evaluation at the time of separation when determined necessary by the occupational medicine provider, DOE believes that obtaining information about a beryllium or beryllium-associated worker's health status at termination is important for contributing to the information available for performance feedback about the employer's CBDPP.

Accordingly, proposed § 850.34(b)(4)(i)(A) would require employers to provide an exit medical evaluation to beryllium workers upon separation from employment, and to beryllium-associated workers who voluntarily participate in the program at the time of separation [proposed § 850.34(b)(4)(i)(B)] if a baseline or periodic evaluation has not been performed within the previous six months. The exit medical evaluation would include the following:

- A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement [proposed § 850.34(b)(4)(ii)(A)];
- Updates to the worker's medical and work history with emphasis on exposures to levels of beryllium [proposed § 850.34(b)(4)(ii)(B)];
- A respiratory symptom questionnaire [proposed § 850.34(b)(4)(ii)(C)];
- A physical examination, with special emphasis on the respiratory system, skin, and eyes [proposed § 850.34(b)(4)(ii)(D)];
- Two peripheral blood Be-LPTs [proposed § 850.34(b)(4)(ii)(E)]; and
- Any other test deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions [proposed § 850.34(b)(4)(ii)(F)].

Proposed § 850.34(c)—[Reserved]

Note that following separation, these workers would be eligible for continued health monitoring under the Former Worker Medical Screening Program. Certain current or former workers who have contracted work-related illnesses from work performed at DOE sites may be eligible to receive compensation through the Energy Employee Occupational Illness Compensation Program Act (EEOICPA).

*e. Reporting the results of the medical evaluations.* Proposed § 850.34(d) [currently § 850.34(e)], would be revised to clarify the requirements for the SOMD's reporting the results of the medical evaluations performed pursuant to paragraph (b) of this section. SOMDs are required to provide their written medical opinions to the worker within 15 working days after receiving the results of the evaluations performed

pursuant to paragraphs (b)(1) through (3) of this section.

Specifically, proposed § 850.34(d)(1)(i) would require the SOMD to provide a beryllium or beryllium-associated worker with:

- A written medical opinion containing the purpose and results of all medical test or procedures [proposed § 850.34(d)(1)(i)(A)];
- An explanation of any abnormal findings [proposed § 850.34(d)(1)(i)(B)];
- The basis for the SOMD's medical opinion [proposed § 850.34(d)(1)(i)(C)];

Proposed § 850.34(d)(1)(i)(D) would be added to require the SOMD to provide in this written medical opinion any determination of whether:

- In the case of a beryllium worker, temporary or permanent removal of the beryllium worker from beryllium exposure is warranted pursuant to § 850.36 [proposed § 850.34(d)(1)(i)(D)(*1*)];
- A medical restriction is appropriate for the worker pursuant to 10 CFR 851, appendix A, section 8(h) [proposed § 850.34(d)(1)(i)(D)(*2*)]; and
- The SOMD would also be required to give the worker an opportunity to ask and have answered, their questions regarding the information provided [proposed § 850.34(d)(1)(i)(E)];

Proposed § 850.34(d)(1)(ii) would require the SOMD's written medical opinion to take into account the findings, determinations and recommendations of examining physicians who have examined the worker and provided written results of the examination to the SOMD, provided that the examining physician is qualified to diagnose beryllium-induced conditions. This proposed change responds to DOE's recognition, through its experience implementing this part, that many of those working at the DOE complex received regular medical evaluations from their private physician or through the DOL managed EEOICPA. While the SOMD must make the final decision regarding the worker's fitness for duty, and issues such as restriction and removal, the SOMD must take into account the findings, determinations and recommendations of qualified physicians who have examined the worker and provided their written recommendations to the SOMD.

Proposed § 850.34(d)(1)(iii) would be added to require the SOMD to obtain the workers signature on a dated copy of the written opinion and to include this information in the worker's medical record documenting that the employee received a copy of the opinion. If the worker declines to sign the statement, then the SOMD must make a record of that fact in the worker's medical record.

Proposed § 850.34(d)(1)(iv) would be added to clarify that within 15 working days after receiving the results from an exit evaluation performed pursuant to § 850.34(b)(4) of this part, the SOMD is required to provide the worker with:

- A written medical opinion containing the purpose and results of all medical tests or procedures [proposed § 850.34(d)(1)(iv)(A)];
- An explanation of any abnormal findings [proposed § 850.34(d)(1)(iv)(B)];
- The basis for the SOMD's medical opinion [proposed § 850.34(d)(1)(iv)(C)]; and
- An opportunity to ask, and have answered, questions regarding the information provided [proposed § 850.34(d)(1)(iv)(D)].

Proposed § 850.34(d)(2)(i) would require the SOMD, within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(i) of this section to the beryllium or beryllium-associated worker, to provide to the employer a written medical opinion that includes the following:

- The diagnosis of the worker's condition relevant to occupational exposure to beryllium, and any other medical condition for which exposure to beryllium at or above the action level would be contraindicated [proposed § 850.34(d)(2)(i)(A)].

In this written medical opinion to the employer, the SOMD would be required to include a determination of whether:

- In the case of a beryllium worker, temporary or permanent removal of the worker from exposure to beryllium is warranted pursuant to § 850.36 of this part [proposed § 850.34(d)(2)(i)(B)(*1*)]. DOE is adding this requirement to clarify that the SOMD is the only individual who can medically determine when a worker is to be removed from exposures to beryllium; or
- A medical restriction pursuant to 10 CFR 851, appendix A, section 8(h) is appropriate for the worker [proposed § 850.34(d)(2)(i)(B)(*2*)].

Proposed § 850.34(d)(2)(i)(C) would continue to require the SOMD or examining physician to provide a statement that he or she has clearly explained to the worker the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that requires further evaluations or treatment.

Proposed § 850.34(d)(2)(ii) would be revised to conform with the requirements in 10 CFR part 851, appendix A, section 8(h)(1) and would require that the SOMD not include in the written medical opinion any specific records, determinations, or diagnoses that are not related to beryllium-induced medical conditions or to any other medical condition indicating the worker should not perform certain job tasks.

Proposed § 850.34(d)(2)(iii) would be added to clarify that within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(iv) of this section, for an exit evaluation performed pursuant to § 850.34(b)(4) of this part, the SOMD would be required to provide the employer with the diagnosis of the worker's condition that is relevant to occupational exposure to beryllium, or indicates the worker should not perform certain job tasks.

*f. Multiple physician review process.* Proposed § 850.34(e) [currently § 850.34(c)], would continue to require the establishment of a multiple physician review process for review of the initial findings, determinations, or recommendations from the medical evaluations. DOE adopted the multiple physician review mechanism as a means of providing workers with an opportunity to obtain independent review of the determinations of physicians selected by the employer. More importantly, use of this review mechanism should serve to engender worker trust and confidence in the employer-retained physician where merited. If workers distrust an employer's physician and the diagnoses of a second physician on several occasions proves there is no basis for distrust, then workers will be much more likely to trust the employer's physician in the future. If the choice of a second and third physician repeatedly results in medical determinations that greatly differ with that of the employer-retained physician, then the multiple physician review mechanism will have served the beneficial purposes of (1) correcting possibly inadequate medical determinations, and (2) exposing potential deficiencies in the employer's medical surveillance program. Therefore, DOE has identified the following benefits of providing a multiple physician review process: (1) It strengthens and broadens the basis for medical decisions that would be made in response to this rule when a beryllium or beryllium-associated worker questions the findings, recommendations, or determinations of an initial physician retained by the employer; (2) it increases workers' confidence in the soundness of medical findings, recommendations, and determinations that are made under this rule; and (3) it increases the workers' acceptance of, and participation in the medical surveillance program. These

independent reviews are likely to show that either a perceived low level of confidence in the physician retained by the employer is unwarranted, or the employer should improve the quality of the medical evaluations. In either case, the multiple physician review process will have served a beneficial purpose.

Accordingly, proposed § 850.34(e)(1) [current § 850.34(c)(1)] would continue to require employers to establish a multiple physician review process for beryllium and beryllium-associated workers that allows for the review of the initial medical findings, determinations, or recommendations from any medical evaluation conducted in accordance with paragraphs (b)(1)–(3) of this section. Note that the rule as proposed would not require the employer to provide a multiple physician review process for exit evaluations which would be provided pursuant to proposed § 850.34(b)(4).

The Department recognizes the value to employers and workers alike of the process operating in an expeditious fashion, and thus has established explicit criteria for the beginning of the process. Therefore, proposed § 850.34(e)(2) would clarify that the employer must notify a beryllium or beryllium-associated worker in writing within 15 working days after receiving the written medical opinion and determination regarding removal and/or work restriction pursuant to proposed paragraph (d)(2) of this section, of the worker's right to elect the multiple physician review process.

Proposed § 850.34(e)(3) [currently § 850.34(c)(3)] would provide that the employer's participation in, and payment for the multiple physician review process or the alternative physician review process for a beryllium-associated worker would be conditioned on the worker's participation in the medical surveillance program pursuant to paragraph (b) of this section.

Proposed § 850.34(e)(4)(i) and (ii) would require the beryllium or beryllium-associated worker to notify the employer in writing within 15 working days after receiving the employer's written notification pursuant to paragraph (e)(2) of this section, of the worker's intention to seek a second medical opinion on the results of any medical evaluation conducted pursuant to paragraphs (b)(1) through (3) of this section; and the beryllium or beryllium-associated worker identifying in writing to the SOMD within 20 working days after delivering the notice pursuant to paragraph (e)(4)(i) of this section, a physician who is qualified to diagnose beryllium-induced medical condition to:

- Review all findings, determinations, or recommendation of the initial physician [proposed § 850.34(e)(4)(ii)(A)];
- Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review [proposed § 850.34(e)(4)(ii)(B)]; and
- Provide the employer and the worker with a written medical opinion within 30 working days after completing the review pursuant to paragraphs (e)(4)(ii)(A) and (B) of this section [proposed § 850.34(e)(4)(ii)(C)].

Proposed § 850.34(e)(5) would clarify that if the findings, determinations, or recommendations of the two physicians differ substantively, then the employer and the worker would be required to assist the two physicians in resolving any disagreement. DOE expects that the two physicians will communicate with each other to resolve their differences, but the rule requires the employer and worker to encourage such a resolution. In most cases, this professional interaction should resolve any differences of opinion.

If the first two physicians are unable to resolve expeditiously any significant differences of opinion with respect to a beryllium or beryllium-associated worker, then it would be necessary for a third qualified physician to resolve the dispute. It is important that this third physician be competent to resolve the dispute. Consequently, proposed § 850.34(e)(6) [currently § 850.34(c)(5)], would require the employer and the worker together, through their respective physicians, to designate a third physician. It is the responsibility of the employer and the worker to assure that a third physician is selected, but the selection is to be made by the two prior physicians. Since the third physician is chosen by the joint endorsement of the two prior physicians, the professional competence of the third physician will be assured. Proposed § 850.34(e)(6) [currently § 850.34(c)(5)], would allow the third physician a full opportunity to:

- Review the findings, determinations, and recommendations of the two prior physicians [proposed § 850.34(e)(6)(i)];
- Conduct such examinations, consultations, laboratory tests, and consultations with the other two physicians as the third physician deems necessary to resolve the disagreement among them [proposed § 850.34(e)(6)(ii)]; and
- Provide the employer and the worker with a written medical opinion within 30 working days after completing the review pursuant to paragraph (e)(5)(i) and (ii) of this section [proposed § 850.34(e)(6)(iii)].

Proposed § 850.34(e)(7) [currently § 850.34(c)(6)], would continue to require the SOMD to take action consistent with the findings, determinations, and recommendations of the third physician, unless the SOMD and the worker reach an agreement that is otherwise consistent with the recommendations of at least one of the other two physicians.

The Department's experience in implementing the final rule provisions has shown there was some confusion among employers and workers about the multiple physician review process for a worker who has been laid off or whose contract ended during the multiple physician review process. To address these situations proposed § 850.34(e)(8) would require the employer to complete the multiple physicians review process and treat the worker as though he is a current worker, even when a worker is laid off or his contract ends before the review process is complete, subject to the following conditions: (1) The worker must have elected the multiple physician review while he was in fact a current worker and in accordance with the conditions set forth in paragraph (e)(4) of this section; and (2) the worker must participate in good faith in the multiple physician review process. If a worker's job would have ended prior to the end of the multiple physician review process (*e.g.,* if the worker was hired to do a particular job which has been completed), the proposed rule provides that the employer may place the worker on unpaid leave status until the review process is completed.

Proposed § 850.34(e)(9) would be added to clarify that the employer would not be required to provide the multiple physician review process in those cases where the worker had not elected the process in accordance with the conditions specified in paragraph (e)(4) of this section before the worker was laid off or contract ended. In these cases the workers may still be eligible for medical screening through DOE's FormerWorker Medical Screening Program.

The employer would be required to pay for the expenses of the multiple physician review process when a beryllium-associated worker elects it in writing and in a timely manner. DOE does not expect the cost of this process to be burdensome to its contractor employers since DOE contractors typically receive reimbursement for the cost of complying with this process. If the employer establishes and

administers a medical surveillance program that engender worker confidence, workers should have little or no need to seek second medical opinions.

The requirement for a multiple physician review is not intended to preclude employers from establishing and implementing alternate medical protocols. DOE would continue to include language in proposed § 850.34(f) [currently § 850.34(d)] that establishes an alternate physician review process. Under this section, the employer, beryllium and beryllium-associated worker, or the worker's designated representative, would be allowed to agree on the use of any expeditious alternate physician determination process, instead of the multiple physician review process. The only condition is that the alternate process is reasonable, expeditious and adequately protects the worker's health. For example, a jointly agreed upon physician might be used in the first instance without recourse to other physicians. DOE would continue to encourage employers and workers to adopt medical determination procedures in which all parties have trust and confidence.

Proposed § 850.34(g)(1) would be revised to comply with the reporting requirements in 10 CFR part 851.23(a)(2). Proposed § 850.34(g)(2) and (3) would be added to comply with the reporting requirements for cases involving medical removal. Accordingly, proposed § 850.34(g)(2) would require employers to record each case of medical removal on the applicable OSHA form when a worker is being medically removed in accordance with proposed § 850.36 of this part. Proposed § 850.34(g)(3) would require employers to enter each case of medical removal either as a case involving days away from work (if the worker does not work during the medical removal period) or as a case involving restricted work activity (if the worker continues to work but in an area where beryllium exposures are below the action level).

DOE is proposing to delete § 850.34(h) in the final rule. This section requires employers to establish routine and systematic analyses of medical, job and exposure data. The purpose of this requirement is to collect and analyze information so that the prevalence of disease can be accurately described and conclusions reached on causes or risk factors for disease. The Department intends to rely on the data collected from the Beryllium Registry for this purpose.

Proposed § 850.35—Medical Restriction

Proposed § 850.35 would be added to establish the medical restriction provisions of the CBDPP. Part 850 is intended to address and prevent disease caused by exposure to beryllium at DOE sites. Medical removal benefits under the rule are not intended to apply in cases where beryllium is not the cause of the worker's illness. In the case where the worker is not suffering from beryllium disease or has not been sensitized to beryllium, but exposure to beryllium at or above the action level is contraindicated, medical restriction would ensure that workers with other medical conditions are not exposed to beryllium which could put them at a materially higher risk for developing serious medical problems. Other medical conditions include, but are not limited to, chronic obstructive pulmonary disease (COPD), sarcoidosis, asthma, emphysema, or any other medical condition with respect to which the SOMD may determine that exposure to beryllium at or above the action level is contraindicated.

Proposed § 850.35(a) would require medical restrictions to be conducted in accordance with 10 CFR part 851, appendix A, section 8(h). In such cases where medical restrictions appropriate, proposed § 850.35(b) would require employers to, within 15 working days after receiving the SOMD's written opinion pursuant to § 850.34(d)(2) that it is medically appropriate to restrict a worker, restrict the worker from a job that involves a beryllium activity.

The Department's experience in implementing the final rule provisions has shown there was some confusion among employers and workers about medical restriction and when to offer, or not offer, medical removal benefits. Therefore, DOE would add proposed § 850.35(c) to clarify that employers would only be required to provide the beryllium medical removal benefits specified in § 850.36 of this proposed rule to beryllium workers who have been diagnosed with BeS or CBD, or pending the outcome of medical evaluations to determine whether the worker has BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the health of the worker, or pending the alternate physician review or multiple physician review. Employers are not required to provide removal benefits to other types of workers with a medical restriction.

Proposed § 850.35(d) would be added for those situations when the SOMD determines that a beryllium worker should not work with beryllium at or above the action level due to BeS or CBD. In such cases, the SOMD would be required to recommend medical removal under § 850.36 of this proposed rule, not medical restriction.

Proposed § 850.36—Medical Removal and Benefits

Proposed § 850.36 [(currently § 850.35] would continue to require employers to implement the medical removal (currently known as ''*medical removal protection''*) and benefits (currently known as ''*medical removal protection benefits''*) provisions of the CBDPP. DOE believes medical surveillance can only be effective in detecting and preventing disease if workers: (1) Seek medical attention when they feel ill; (2) refrain from efforts to conceal their true health status; and (3) fully cooperate with examining physicians to facilitate accurate medical diagnoses and effective treatment. This type of worker participation and cooperation will occur only where no major disincentives to meaningful worker participation exists. Without such participation, it would be much more difficult to adequately monitor workers' health and to identify workers who need temporary or permanent medical removal.

Medical removal is a logical result of the medical surveillance program. Without medical removal, employees with BeS or CBD may remain undiagnosed and continue to be exposed to beryllium at or above the action level which would not be sufficiently protective of their health. Also, without medical removal benefits, workers with BeS or CBD could be terminated or transferred from higher-paying jobs where exposure to beryllium is at or above the action level to lower-paying jobs that do not include such exposure. This might be protective, but it would impair the workers' earning ability. In either case, the effectiveness and integrity of the medical surveillance program may be compromised.

With medical removal, beryllium workers with BeS or CBD would be assured of being removed to jobs where the exposure to beryllium is below the action level, if such jobs are available and if removal is determined to be necessary to protect their health. With medical removal benefits, beryllium workers with BeS or CBD would be assured that, if the results require removal from their beryllium job, their normal earnings will be protected for a pre-determined period.

Proposed § 850.36(a)(1) would clarify that, subject to the terms set forth in this proposed section, employers would be required to remove beryllium workers

from jobs where the exposure to beryllium is at or above the action level. As set forth in this section, temporary or permanent removal is required when the SOMD has determined in a written medical opinion that it is appropriate to remove the beryllium worker from exposure to beryllium at or above the action level. This determination would be required to be based on a diagnosis that the worker has BeS or CBD, as defined in this proposed rule.

The Department's experience in implementing the current rule provisions has shown there was some confusion about who has the authority to recommend temporary or permanent removal of a beryllium worker. Therefore, proposed § 850.36(a)(2) would clarify that only the SOMD may recommend temporary or permanent removal of a beryllium worker from exposure to beryllium at or above the action level. DOE proposes revising the wording used in this section to clarify that the SOMD would make the final medical determination, even when a multiple physician review or alternative physician determination process is used. The SOMD, in making the final medical determination would be expected to take into account the findings, determinations and recommendations of other examining physicians who may have examined the worker, but the SOMD makes the final determination.

*Mandatory medical removal of beryllium workers.* In response to its RFI, DOE received several comments concerning whether to continue to require a worker's consent for medical removal, or instead require mandatory medical removal. The majority of commenters recommended that DOE establish a mandatory medical removal practice; however, many of those commenters also recommended that DOE provide enhanced medical removal benefits. Some commenters suggested that mandatory removal should be implemented by DOE complex-wide. Some commenters suggested that DOE mandate that the employer offer a vocational training program to the affected worker to assist the employee in maintaining the financial compensation and benefits from his or her previous position, and that the length of time for medical removal benefits should be increased from two to five years. A minority of commenters believed that DOE should continue to leave medical removal up to the worker, pointing out that the National Academies suggests that the worker's consent be obtained. Some commenters indicated that DOE should retain voluntary medical removal only if DOE will accept the risk of future health issues from allowing a worker to resume activities after the SOMD has recommended medical removal.

After consideration of all commenters' suggestions, DOE's experience in implementing the current rule provisions, and other available information, proposed § 850.36(c)(1) would require mandatory medical removal for beryllium workers in jobs that include a beryllium activity in cases where an employee has a diagnosis of BeS or CBD. DOE proposes this amendment because removing workers from jobs that risk additional exposure will avoid increasing their body burden of beryllium, and potentially reduce the risk of symptomatic beryllium disease, or minimize the magnitude of symptoms that may occur.

DOE recognizes that it is very difficult to establish policy that involves trade-offs between the unfettered pursuit of livelihood and other potential financial effects, such as insurability and the risk of debilitating disease; however, DOE believes that the medical removal benefits provisions in proposed § 850.36(d) and the counseling provisions in proposed § 850.38(b) of this part would be sufficient to assist workers in effectively preparing for, and responding to, possible medical removal. For these reasons, DOE believes that the proposed policy of mandatory removal is its optimal risk management strategy.

Proposed § 850.36(a)(3) [currently § 850.35(a)(1)] would clarify the requirements for temporary or permanent removal of a beryllium worker from exposure to beryllium at or above the action level. Accordingly, proposed § 850.36(a)(3) would require the SOMD to recommend to employers temporary removal of a beryllium worker:

- Pending the outcome of the medical evaluations conducted pursuant to § 850.34(b) of this part, if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the worker's health [proposed § 850.36(a)(3)(i)]; or
- Pending the outcome of the multiple physicians or alternative physician review process pursuant to proposed § 850.34(e) and (f) of this part, if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above an action level may be harmful to the worker's health [proposed § 850.36(a)(3)(ii)].

Proposed § 850.36(a)(4) would require the SOMD to recommend permanent removal of a beryllium worker from exposure to beryllium at or above the action level only when he or she makes a final medical determination that the worker should be permanently removed. The SOMD's determination to permanently remove a worker would be required to be based on a diagnosis of BeS or CDB as defined in § 850.3 of this proposed rule.

Proposed § 850.36(a)(5) would require, within 15 working days after a final medical determination has been made, the SOMD to provide the employer with a written notice to either return the temporarily removed beryllium worker to his or her previous job status, along with the steps needed to protect the workers' health including any work restrictions [proposed § 850.36(a)(5)(i)]; or, to permanently remove the beryllium worker [proposed § 850.36(a)(5)(ii)]. If a worker is temporarily removed and the final medical determination is made that the beryllium worker does not have a medical condition caused by beryllium, the temporary medical removal benefits specified in paragraph (d)(1) of this section would end, and the affected worker would be able to return to his or her normal duties, unless work restrictions would prevent the worker from doing so. If the SOMD makes a final medical determination that the worker is not sensitized to beryllium and does not have CBD, but further exposure to beryllium at or above the action level is medically contraindicated, the SOMD would be able to recommend a medical restriction for the worker.

DOE has learned through its experience implementing this part, as issued in December 1999, that a lack of explicit expectations has resulted in different understandings of how the SOMD should recommend temporary or permanent removal of a worker. Accordingly, proposed § 850.36(a)(6) would be added to clarify that the SOMD is not required to recommend temporary removal first and then permanent removal. If it is clear based on the SOMD's medical evaluation that the worker should be permanently removed, based on a diagnosis of BeS or CBD, then the SOMD may recommend permanent removal.

Proposed § 850.36(b) [currently § 850.35(a)(3)] would establish the counseling requirements for beryllium workers before they are placed on either temporary or permanent medical removal, as well as clarify the requirements for notifications to the employer. This proposed addition

would help beryllium workers understand and effectively manage the potential effects of medical removal.

DOE has learned through its experience implementing this part, as issued in December 1999, that a lack of explicit expectations has resulted in different understandings of the individual worker's medical removal status. DOE, therefore, proposes adding requirements that will help workers understand their medical removal status. Accordingly, proposed § 850.36(b)(1) would require that if the SOMD determines a beryllium worker should be temporarily or permanently removed, the SOMD would be required to perform the following when communicating the written medical opinion and determination to the worker pursuant to § 850.34(d)(1):

- Advise the beryllium worker diagnosed with BeS or CBD or suspected of having BeS or CBD of the determination that medical removal is necessary to protect his or her health, and specify whether the SOMD is recommending temporary or permanent removal from work that involves exposure to beryllium at or above the action level [proposed § 850.36(b)(1)(i)]; and
- Provide the beryllium worker with a copy of the rule, including its preamble, and information on the risks of continued exposure to beryllium at levels at or above the action level, as well as the benefits of removal [proposed § 850.36(b)(1)(ii)].

Proposed § 850.36(b)(2) would be added to clarify the notifications the SOMD gives to the employers for removal of workers. The SOMD, in communicating the written medical opinion and determination to the employer, would be required to comply with § 850.34(e)(2) of this part. In the case of a final medical determination regarding permanent removal, the SOMD would be required to provide the employer with a written notice recommending that the employer either:

- If the worker has been on temporary removal, return the temporarily removed beryllium worker to his previous job status if the SOMD determines that removal is no longer warranted [proposed § 850.36(b)(2)(i)]; or
- Permanently remove the beryllium worker [proposed § 850.36(b)(2)(ii)]; or
- Medically restrict the worker pursuant to § 850.35 of this part [proposed § 850.36 (b)(2)(iii)].

Proposed § 850.36(c) would clarify the employer's responsibilities for removal of a worker. Proposed § 850.36(c)(1) would require the employer, within 15 working days after receiving the SOMD's written opinion pursuant to paragraph (b)(2) of this section, stating that it is medically appropriate to remove a worker, to remove the beryllium worker from the job that involves a beryllium activity, regardless of whether at the time of removal a job is available into which the removed worker may be transferred.

Proposed § 850.36(c)(2) would require employers to formally notify beryllium workers in writing that they are in medical removal status when the employer receives the SOMD's determination that removal is warranted. Employers would be required to include a start date for medical removal in the written notification. This proposed addition should resolve difficulties that have occurred at DOE sites in determining when medical removal officially began.

Proposed § 850.36(c)(3) would establish that when a beryllium worker is medically removed, the employer must transfer the removed worker to a comparable job, if such a job is available, and provide removal benefits in accordance with paragraphs (d)(1) of this section, for temporary removal or (d)(2) of this section, for permanent removal.

DOE is proposing to add § 850.36(c)(4) to clarify that employers would not be able to return a worker who has been medically removed to his or her former job status unless the SOMD has determined in a written medical opinion that continued medical removal is no longer necessary to protect the worker's health.

Proposed § 850.36(d) [currently § 850.35(b)] would continue to establish the medical removal benefits that must be provided to removed workers. DOE continues to believe that medical removal benefits are critical to minimize the disability associated with CBD. Removal from exposure and effective job-placement efforts, coupled with early diagnosis and treatment, will increase the likelihood that affected beryllium workers would continue as productive members of the DOE workforce.

Proposed § 850.36(d)(1)(i) would specify that when a beryllium worker has been temporarily removed from a job pursuant to paragraph (a)(2) of this section, employers would be required to, consistent with any applicable collective bargaining agreement:

- Transfer the worker to a comparable job [proposed § 850.36(d)(1)(i)(A)]; where beryllium exposures are below the action level [proposed § 850.36(d)(1)(i)(A)(*1*)]; and for which the worker is qualified or can be trained for in 6 months or less [proposed § 850.36(d)(1)(i)(A)(*2*)];
- Maintain the worker's total normal earnings, and other employment rights, as they existed at the time of removal, on each occasion that the worker is temporarily removed. The purpose of this requirement is to ensure that a removed worker does not suffer immediate economic loss due to removal [proposed § 850.36(d)(1)(i)(B)]. Note, benefits received under the Energy Employees Occupational Illness Compensation Program (EEOICP) do not constitute wage replacement, and therefore would not offset the employee's medical removal benefits.

DOE has learned with experience implementing this part, as issued in December 1999, that a lack of explicit expectations has resulted in different understandings of what happens when a job is not available for a beryllium worker. Therefore, proposed § 850.36(d)(1)(ii) would be added to clarify the requirements for the employer. Specifically, if there is no such job for the beryllium worker, the employer would be required to provide the workers total normal earnings, seniority (to the extent allowed in an applicable bargaining agreement), and other employment rights, as if the worker were not removed. For temporary removal, the employer would be required to provide the beryllium worker's total normal earnings and other employment rights, until:

- A comparable job becomes available that meets the requirements of (d)(1)(i)(A), and the worker is placed in that job [proposed § 850.36(d)(1)(ii)(A)];
- The SOMD determines that the beryllium worker is not sensitized to beryllium and does not have CBD and medical removal is ended [proposed § 850.36(d)(1)(ii)(B)];
- The beryllium worker is permanently medically removed from the job [proposed § 850.36(d)(1)(ii)(C)]; or
- The term of the removal period has expired [proposed § 850.36(d)(1)(ii)(D)].

Proposed § 850.36(d)(1)(iii) would be added to clarify that each period of temporary removal could not exceed one year and no term of temporary removal can immediately succeed a prior term of temporary removal to extend the term beyond one year.

Proposed § 850.36(d)(1)(iv) would be added to require that periods of temporary removal received by a worker not be considered part of any permanent removal period should the employer provide the beryllium worker with temporary and then permanent removal. This clarification supports DOE's intent to provide workers with sufficient time

to plan and implement changes in pursuing their livelihood as necessitated by permanent medical removal from jobs that involve beryllium activities at or above the action level.

Proposed § 850.36(d)(2) [currently § 850.35(b)(1)] would continue to provide permanent medical removal benefits of the CBDPP. Accordingly, in proposed § 850.36(d)(2)(i)(A) and (B), if a beryllium worker has been permanently removed from a job because of a beryllium-induced medical condition pursuant to paragraph (a)(4) of this section, the employer would be required to, consistent with any applicable collective bargaining agreement, transfer the worker to a comparable job [proposed § 850.36(d)(2)(i)(A)], where beryllium exposures are below the action level [proposed § 850.36(d)(2)(i)(A)(I)], and for which the worker is qualified or can be trained within a period of up to one year [proposed § 850.36(d)(2)(i)(A)(II)].

Proposed § 850.36(d)(2)(i)(B) would clarify that if a beryllium worker could not be transferred to a comparable job that meets the requirements of (d)(2)(i)(A), the employer would be required to maintain the worker's total normal earnings and benefits at the time of removal, as if the worker were not permanently removed for up to two years. DOE continues to select 2 years as the maximum period during which the employer is required to pay medical removal benefits to a worker instead of the 18-month protection period established in OSHA's lead and cadmium standards. DOE established a different protection period for beryllium because of the toxicological differences between beryllium and the two metals covered in the OSHA standards. Specifically, the early stages of the health impairments associated with exposure to lead or cadmium will reverse in time with no additional exposure, but the health effects from BeS and CBD typically do not. The objective of OSHA's 18-month period is to provide workers with sufficient recovery time so they can return to their job. The objective of DOE's two-year period, however, is to allow workers permanently medically removed sufficient time to be retrained and placed in a different job. DOE believes that this period should be long enough to enable the majority of removed workers to be retrained and placed in another job or, for those workers who can be returned to their former job status, to be returned before their medical removal benefits expire. Proposed § 850.36(d)(2)(i)(B) would also clarify that employers are not required to continue providing medical removal benefits after a worker has been permanently removed for up to two years. The removed worker who is transferred to a comparable job is not guaranteed removal benefits in the form of such job after the two-year removal period because permanent medical removal benefits consist of either the opportunity to transfer to a comparable job or to receive the earnings and benefits associated with a comparable job, if a comparable job is not available (*e.g.,* due to layoffs, illness of the worker, etc.). After the two-year benefit period expires, employers are expected to treat removed workers who have been transferred to a comparable job in a neutral and nondiscriminatory fashion, in accordance with all applicable state and Federal labor laws.

DOE does not intend for the beryllium medical removal benefit to function as a workers' compensation program. Workers' compensation and other work-related compensation for beryllium illness are provided by public or employer-funded compensation programs, including the Federal EEOICP administered by the DOL.

Proposed § 850.36(d)(3) [currently § 850.35(b)(5)] would continue to establish additional conditions for both temporary and permanent removal benefits. Proposed § 850.36(d)(3)(i) would clarify that employers providing medical removal benefits is not intended to expand upon, restrict or change any rights a worker has or would have had, absent medical removal, regarding a specific job classification or position under the terms of a collective bargaining agreement.

Proposed § 850.36(d)(3)(ii) [currently § 850.35(b)(2)] would continue to establish that during a temporary or permanent removal period, employers are required to continue to provide a worker total normal earnings and benefits.

DOE has learned from implementing this part, as issued in December 1999, that not addressing medical removal benefits when there is a change in the worker's job status, caused confusion and different implementation among DOE sites. Therefore, proposed § 850.36(d)(3)(iii) would be added to clarify and require employers to continue providing workers medical removal benefits during the removal period designated by the SOMD regardless of changes in the workers' jobs (*e.g.,* worker is laid off or the contract ends before the removal period ends) or whether workers can be transferred into comparable jobs because the workers are too sick to work, provided that:

- If the workers are on temporary removal, the employers are not required to continue the worker's benefits, as set forth in paragraph (d)(1) of this section, beyond one year [proposed § 850.36(d)(3)(iii)(A)];
- If the worker is on permanent removal, the employer is not required to continue the worker's benefits, as set forth in paragraph (d)(2) of this section, beyond two years [proposed § 850.36(d)(3)(iii)(B)].

Proposed § 850.36(d)(3)(iv) [currently § 850.35(b)(3)] would continue to establish that if a removed worker files a claim for workers' compensation payments for a beryllium-related disability, the employer must continue to provide benefits pending disposition of the claim, but no longer than a period of two years. The employer must receive no credit for the workers' compensation payments received by the worker for treatment related expenses.

Proposed § 850.36(d)(3)(v) [currently § 850.35(b)(4)] would continue to establish that the employer's obligation to provide medical removal benefits to a removed worker is reduced to the extent that the worker receives compensation for earnings lost during the period of removal from a publicly- or employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal. This provision is necessary to ensure that medical removal benefits do not result in a ''windfall'' to the worker who collects other compensation, including a salary from another job, while the worker is on medical removal from beryllium exposure.

Proposed § 850.36(d)(3)(vi) would be added to inform worker that they may also apply for compensation through EEOICP for any additional benefits beyond those provided in this proposed section.

DOE is proposing to delete current § 850.35(a)(4). DOE has learned through its experience implementing this part, as issued in December 1999, that it would not be a prudent practice to return a beryllium worker who has been permanently removed to a job in which the worker will be exposed to beryllium at or above the action level.

Proposed § 850.37—Medical Consent

Proposed § 850.37 [currently § 850.36], would continue to establish the medical consent provisions of the CBDPP. This section is necessary to ensure that beryllium and beryllium-associated workers receive adequate information to make an informed decision about the medical surveillance program. Accordingly, proposed

§ 850.37(a) would require that in order to provide each beryllium and beryllium-associated worker with the information necessary for the workers to make informed decisions about consenting to the medical evaluation established in proposed § 850.34 of this part, the employer must ensure that the SOMD has the worker sign and date the consent form in appendix A(for beryllium workers) or appendix B (for beryllium-associated workers) before performing any medical evaluation. The dated signature of the worker serves to document the worker consented to being tested. DOE would expect employers to make reasonable efforts to help workers understand the material.

Proposed § 850.37(b) would require employers to inform beryllium workers that testing is mandatory to transfer into or remain in a job involving exposure to beryllium at or above the action level, and that a beryllium worker who decides not to consent to the medical evaluations that would be required in § 850.34 will be removed from a beryllium activity and will not receive medical removal benefits.

Proposed § 850.38—Training and Counseling

Proposed § 850.38 [currently § 850.37], would continue to establish the worker training and counseling requirements regarding exposure to beryllium, and the potential health effects associated with such exposure. This worker training is necessary because appropriate implementation of the required workplace procedures of the CBDPP ultimately rests upon the front-line workers who will be performing work on, with, or near beryllium or beryllium-contaminated materials. These workers cannot be expected to comply with the required CBDPP procedures if they are not aware of such procedures.

DOE expects employers would conduct training in a manner that is easy to understand. Training material should be appropriate in content and vocabulary for the education level and language background of affected workers. The goal of the training would be to ensure all workers, regardless of cultural or educational background, have the knowledge necessary to reduce and minimize their exposure to beryllium.

DOE's experience in implementing the training requirements of this part, as issued in December 1999, demonstrates that greater differentiation of training requirements for different types of workers is needed. Therefore, proposed § 850.38 would continue to maintain the training requirements of the CBDPP but would clarify the training needs of beryllium workers and add training for these workers on the benefits of medical evaluations and the content of this part.

Proposed § 850.38(a)(1) [currently § 850.37(a)(1))] would continue to require employers to develop and implement a training program for beryllium workers, beryllium-associated workers, and all other workers who work at a site where beryllium activities are conducted and ensure their participation in the program.

Proposed § 850.38(a)(2) would establish the training requirements for beryllium workers. Specifically, employers would be required to provide beryllium workers training on the following:

- The contents of the CBDPP [proposed § 850.38(a)(2)(i)];
- The potential health risks to family members and others who may come in to contact with beryllium if beryllium controls are not followed [proposed § 850.38(a)(2)(ii)]. This section relies on the workers to relay the relevant beryllium hazard information to their families. DOE encourages employers to provide beryllium workers with information about beryllium risks that is also readily understandable to family members.
- Benefits of medical evaluations for diagnosing BeS and CBD [proposed § 850.38(a)(2)(iii)]; and
- The contents of the final rule [proposed § 850.38(a)(2)(iv)].

Proposed § 850.38(a)(3) would establish the training requirements for beryllium-associated workers and other workers identified in paragraph (a)(1) of this section. The training for these individuals would continue to require general awareness about beryllium hazards and controls training for other workers at a site where beryllium activities are conducted. This training should also address the benefits of medical evaluations for early diagnosis of BeS or CBD.

Proposed § 850.38(a)(4) would continue to require employers to provide training to workers prior to or at the time of initial assignment, and at least every two years thereafter, to ensure that workers are appropriately prepared to deal with the hazards and risks of working with beryllium. The initial training requirement of this paragraph is important to ensure workers have the information they need to protect themselves before they are subject to actual or potential exposure hazards. Periodic training is necessary to reinforce and update initial training; especially with regard to the protective actions workers must take at their current jobs to reduce their potential for exposure to beryllium. DOE has established two years as the minimum frequency requirement.

Proposed § 850.38(a)(5) would require employers to provide retraining when they have reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium. The retaining would include, at a minimum, the following situations:

- To address any new beryllium hazards resulting from a change to the beryllium inventory, activities, or controls about which the worker was not previously trained [proposed § 850.38(a)(5)(i)]; or
- When a worker's performance involving beryllium activities indicates that the worker has not retained the requisite proficiency [proposed § 850.38(a)(5)(ii)].

Proposed § 850.38(b) [currently § 850.37(f)], would continue require employers to develop and implement a workers counseling program to assist workers diagnosed by the SOMD with BeS or CBD. The purpose of the counseling program is to communicate information to workers that may help them make important health- and work-related decisions and perform administrative activities, such as filing workers' compensation claims. Accordingly, proposed § 850.38(b)(1) would require employers to develop and implement a counseling program to assist beryllium and beryllium-associated workers who are diagnosed by the SOMD with BeS or CBD.

Proposed § 850.38(b)(2) would require the counseling program for beryllium workers to include communicating with the worker concerning:

- The medical surveillance program provisions and procedures [proposed § 850.38(b)(2)(i)];
- Medical treatment options [proposed § 850.38(b)(2)(ii)];
- Medical, psychological, and career counseling [proposed § 850.38(b)(2)(iii)];
- Medical removal benefits [proposed § 850.38(b)(2)(iv)];
- Administrative procedures and worker rights under EEOICPA and applicable workers' compensation laws and regulations [proposed § 850.38(b)(2)(v)]; and
- The risk of continued exposure to beryllium at or above the action level and practices to limit exposure [proposed § 850.38(b)(2)(vi)].

Proposed § 850.38(b)(3) would clarify the counseling requirements for beryllium-associated workers. For beryllium-associated workers, employers would be required to communicate information to workers concerning the following topics:

• The medical surveillance program provisions and procedures [proposed § 850.38(b)(3)(i)];

• Medical treatment options [proposed § 850.38(b)(3)(ii)];

• Medical, psychological, and career counseling [proposed § 850.38(b)(3)(iii)]; and

• Application procedures under EEOICPA and applicable workers' compensation laws and regulations [proposed § 850.38(b)(3)(iv)].

In this section, DOE would include the qualifying language ''application procedures and workers rights' and ''under . . . applicable workers compensation laws and regulations'' to make clear that DOE still does not intend to establish any new workers' compensation obligations. DOE understands that employers may develop such counseling programs in consultation with labor organizations representing workers, and that employer may wish to advise the workers to consult their own attorneys on these matters.

Proposed § 850.39—Warning Signs and Labels

Proposed § 850.39 [currently § 850.38], would continue to require employers to post warning signs and labels to ensure that the presence of, and dangers associated with beryllium and beryllium-contaminated items or areas are communicated to workers.

DOE received several comments in response to its RFI concerning whether DOE should require warning labels for the transfer—to either another DOE entity or an entity to whom this rule does not apply—of items with surface areas that are free of removable beryllium but that might contain surface contamination that is inaccessible or has been sealed with hard-to-remove substances (*e.g.,* paint). Most of the commenters suggested that DOE should require warning labels when individuals could be exposed during the handling of an item (*e.g.,* servicing a seldom-accessed part, opening a waste container), or to warn the uninformed so as to prevent unplanned beryllium exposures. DOE pointed out that the further removed a worker is from direct DOE employment (*e.g.,* some DOE facility general contractors hire subcontractors, who in turn hire their own subcontractors, and so on), the more likely it is that verbal instructions and warnings will be insufficient. Other commenters suggested that DOE's labeling requirement should allow flexibility to convey the beryllium exposure hazard without unduly alarming downstream individuals and without preventing potential downstream users from accepting items because of unfounded health concerns.

DOE, in considering suggestions of the RFI commenters and other available information, has proposed minor changes to the wording of this section, as issued in December 1999. Proposed § 850.39(a) would continue to require the posting of warning signs demarcating beryllium regulated areas and these signs bear the following warning:

BERYLLIUM REGULATED AREA
DANGER
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

The purpose of these warning signs is to minimize the number of individuals entering a beryllium regulated area by warning workers prior to entry. The signs alert workers that they must have the appropriate authorization from their supervisor to enter the beryllium regulated area. This is especially important when regulated areas are established on a temporary basis, such as during cleanup operations. In such cases, workers who typically work in or travel through the area may not be aware of the new potential for beryllium exposures and thus, may not be appropriately equipped for or aware of the need to protect themselves from potential exposures. Warning signs also serve as a constant reminder to those who work in beryllium regulated areas that the potential for exposure to beryllium exists in the area and that appropriate controls must be used.

Proposed § 850.39(b) would continue to require employers use warning labels to ensure that individuals who come in contact with containers of beryllium, or other beryllium-contaminated items are aware of their content and the need to implement special handling precautions. Accordingly, this proposed section would add a provision requiring employers affix warning labels to all bags, containers, equipment, or items that have surface levels of beryllium that exceed 0.2 μg/100 $cm^2$, or that will be released and have beryllium material on the surface at levels above the level in soil at the point of release. Because the effectiveness of the warning label is greatly dependent upon the visibility, accuracy, and understandability of the content of the labels, proposed § 850.39(b)(1) would specify that labels bear the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

Proposed § 850.39(b)(2) would add a new provision that would require employers to affix warning labels to equipment or items that contain sources of beryllium in typically inaccessible locations or embedded in hard-to-remove substances. This label is for less hazardous situations in which the beryllium is normally inaccessible but could be released with effort (*e.g.,* by disassembling machine tools that were used for processing beryllium, or by removing paint that encapsulates beryllium particulates). This proposed section would require that labels bear the following information:

CAUTION
CONTAINS BERYLLIUM IN INACCESSIBLE LOCATIONS OR EMBEDDED IN HARD-TO-REMOVE SUBSTANCES
DO NOT RELEASE AIRBORNE BERYLLIUM DUST
CANCER AND LUNG DISEASE HAZARD

Proposed § 850.40—Recordkeeping and Use of Information

Proposed § 850.40 [currently § 850.39] would continue to require employers to establish and effectively manage records that relate to the CBDPP and to periodically submit to the Office of Environment, Health, Safety and Security a registry of beryllium and beryllium-associated workers. Proposed § 850.40 would also clarify recordkeeping requirements that are not clearly defined in the current rule, and the use of such information by both DOE contractor and Federal employers. Proposed § 850.40(a) would require contractor employers to:

• Establish and maintain records in accordance with 10 CFR part 851, *Worker Safety and Health Program,* for records generated by their CBDPP, and include records of beryllium medical evaluations and training [proposed § 850.40(a)(1)]. This would revise the current requirement for consistency with 10 CFR 851.26, *Recordkeeping and reporting.*

• Maintain employees' medical records in accordance with DOE System of Records DOE–33, *Personnel Medical Records* [proposed § 850.40(a)(2)]. This requirement would be added to clarify the system of records with which employers are required to comply.

• Maintain all records required by this part in current and accessible electronic systems [proposed § 850.40(a)(3)]. This requirement, currently in § 850.39(f), is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBDPP-related data. DOE continues to use the phrase ''current and accessible'' in this section because DOE's experience indicates that the ability to use information held in electronic records is severely hampered if the

electronic systems are out-of-date or the records are difficult to retrieve.

• Convey all record series required by this rule to the appropriate Head of DOE Field Element, or his or her designee, if this part ceases to be applicable (*e.g.,* if the employer ceases to be a DOE contractor) [proposed § 850.40(a)(4)]. This requirement would be added to ensure that DOE has access to and ownership of such records generated during contract performance for its contractors performing beryllium activities at DOE sites and clarifies management, retention and disposal of records after contract termination.

Proposed § 850.40(b) would continue to require Federal employers to:

• Establish and maintain complete and accurate records generated by the CBDPP submitted by DOE offices, including all beryllium inventory information, hazard assessments, exposure measurements of Federal employees, exposure control, medical evaluations, and training for operations or activities implemented by DOE offices [proposed § 850.40(b)(1)].

• Maintain Federal employees' medical records in accordance with the Office of Personnel Management's OPM/GOVT–10, *Employee Medical File System Records for Federal Employees* [proposed § 850.40(b)(2)]. This requirement would be added to clarify the system of records for Federal employees.

• Maintain all records required by this part in current and accessible electronic systems. This requirement is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBDPP-related data [proposed § 850.40(b)(3); currently § 850.39(f)].

Proposed § 850.40(c) would continue to require Heads of DOE Field Elements and CSOs to designate all record series required by this rule as agency records and ensure that these records are retained for a minimum of 75 years. This practice is consistent with DOE's policy on retaining medical records. This requirement would continue to ensure that required CBDPP records that relate to workplace conditions will be available to correlate with the beryllium and beryllium-associated workers' medical records. DOE expects that Heads of DOE Field Elements will direct their DOE contracting officers to stipulate DOE ownership of these documents in those contracts.

Proposed § 850.40(d)(1) would require both contractor and Federal employers to ensure the confidentiality of all personally identifiable information in work-related records generated in response to this rule by making sure that:

• All records that are transmitted to other parties are transmitted consistent with the Privacy Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and their implementing regulations [proposed § 850.40(d)(1)(i)]. DOE recognizes that employers must take these precautions to prevent the violation of privacy laws because personal information could be obtained from transmitted records, or inferred from information other than personal identifiers in the records, unless these precautions are taken.

• Individual medical information generated by the CBDPP is [proposed § 850.40(d)(1)(ii)]:

• Either included as part of the worker's site medical records and maintained by the SOMD, or is maintained by another physician designated by the employer [proposed § 850.40(d)(1)(ii)(A)];

• Required to be maintained as confidential medical records separately from non-medical records [proposed § 850.40(d)(1)(ii)(B)]; and

• Used or disclosed in conformance with any applicable requirement of the American with Disabilities Act of 1990, HIPAA, and any other applicable law or regulation[proposed § 850.40(d)(1)(ii)(C)].

Proposed § 850.40(d)(2) would continue to require employers to maintain all records generated as required by this rule, in current and accessible electronic systems, which include the ability to readily retrieve data in a format that maintains confidentiality. This requirement is necessary to facilitate timely, efficient, and cost-effective transfer and analysis of CBD-related data.

Proposed § 850.40(d)(3) would require employers to transmit all records generated by this rule to the Office of Environment, Health, Safety and Security, upon request.

Proposed § 850.40(d)(4) would continue to require employers to semi-annually transmit to the Office of Environment, Health, Safety and Security an electronic registry of beryllium and beryllium-associated workers that protects confidentiality, and the registry must include, a unique identifier for each individual, date of birth, gender, site job history, medical screening test results, exposure measurements, surface contamination levels, and results of referrals for specialized medical evaluations. The format of the information transmitted should currently comply with DOE Technical Standard 1187–2007 (DOE–STD–1187–2007), *Beryllium-Associated Worker Registry Data Collection and Management Guidance,* June 2007. Using this format would ensure consistency among DOE sites with respect to Beryllium Registry submittals. DOE expects employers to submit only the information that is already available. DOE does not propose requiring the employer to generate information solely for the purpose of submitting that information to the Beryllium Registry. DOE also believes that using the Beryllium Registry's format would implement DOE's Office of Inspector General's recommendation for CBDPPs in DOE/IG–0726, *Implementation of the Department of Energy's Beryllium-Associated Worker Registry,* April 2006, that Departmental program offices and sites adopt DOE–STD–1187–2007 in their individual CBDPPs.

Proposed § 850.41—Performance Feedback.

Proposed § 850.41 [currently § 850.40] would continue to establish the performance feedback provisions for the CBDPP. Accordingly, proposed § 850.41(a) [currently § 850.40(a)] would be revised for consistency among the sites and would require employers to conduct semi-annual assessments of the following:

• Monitoring results [proposed § 850.41(a)(1)];

• Hazard assessments [proposed § 850.41(a)(2)];

• Medical surveillance [proposed § 850.41(a)(3)]; and

• Exposure reduction efforts [proposed § 850.41(a)(4)].

DOE believes that the assessment of this data is important for the continuous improvement of the program.

Proposed § 850.41(b), would be added to require the assessments to identify any:

• Individuals at risk for beryllium-induced medical conditions and the working conditions that may be contributing to that risk [proposed § 850.41(b)(1)]; and

• Need for additional exposure controls [proposed § 850.41(b)(2)].

To ensure that workers have the information necessary to safely perform their assigned tasks, proposed § 850.41(c) [currently § 850.40(b)], would require employers to notify and make the assessment available to the appropriate Head of DOE Field Element, line managers, work planners, worker protection staff, medical staff, workers, and labor organizations representing beryllium workers performing beryllium activities. DOE believes that the requirement would improve communication among employers, managers, and others to more effectively

evaluate and monitor program effectiveness.

*D. Appendix A to Part 850— Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory) [Currently Appendix A to Part 850—Chronic Beryllium Disease Prevention Program Informed Consent Form]*

Proposed appendix A would revise the Chronic Beryllium Disease Prevention Program Informed Consent Form in the current rule by adding text to reflect the proposed amendments to §§ 850.34 and 850.37 requiring mandatory medical evaluations for beryllium workers. As stated earlier, DOE is aware that the term ''informed consent'' has a different meaning when used in other contexts (*e.g.,* human subject research). The Department, however, used this term in the original 10 CFR part 850 published in December 1999 to ensure beryllium associated workers were informed of the medical evaluation process before medical evaluations were performed. However, DOE is proposing to not use ''informed consent'' but would use the term ''consent'' and expand it to address consent for medical evaluations for beryllium workers and beryllium associated workers.

*E. Appendix B to Part 850— Beryllium-Associated Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)*

Proposed Appendix B would be added to reflect the proposed amendments to §§ 850.34 and 850.37 as they relate to the voluntary medical evaluations for beryllium-associated workers.

## V. Procedural Requirements

*A. Review Under Executive Orders 12866 and 13563*

This regulatory action has been determined to be a significant regulatory action under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA). The assessment of the potential costs and benefits of the rule required by section 6(a)(3) of the Executive Order has been made a part of the rulemaking file and is available for public review as provided in the **ADDRESSES** section of this NOPR.

Before conducting the assessment, DOE profiled the 22 sites and activities affected by the proposed CBDPP rule and estimated the number of workers affected by the proposed rule. DOE estimated that 20,444 workers may have been or be exposed or potentially exposed in the DOE complex. Based on exposure monitoring data submitted since 2002 to the Beryllium-Associated Worker Registry (BAWR), DOE estimated that 1,261 of these workers are potentially exposed at or above the proposed action level (0.05 $\mu g/m^3$) or the permissible exposure limit prescribed in the CBDPP rule.

DOE estimated the compliance costs of the proposed amendments to the CBDPP rule for its 22 beryllium sites. The proposed rule is estimated to cost from 13.6 million to $17.2 million (annualized first year costs plus annual costs in 2014 dollars, using a 7 percent discount rate and a 10 year period lifetime of investment. This includes un-annualized first year costs of $41.4 million to $42.7 million, of which $7.8 million to $11.2 million are annually recurring costs. Most costs are related to establishing additional regulated areas, which are estimated to average $37.1 million in initial costs, or 84 to 87 percent of total initial costs. In addition, DOE expects its sites will experience cost-savings attributable to linguistic changes and clarifications in the proposed amendments to 10 CFR part 850.

DOE assessed potential benefits and cost-savings of the proposed amendments to the CBDPP for DOE, DOE contractors, and workers. DOE assessed the following benefits of the proposed CBDPP rule if it is adopted as a final rule: (1) Reduced medical costs; (2) reduced mortality; (3) increased quality of life; (4) increased medical surveillance for workers at risk; (5) increased work-life for beryllium workers; (6) reduced confusion and dispute over the legal liability of DOE and DOE contractors; (7) reduced restrictions and costs for the release and transfer of equipment or areas with potential beryllium contamination; (8) reduced control of areas where measured beryllium is a result of naturally high levels of beryllium in the soil or surrounding environment; (9) reduced turnaround time for sample analysis due to the use of portable laboratories; and (10) reduced medical costs for periodic evaluations due to the Site Occupational Medicine Director's ability to judge that certain medical tests may be unnecessary for some workers.

DOE also assessed the potential economic impact of the proposed rule on the provision of public goods that contain beryllium and the impact on the market for beryllium. DOE assessed each of these potential impacts and determined neither will impose a significant economic impact. DOE determined that the potential reduction in the provision of beryllium-containing public goods will be minimal and, consequently, the reduction in demand for beryllium will be small.

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, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

This proposed rule would update DOE's regulations on CBDPP. This proposed rule applies only to activities conducted by DOE or by DOE's contractors. The contractors who manage and operate DOE facilities would be principally responsible for implementing the rule requirements. DOE considered whether these contractors are ''small businesses'' as the term is defined in the Regulatory Flexibility Act (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of small business concerns in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. DOE expects that any potential economic impact of this proposed rule on small businesses would be minimal because work performed at DOE sites is under contracts with DOE or the prime contractor at the site. DOE contractors are usually reimbursed through their contracts for the costs of complying with CBDPP requirements. Therefore, most would not be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared.

*C. Review Under the Paperwork Reduction Act*

The information collection provisions of this proposed rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by the current CBDPP rule, and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–5112. That approval covered submission to develop and submit an initial CBDPP to DOE for approval; periodically revise the CBDPP; conduct a baseline inventory of beryllium at the site; notify workers of exposure monitoring results; develop and maintain a registry of beryllium workers; require workers to sign consent forms for beryllium work and medical surveillance; establish and maintain records related to the beryllium inventory and hazard assessment, exposure monitoring, workplace controls and medical surveillance; and establish a performance feedback process for continually evaluating and improving the CBDPP. Accordingly, no additional OMB clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

*D. Review Under the National Environmental Policy Act*

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.

*E. Review Under Executive Order 12988*

Section 3 of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), instructs each agency to adhere to certain requirements in promulgating new regulations. Executive agencies are required by section 3(a) to adhere to the following general requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to 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.

*F. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism'' (64 FR 43255, August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

*G. Review Under Executive Order 13175*

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''tribal'' implications and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

*H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published does not contain any Federal mandates affecting small governments, so these requirements do not apply.

*I. 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 the 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 promulgated 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. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*J. 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 proposed rule that may affect family well being. The proposed 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.

*K. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

## VI. Public Participation

*A. Attendance at the Public Hearings*

Public hearings will be held at the times, dates, and places indicated in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the telephone number in the **DATES** section of this NOPR. The person should provide a daytime telephone number where he or she may be reached. A person requesting an opportunity to speak will be notified as to the approximate time he or she will be speaking. Each presentation is limited to 10 minutes. A person making an oral presentation should bring a copy of their statements to the hearing on a CD or USB flash drive and submit them at the registration desk. Foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in this public hearing should advise DOE as soon as possible by contacting Ms. Rogers to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

*B. Conduct of the Public Hearings*

A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to select the people who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing.

A transcript of each hearing will be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, transcripts may be purchased from the transcribing reporter.

If DOE must cancel the hearings, it will make every effort to give advance notice.

*C. Submission of Comments*

DOE will accept comments, data and information regarding this proposed rule before or after the public hearings, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule using any of the methods described in the **ADDRESSES** section at the beginning of this notice. To help the Department review the submitted comments, commenters are requested to reference the paragraph(s), *e.g.,* § 850.3(a), to which they refer where possible.

1. *Submitting comments via regulations.gov.* The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE's Office of Environment, Health, Safety and Security 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 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 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 *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 *regulations.gov* provides after you have successfully uploaded your comment.

2. *Submitting comments via email, mail or hand delivery/courier.* Comments and documents submitted via email, mail, or hand delivery/courier, also will be posted to *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 or USB flash drive, if feasible. It is not necessary to submit printed copies. No facsimiles (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.

*3. Confidential Business Information.* Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail two well-marked copies: One copy of the document marked ''CONFIDENTIAL BUSINESS INFORMATION'' including all the information believed to be confidential, and one copy of the document marked ''NO CONFIDENTIAL BUSINESS INFORMATION'' with the information believed to be confidential deleted. Submit these documents via email or CD, if feasible. DOE will make its own determination as to the confidentiality of the information and treat it accordingly. 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 which 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).

4. *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.

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**List of Subjects in 10 CFR Part 850**

Beryllium, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

Issued in Washington, DC, on May 16, 2016.

**Ernest J. Moniz,**

*Secretary of Energy.*

For the reasons set forth in the preamble, the Department of Energy proposes to revise part 850 of chapter III of title 10 of the Code of Federal Regulations to read as follows:

## PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

### Subpart A—General Provisions

Sec.
850.1 Scope.
850.2 Applicability.
850.3 Definitions.
850.4 Enforcement.
850.5 Dispute resolution.
850.6 Interpretations, binding interpretive rulings and requests for information.

### Subpart B—Administrative Requirements

850.10 Development and approval of the CBDPP.
850.11 General CBDPP requirements.
850.12 Implementation.
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### Subpart C—Specific Program Requirements

850.20 Beryllium inventory.
850.21 Hazard assessment and abatement.
850.22 Permissible exposure limit.
850.23 Action level.
850.24 Exposure monitoring.
850.25 Exposure reduction.
850.26 Beryllium regulated areas.
850.27 Hygiene facilities and practices.
850.28 Respiratory protection.
850.29 Protective clothing and equipment.
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850.32 Waste disposal.
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850.34 Medical surveillance.
850.35 Medical restriction.
850.36 Medical removal and benefits.
850.37 Medical consent.
850.38 Training and counseling.
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850.40 Recordkeeping and use of information.
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**Appendix A to Part 850—Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)**

**Appendix B to Part 850—Beryllium-Associated Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)**

**Authority:** 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.,* 50 U.S.C. 2401 *et seq.,* E.O. 12196, as amended.

## Subpart A—General Provisions

### § 850.1 Scope.

This part provides for the establishment of a chronic beryllium disease prevention program (CBDPP) for DOE employees and DOE contractor employees, and supplements and is deemed an integral part of the worker safety and health program required under part 851 of this chapter for DOE contractor employees. If there is a conflict between the requirements of this part, and part 851, this part controls.

### § 850.2 Applicability.

(a) This part applies to:

(1) DOE contractors and DOE offices responsible for operations or activities that involve present or past exposure, or the potential for exposure, to airborne concentrations of beryllium at or above the action level at DOE sites;

(2) Any current DOE contractor employee and DOE employee at a DOE site who was exposed or potentially exposed to airborne concentrations of beryllium at or above the action level at a DOE site; and

(3) The Site Occupational Medical Directors (SOMD) responsible for providing the overall direction and operation of the employer's beryllium medical surveillance program.

(b) This part does not apply to:

(1) Activities involving beryllium articles; and

(2) DOE laboratory operations that meet the definition of laboratory use of hazardous chemicals in 29 CFR 1910.1450, *Occupational Exposure to Hazardous Chemicals in Laboratories.*

### § 850.3 Definitions.

(a) As used in this part:

*Action level* means the airborne concentration of beryllium which, at or above, triggers the implementation of worker protection provisions as specified in § 850.23 of this part are required.

*Authorized person* means any person required by work duties to be in a regulated area.

*Beryllium* means elemental beryllium, beryllium oxide, and any alloy containing 0.1% or greater of beryllium by weight that may be released as an airborne particulate.

*Beryllium activity* means any activity taken for or by DOE at a DOE site that can expose workers to levels of airborne beryllium at or above the action level, including the disturbance of legacy beryllium-containing dust.

*Beryllium article* means a ''commercially available, off-the-shelf'' item composed of beryllium that is formed to a specific shape or design during manufacture, has end-use functions that depend in whole or in part on its shape or design during end use, and which does not release particulate beryllium at or above the action level under normal conditions of use.

*Beryllium-associated worker* means a current worker, who was exposed or potentially exposed to airborne concentrations of beryllium at a DOE site, including a worker:

(1) Whose work history shows that the worker may have been exposed to airborne concentrations of beryllium at a DOE site;

(2) Who exhibits signs or symptoms of beryllium exposure; or

(3) Who is receiving medical removal benefits under this part.

*Beryllium emergency* means any occurrence such as, but not limited to, equipment failure, container rupture, or failure of control equipment or operations that results in an unexpected and significant release of beryllium at a DOE site.

*Beryllium-Induced Lymphocyte Proliferation Test (BeLPT)* is an in vitro measure of the beryllium antigen-specific, cell-mediated immune response to beryllium. In this part, a split sample BeLPT (where one blood draw is split and sent to two different testing facilities) would constitute two tests for purposes of diagnosing BeS.

*Beryllium-induced medical condition* refers to CBD and BeS. Other diseases may resemble CBD, but are not attributable to beryllium.

*Beryllium Registry* refers the DOE Beryllium-Associated Worker Registry.

*Beryllium regulated area* means an area demarcated by the employer in which the airborne concentration of beryllium at or above, or can reasonably be expected to be at or above, the action level.

*Beryllium sensitization or sensitivity (BeS)* means a condition diagnosed by the SOMD based on any of the following:

(1) Two abnormal blood BeLPT results;

(2) One abnormal and one borderline blood BeLPT; or

(3) One abnormal BeLPT test of alveolar lung lavage cells.

*Beryllium worker* means a current worker who is exposed or potentially exposed to levels of airborne concentration of beryllium at or above the action level in the course of the worker's employment in a DOE beryllium activity.

*Breathing zone* is a hemisphere forward of the shoulders, centered on the mouth and nose, with a radius of 6 to 9 inches.

*Chronic beryllium disease (CBD)* means a condition diagnosed by the SOMD based on the worker having the following:

(1) BeS as defined in this section; and

(2) A lung biopsy showing non-caseating granulomas or lymphocytic process consistent with CBD; or radiographic (including computed tomographic (CT) scans) and pulmonary function testing results consistent with pulmonary granulomas.

*Cognizant Secretarial Officer (CSO)* means, with respect to a particular situation, the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor, or any other official to whom the CSO delegates in writing a particular function under this part.

*Contractor* means any entity, including affiliated entities, such as a parent corporation, under contract with DOE, or a subcontractor at any tier that has responsibilities for performing beryllium work at a DOE site in furtherance of a DOE mission.

*DOE* means the U.S. Department of Energy.

*DOE site* means a DOE-owned or -leased area or location or other area or location controlled by DOE where activities and operations are performed at one or more facilities or places by a contractor in furtherance of a DOE mission.

*Employer* means:

(1) For DOE contractors employees, the DOE contractor that is directly responsible for the safety and health of DOE contractor employees while performing a beryllium activity or other activity at a DOE site; or

(2) For DOE employees, the DOE office that is directly responsible for the safety and health of DOE Federal employees while performing a beryllium activity or other activity at a DOE site; or

(3) Any person acting directly or indirectly for a DOE office or contractor with respect to terms and conditions of employment of beryllium and beryllium-associated workers.

*Final medical determination* means the final written medical determination of the SOMD as to whether the beryllium worker should be permanently removed because of BeS or CBD as those terms are defined in this part. If the worker is eligible and has elected the multiple physician review or alternate physician's review, the SOMD issues the final medical determination at the conclusion of such process. The

initial determination is also the final determination if the worker does not make a timely request for a multiple physician review or alternate physician review.

*Head of DOE Field Element* means an individual who is the manager or head of the DOE operations office or field office.

*High-efficiency particulate air (HEPA) filter* means a filter capable of trapping and retaining at least 99.97% of 0.3 micrometer mono-dispersed particles.

*Medical removal benefits* means the employment benefits established by § 850.36 of this part for beryllium workers who are temporarily or permanently medically removed from beryllium activities at or above the action level following a determination by the SOMD that removal is warranted.

*Medical restriction* means the outcome of the process in which the SOMD recommends that the worker be restricted from a job that involves a beryllium activity when health evaluations indicate the worker is not suffering from CBD or has not been sensitized to beryllium, but the SOMD determines that exposure to beryllium at or above the action level is contraindicated due to other medical conditions of the worker. In addition, medical restrictions must be performed in accordance with 10 CFR part 851, appendix A, section 8.

*Qualified Individual* means an individual designated by the employer who possesses the knowledge, skills, and abilities needed to implement an industrial hygiene program (*i.e.,* an individual who is either a certified industrial hygienist or has a college degree in industrial hygiene or a related scientific, engineering, or technical degree); who has completed special studies and training in industrial hygiene; and who has at least five years of full-time employment in the professional practice of industrial hygiene.

*Site Occupational Medical Director (SOMD)* means the physician responsible for the overall direction and operation of the site occupational medicine program.

*Surface levels of beryllium* means the amount of beryllium easily removed from surfaces by means such as casual contact, wiping, or brushing.

*Unique identifier* means the part of a paired set of labels, used in records that contain confidential information that does not identify individuals except by using the matching label.

*Worker* means an employee of DOE, or a DOE contractor or subcontractor at any tier, who performs work in furtherance of a DOE mission at a DOE site.

(b) Terms undefined in this part that are defined in the Atomic Energy Act of 1954, as amended, or 10 CFR part 851, *Worker Safety and Health Program,* have the same meaning as under that Act and regulation, as applicable.

### § 850.4 Enforcement.

DOE may take appropriate steps pursuant to part 851 of this chapter to enforce compliance by contractors with this part and any DOE-approved contractor CBDPP.

### § 850.5 Dispute resolution.

(a) Any worker who is adversely affected by an action taken, or a failure to act, under this part may petition the Office of Hearings and Appeals for relief in accordance with 10 CFR part 1003, subpart G, *Office of Hearings and Appeals Procedural Regulations; Private Grievances and Redress,* subject to paragraphs (b) and (c) of this section.

(b) The Office of Hearings and Appeals may elect not to accept a petition from a worker unless the worker had requested that the employer correct the violation, and the employer refused or failed to take corrective action within a reasonable time.

(c) If the dispute relates to a term or condition of employment that is covered by a grievance-arbitration provision in a collective bargaining agreement, the worker must exhaust all applicable grievance-arbitration procedures before filing a petition for relief with the Office of Hearings and Appeals. A worker is deemed to have exhausted all applicable grievance-arbitration procedures if 150 days have passed since the filing of a grievance and a final decision has not been issued.

### § 850.6 Interpretations, binding interpretive rulings, and requests for information.

Requests for legal interpretations, binding interpretive rulings, and requests for information regarding this part must be in accordance 10 CFR 851.6, *Petitions for generally applicable rulemaking,* 851.7, *Requests for a binding interpretative ruling,* or 851.8, *Informal requests for information,* respectively.

## Subpart B—Administrative Requirements

### § 850.10 Development and approval of the CBDPP.

(a) *Preparation and submittal of CBDPP to DOE.* (1) Subject to the provisions of § 851.13 of this part, each employer engaged in beryllium activities at a DOE site must submit a CBDPP for review and approval, as indicated in § 850.10(b), no later than [date *90 days after effective date of final rule*];

(2) Each employer at a DOE site which is not engaged in beryllium activities but which employs beryllium-associated workers must submit a CBDPP with the provisions applicable to those workers (*e.g.,* medical evaluations, training, recordkeeping) for review and approval as indicated in § 850.10(b), no later than [date *90 days after effective date of final rule*];

(3) If the CBDPP has separate sections addressing the beryllium activities of multiple contractors at the site, the Head of DOE Field Element will designate a single contractor to review the sections prepared by the other contractors, so that a single consolidated CBDPP for the site is submitted to the Head of DOE Field Element for review and approval; and

(4) Employers at a multiple contractor site must share relevant information generated by the assessment required by § 850.41(a), to ensure the safety and health of their workers.

(b) *DOE review and approval.* (1) The appropriate Head of DOE Field Element must review and provide written approval or rejection of the applicable contractor's CBDPP, or any updates to the CBDPP, within 90 working days of receiving the document. The appropriate Head of DOE Field Element may direct the applicable contractor to modify the CBDPP or any updates to the CBDPP during their review.

(2) The appropriate CSO must review and provide written approval or rejection of the CBDPP, or any updates to the CBDPP submitted by DOE offices within 90 working days of receiving the document. The appropriate CSO may direct the DOE office to modify the CBDPP or any updates to the CBDPP during their review.

(3) The CBDPP and any updates are deemed approved 90 working days after submission to the Head of DOE Field Element or the CSO, if they are not specifically approved or rejected earlier.

(4) Employers must furnish a copy of the approved CBDPP to the Office of Environment, Health, Safety and Security; DOE program offices; and affected workers or their designated representative upon request.

(c) *Updates.* Employers must submit an update of the CBDPP for review and approval within 30 working days after a significant change or significant addition to the CBDPP is made or warranted, or a change in contractors occurs. The Head of DOE Field Element or appropriate CSO, as applicable, must review the CBDPP at least annually and,

if appropriate, require the employer to update the CBDPP.

(d) *Labor organizations.* If an employer employs or supervises workers who are represented for collective bargaining purposes by a labor organization, the employer must:

(1) Give the labor organization timely notice of the development and implementation of the CBDPP and any updates thereto; and

(2) Upon timely request, bargain concerning implementation of this part, consistent with Federal labor laws and this part.

**§ 850.11 General CBDPP requirements.**

(a) The CBDPP must specify existing and planned beryllium activities.

(b) The scope and content of the CBDPP must be commensurate with the hazard of the activities performed. In all cases it must:

(1) Include formal plans and measures for maintaining exposures to beryllium that are below the levels prescribed in § 850.22;

(2) Satisfy the requirements in subpart C, *Specific Program Requirements,* of this part; and

(3) Contain provisions for minimizing the number of:

(i) Workers exposed to airborne concentrations of beryllium at or above the action level; and

(ii) Instances in which workers are exposed to airborne concentrations of beryllium at or above the action level.

**§ 850.12 Implementation.**

(a) Employers must manage and control beryllium activities consistent with the approved CBDPP.

(b) Activities that are outside the scope of the approved CBDPP involving unexpected exposure to airborne concentrations of beryllium at or above the action level may only be initiated upon written approval by the Head of DOE Field Element or appropriate CSO, as applicable.

(c) No person employed by DOE or a DOE contractor may take or cause any action inconsistent with the requirements of this part, an approved CBDPP, or any other applicable Federal statute or regulation concerning the exposure of workers to levels of beryllium at a DOE site.

(d) Nothing in this part precludes an employer from taking any additional protective actions that it determines to be necessary to protect the safety and health of workers provided that the employer continues to comply with the requirements of this part.

(e) Nothing in this part is intended to diminish the responsibilities of DOE officials under the Federal Employee Occupational Safety and Health Program (29 CFR part 1960) and related DOE directives.

**§ 850.13 Compliance.**

(a) Employers may continue to conduct beryllium activities in compliance with their previously approved CBDPP until [*date 1 year after the effective date of the final rule*].

(b) Employers must conduct activities under their approved CBDPP in compliance with this part as issued on [*effective date of the final rule]* by *[1 year after the effective date of the final rule*].

(c) With respect to a particular beryllium activity, the contractor in charge of the activity is responsible for complying with this part. If no contractor is responsible for the beryllium activity, and Federal employees perform the activity, DOE must ensure implementation of, and compliance with, this part.

## Subpart C—Specific Program Requirements

**§ 850.20 Beryllium inventory.**

(a) The employer must identify and develop an inventory of beryllium activities and locations of potential beryllium contamination. In developing the inventory the employer must:

(1) Review current and historical records;

(2) Interview workers;

(3) Conduct air, surface, and bulk sampling, as appropriate, to characterize the beryllium and its locations; and

(4) Document the locations of beryllium at or above the action level at the site.

(b) Inventory results obtained within 12 months prior to [*effective date of the final rule*] may be used to satisfy this requirement if a Qualified Individual determines that conditions represented by the results have not changed in a manner that warrants changes in the beryllium inventory. The employer must update the beryllium inventory at least annually and when significant changes occur to beryllium activities.

(c) The employer must ensure that the beryllium inventory is conducted and managed by a Qualified Individual as defined in this rule.

**§ 850.21 Hazard assessment and abatement.**

(a) Employers must conduct a beryllium hazard assessment if the inventory establishes the presence of airborne beryllium that is potentially at or above the action level.

(b) The beryllium hazard assessment must be conducted in accordance with 10 CFR 851.21, *Hazard Identification and Assessment.*

(c) Beryllium hazards must be abated in accordance with 10 CFR 851.22, *Hazard prevention and abatement.*

(d) Employers must ensure that paragraphs (a) through (c) of this section are managed by a Qualified Individual as defined in this part.

**§ 850.22 Permissible exposure limit.**

(a) Employers must ensure that no worker is exposed to an airborne concentration of beryllium greater than the 8-hour TWA PEL established in 29 CFR 1910.1000, as measured in the worker's breathing zone by personal monitoring, or a more stringent 8-hour TWA PEL that may be promulgated by the Occupational Safety and Health Administration (OSHA) as an expanded health standard for beryllium.

(b) DOE must inform employers through a notice in the **Federal Register** of any applicable changes to the OSHA 8-hour TWA PEL described in paragraph (a) of this section.

**§ 850.23 Action level.**

(a) Employers must include in their CBDPPs an action level that is no greater than 0.05 $\mu g/m^3$, calculated as an 8-hour time weighted average exposure, as measured in the worker's breathing zone by personal monitoring.

(b) If the airborne level of beryllium is at or above the level specified in paragraph (a) of this section, employers must implement §§ 850.24(c) (periodic exposure monitoring), 850.25 (exposure reduction), 850.26 (beryllium regulated areas), 850.27 (hygiene facilities and practices), 850.28 (respiratory protection), 850.29 (protective clothing and equipment),850.30 (housekeeping), and 850.39 (warning signs and labels).

**§ 850.24 Exposure monitoring.**

(a) *General.* (1) The employer must ensure that exposure monitoring is managed by a Qualified Individual and conducted as specified in the approved CBDPP.

(2) The employer must ensure that:

(i) Air exposure levels are determined by conducting breathing zone sampling and reported as the 8-hour time-weighted average level to which a worker would be exposed if the worker were not using respiratory protective equipment.

(ii) Surface levels of beryllium are determined by using:

(A) Wet wipes; or

(B) Dry wipes if wet wipes would have an undesirable effect on the surface being sampled or surrounding surfaces, or if it is not technically feasible because the texture of the

surface is not compatible with wet wiping methods; or

(C) Vacuum surface sampling if wipes are not technically feasible because the texture of the surface is not compatible with wiping methods; or

(D) Bulk sampling where accumulations of material on a surface exceed amounts that are conducive to wipe or vacuum sampling.

(3) Surface sampling is not required for the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems, or normally inaccessible surfaces such as under fixed cabinets or on the tops of overhead structural beams, unless these surfaces will become accessible or disturbed by planned work activity.

(b) *Initial exposure monitoring.* (1) Employers, except as provided for in paragraphs (b)(2) and (3) of this section, must perform initial exposure monitoring when the inventory and hazard assessment show there is, or the potential for, airborne concentrations of beryllium at or above the action level.

(2) Monitoring results obtained within 12 months prior to [*effective date of the final rule*] may be used to satisfy this requirement if a Qualified Individual determines that conditions represented by the results have not changed in a manner that would necessitate changes in beryllium controls.

(3) Where the employer has relied upon objective data that demonstrate that beryllium is not capable of being released in airborne concentrations at or above the action level under the expected conditions of processing, use, or handling, then no initial monitoring is required.

(c) *Periodic exposure monitoring.* (1) The employer must conduct periodic exposure monitoring of workers in locations where the airborne concentration of beryllium is at or above the action level. The monitoring must be conducted:

(i) In a manner and at a frequency necessary to represent workers' exposures; and

(ii) For the first year of operation, at least quarterly (every three months).

(2) After the first year, and subject to paragraph (d) of this section, the employer may reduce or terminate monitoring if it demonstrates that the airborne concentration of beryllium is below the action level for 6 months, based on an analysis of monitoring results and of any activities, controls, or other conditions that would affect beryllium levels. If the employer cannot demonstrate that the airborne concentration of beryllium is below the action level, the employer must continue periodic monitoring on a quarterly basis.

(d) *Additional exposure monitoring.* The employer must conduct additional monitoring whenever there has been a production, process, control, or other change that may result in an exposure to beryllium that is at or above the action level. This monitoring must continue on a quarterly basis until the employer can demonstrate that the airborne concentration of beryllium is below the action level.

(e) *Analysis quality assurance.* (1) All samples collected to satisfy the monitoring requirements of this part must be analyzed in a laboratory that:

(i) Is accredited for beryllium analysis by the American Industrial Hygiene Association's Laboratory Accreditation Programs, LLC (AIHA–LAP, LLC), or

(ii) Is certified or accredited by a recognized laboratory quality assurance certifying or accrediting organization and demonstrates quality assurance for metal analysis, including beryllium, that is equivalent to AIHA–LAP, LLC accreditation for beryllium.

(2) The employer may use:

(i) Field or portable laboratories that are accredited by an AIHA–LAP, LLC or in an equivalent quality assurance program that addresses field or portable laboratory analyses of beryllium samples; and

(ii) Air exposure results below laboratory reporting limits.

(f) *Notification of monitoring results.* (1) The employer must notify workers in the same work area of the exposure monitoring results within 10 working days after receipt of the results. Notifications of exposure monitoring results must be:

(i) In written or electronic format and posted in locations or in electronic systems that are readily accessible to the workers, but in a manner that does not identify an individual worker; and

(ii) For individuals that were sampled, the results must be provided in written or electronic format directly to the individual.

(2) If the monitoring results indicate that exposures are at or above the action level, the employer's notification of exposure monitoring results must include:

(i) A statement that exposures are at or above the specified level;

(ii) A description of the controls being implemented to address those exposures.

(3) If the monitoring results indicate that worker exposure is at or above the action level, the responsible employer must also notify the appropriate Head of DOE Field Element and the SOMD of these results within 10 working days after receipt of the results.

**§ 850.25 Exposure reduction.**

The employer must establish a formal hazard prevention and abatement program in accordance with 10 CFR 851.22, *Hazard Prevention and Abatement,* to reduce exposures to below the action level.

**§ 850.26 Beryllium regulated areas.**

(a) Employers must establish a beryllium regulated area in facilities wherever the level of airborne beryllium is at or above the action level;

(b) Employers must:

(1) Demarcate beryllium regulated areas from the rest of the workplace in a manner that adequately alerts workers to the boundaries of such areas;

(2) Limit access to beryllium regulated areas to authorized persons; and

(3) Keep records of all individuals who enter beryllium regulated areas that include the name, date, time in and time out, and work activity.

**§ 850.27 Hygiene facilities and practices.**

(a) *General.* The employer must ensure that in beryllium regulated areas:

(1) Food or beverage and tobacco products are not consumed or used;

(2) Cosmetics are not applied, except in changing rooms or areas and shower facilities required under paragraphs (b) and (c) of this section; and

(3) Workers are prevented from exiting areas that contain beryllium with contamination on their bodies or their personal clothing.

(b) *Change rooms or areas.* The employer must:

(1) Provide separate rooms or areas for beryllium workers to change into, and store, personal clothing and clean protective clothing and equipment; and

(2) Ensure that changing rooms or areas being used to remove beryllium-contaminated clothing and protective equipment are kept under negative pressure or located so as to minimize dispersion of beryllium into clean areas.

(c) *Showers and hand washing facilities.* The employer must:

(1) Provide handwashing and shower facilities for beryllium workers who work in beryllium regulated areas; and

(2) Ensure that beryllium workers who work in beryllium regulated areas shower at the end of their work shifts.

(d) *Lunchroom facilities.* The employer must:

(1) Provide lunchroom facilities that are readily accessible to beryllium workers and in which the airborne concentration of beryllium is not at or above the action level.

(2) Ensure that beryllium workers do not enter lunchroom facilities with

protective clothing or equipment that has been used in a regulated area unless the surfaces have been cleaned by HEPA vacuuming or other method that removes beryllium without dispersing it.

(e) The change rooms or areas shower and handwashing facilities, and lunchroom facilities must comply with 29 CFR 1910.141, *Sanitation.*

**§ 850.28 Respiratory protection.**

(a) The employers must provide a respiratory protection in accordance with 10 CFR 851.23, *Safety and Health Standards,* and 10 CFR part 851, appendix A, section 6. *Industrial Hygiene.*

(b) [Reserved]

**§ 850.29 Protective clothing and equipment.**

(a) The employer must provide protective clothing and equipment to beryllium workers and ensure its appropriate use and maintenance by workers where dispersible forms of beryllium may contact workers' skin, enter openings in workers' skin, or contact workers' eyes including where:

(1) Exposure monitoring has established that the airborne concentration of beryllium is at or above the action level;

(2) Surface contamination levels measured or presumed prior to initiating work are at or above the level prescribed in § 850.30;

(3) Surface contamination levels results obtained to confirm housekeeping efforts are above the level prescribed in § 850.30; and

(4) Any worker requests the use of protective clothing and equipment for protection against airborne beryllium, regardless of the measured exposure level.

(b) Employers must comply with 29 CFR 1910.132, *Personal Protective Equipment General Requirements,* when workers use personal protective clothing and equipment.

(c) Employers must establish procedures for donning, doffing, handling, and storing protective clothing and equipment that:

(1) Prevent beryllium workers from exiting beryllium regulated areas with contamination on their bodies or clothing; and

(2) Include beryllium workers exchanging their personal clothing and footwear for protective clothing and footwear before entering beryllium regulated areas.

(d) Employers must ensure that no worker removes beryllium-contaminated protective clothing and equipment from beryllium regulated areas except for workers authorized to launder, clean, maintain, or dispose of the clothing and equipment.

(e) Employers must prohibit the removal of beryllium from protective clothing and equipment by blowing, shaking, or other cleaning methods that may disperse beryllium into the air.

(f) Employers must ensure that protective clothing and equipment is cleaned, laundered, repaired, or replaced as needed to maintain effectiveness. Employers must:

(1) Ensure that beryllium-contaminated protective clothing and equipment when removed for laundering, cleaning, maintenance, or disposal is placed in containers that prevent the dispersion of beryllium particulate and that the container is labeled in accordance with § 850.39(b)(1); and

(2) Inform organizations that launder or clean DOE beryllium-contaminated clothing or equipment that exposure to beryllium is harmful, and that clothing and equipment should be laundered or cleaned in a manner prescribed by the informing employer to prevent the dispersion of beryllium particulates.

**§ 850.30 Housekeeping.**

(a) Where beryllium is present in operational areas of DOE facilities at or above the action level, the employer must conduct routine surface sampling to determine housekeeping conditions. Surfaces contaminated with beryllium dusts and waste must not exceed a removable contamination level of 3 μg/100cm$^2$ during non-operational periods. This sampling would not include the interior of installed closed systems such as enclosures, glove boxes, chambers, or ventilation systems.

(b) When cleaning floors and surfaces of removable beryllium, the employer must use a wet method, HEPA vacuuming, or other cleaning methods that avoid the dispersion of dust, such as wiping with sticky cloths. Compressed air or dry methods that may disperse beryllium particulates must not be used for such cleaning.

(c) The employer must use vacuum units that are equipped with HEPA filters, as defined in this part, to clean beryllium-contaminated surfaces, and change the filters as often as needed to maintain the effectiveness of the vacuum unit.

(d) The employer must ensure that the cleaning equipment that is used to clean beryllium-contaminated surfaces is labeled in accordance with § 850.39(b), controlled, and not used for non-hazardous materials.

**§ 850.31 Release and transfer criteria.**

(a) *Release and transfer.* Except where the beryllium is in normally inaccessible locations or embedded in hard-to-remove substances, prior to the release or transfer of equipment, items, or areas to areas that are not beryllium regulated areas, the employer must ensure that for formerly beryllium-contaminated equipment, items or areas the removable contamination level does not exceed the following:

(1) Surface level of beryllium is at or below 0.2 μg/100 cm$^2$; or

(2) Concentration of beryllium in bulk material on the surface is lower than the concentration in soil at the point of release; or

(3) Airborne levels of beryllium in an enclosure of the smallest practical size surrounding the equipment or item, or in an isolating enclosure of the area do not exceed 0.01 μg/m$^3$.

(b) *Release or transfer with inaccessible beryllium.* For the release from a beryllium regulated area of equipment, items, or areas that contain sources of beryllium in normally inaccessible locations or embedded in hard-to-remove substances, the employer must comply with paragraphs (a)(1) through (3) of this section for accessible beryllium, and the employer must ensure that:

(1) The equipment, item, or area is labeled in accordance with § 850.39(b)(2); and

(2) The release is conditioned on the recipient's commitment to implement controls that will prevent foreseeable beryllium exposure, considering the nature of the equipment or item or area and its future use.

(c) *Release or transfer with levels that exceed 0.2 μg/100 cm$^2$.* For equipment, items, or areas that have removable beryllium above 0.2 μg/100 cm$^2$; or that have beryllium in material on the surface at levels above the natural level in soil at the point of release, the employer must:

(1) Provide the recipient with a copy of this part;

(2) Condition the release on the recipient's commitment to control foreseeable beryllium exposures from the equipment, item, or area considering its future use;

(3) Label the equipment, item, or area in accordance with § 850.39(a) or (b)(1), as applicable;

(4) Place any such equipment or items in sealed, impermeable bags or containers, or have sealants applied that prevent the release of beryllium during handling and transportation; and

(5) Ensure that the beryllium that remains removable on the surfaces of areas is below 3.0 μg/100 cm$^2$.

**§ 850.32 Waste disposal.**

(a) When disposing of beryllium waste, the employer must:

(1) Use sealed, impermeable bags, containers, or enclosures to prevent the release of beryllium dust during handling and transportation; and

(2) Label the bags, containers and enclosures for disposal according to § 850.39(b)(1).

(b) [Reserved]

**§ 850.33 Beryllium emergencies.**

(a) The employers must provide and ensure compliance with procedures for handling beryllium emergencies as they relate to decontamination and decommissioning operations and all other operations, that are in accordance with 10 CFR 851.23, *Safety and Health Standards.*

(b) [Reserved]

**§ 850.34 Medical surveillance.**

(a) *General.* Employers must establish and implement a medical surveillance program which is mandatory for beryllium workers and voluntary for the beryllium-associated workers. Employers must:

(1) Designate a SOMD who is responsible for administering the medical surveillance program;

(2) Ensure that the medical evaluations and procedures required by this section are performed by, or under the supervision of, a licensed physician who is qualified to diagnose beryllium-induced medical conditions;

(3) Establish and maintain a list of all beryllium and beryllium-associated workers; and

(4) Provide the SOMD with the information needed to operate and administer the medical surveillance program, including:

(i) The list of workers established pursuant to paragraph (a)(3) of this section;

(ii) Hazard assessment and exposures monitoring data;

(iii) The identity and nature of activities that are covered under the CBDPP;

(iv) A description of the workers' duties as they pertain to exposures to levels of beryllium at or above the action level;

(v) Records of the workers' beryllium exposures;

(vi) A description of the personal and respiratory protective equipment used by the workers; and

(vii) A copy of this part.

(5) Ensure that the SOMD and beryllium or beryllium-associated workers complete the consent form in appendix A of this part for beryllium workers or appendix B of this part for beryllium-associated workers, before performing any medical evaluations for beryllium or beryllium-associated workers.

(6) Notify beryllium-associated workers on an annual basis of their right to participate in the medical surveillance program. If the beryllium-associated worker declines at that time, he or she may elect to participate at any time during the year, but must notify the employer in writing of his or her intent to participate.

(b) *Medical evaluations and procedures.* Employers must provide the medical evaluations and procedures required by this section at no cost to the worker, without loss of pay, and at a time and place that is reasonable and convenient for the worker.

(1) *Baseline medical evaluations.* (i) Employers must provide baseline medical evaluations that are:

(A) Mandatory for beryllium workers; and

(B) Voluntary for beryllium-associated workers.

(ii) Baseline medical evaluations must include:

(A) A detailed medical and work history with emphasis on exposure or the potential for exposure to beryllium;

(B) A respiratory symptoms questionnaire;

(C) A physical examination, with special emphasis on the respiratory system, skin and eyes;

(D) A chest radiograph (posterior-anterior, 14 x 17 inches) or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist, unless there is an existing baseline chest radiograph that may be used to meet this requirement;

(E) Spirometry consisting of forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_1$);

(F) Two peripheral blood BeLPTs; and

(G) Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

(iii) [Reserved]

(2) *Periodic medical evaluations.* (i) Employers must provide:

(A) An annual medical evaluation to beryllium workers;

(B) A medical evaluation every three years to beryllium-associated workers who voluntarily participate in the program; and

(C) A medical evaluation to a beryllium worker or a beryllium-associated worker who voluntarily participates in the program, and when the worker exhibits signs and symptoms of beryllium sensitization or chronic beryllium diseases if the SOMD determines that an evaluation is warranted.

(ii) The periodic medical evaluation must include the following:

(A) A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement.

(B) Updates to the worker's medical and work history with emphasis on exposures to levels of beryllium;

(C) A respiratory symptoms questionnaire;

(D) A physical examination, with special emphasis on the respiratory system, skin and eyes;

(E) Two peripheral blood Be-LPTs; and

(F) Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

(3) *Emergency evaluation.* The employer must provide a medical evaluation as soon as possible to any worker who may have been exposed to beryllium because of a beryllium emergency, as defined in this part. The medical evaluation must include the tests and examinations listed in paragraph (b)(2)(ii) of this section.

(4) *Exit medical evaluation.* (i) If a baseline or periodic evaluation has not been performed within the previous six months, employers must:

(A) Provide an exit medical evaluation to beryllium workers at the time of the worker's separation from employment; and

(B) Offer an exit medical evaluation to beryllium-associated workers who voluntarily participate in the medical surveillance program at the time of the worker's separation from employment.

(ii) The exit medical evaluation must include:

(A) A chest radiograph (posterior-anterior, 14 x 17 inches), or a standard digital chest radiographic image, interpreted by a NIOSH B-reader of pneumoconiosis or a board-certified radiologist unless there is a chest radiograph obtained in the previous five years that may be used to meet this requirement.

(B) Updates of the workers' medical and work history with emphasis on exposures to levels of beryllium;

(C) A respiratory symptoms questionnaire;

(D) A physical examination, with special emphasis on the respiratory system, skin and eyes;

(E) Two peripheral blood Be-LPTs; and

(F) Any other tests deemed appropriate by the SOMD for evaluating beryllium-induced medical conditions.

(c) [Reserved]

(d) *Written medical opinions and determinations.* The SOMD must provide a written, signed medical opinion and determination after receiving the results from the medical evaluations performed pursuant to paragraph (b) of this section.

(1) *Written medical opinion and determination for beryllium and beryllium-associated workers.* (i) Within 15 working days after receiving the results from the evaluations performed pursuant to paragraph (b)(1) through (3) of this section, the SOMD must provide the beryllium or beryllium-associated worker with:

(A) A written medical opinion containing the purpose and results of all medical tests or procedures;

(B) An explanation of any abnormal findings;

(C) The basis for the SOMD's medical opinion;

(D) Any determination of whether:

(*1*) In the case of a beryllium worker, temporary or permanent removal of the beryllium worker from beryllium exposure is warranted pursuant to § 850.36; or

(*2*) A medical restriction pursuant to 10 CFR part 851, appendix A, section 8(h) is appropriate for the worker.

(E) An opportunity to ask, and have answered, questions regarding the information provided.

(ii) The written medical opinion must take into account the findings, determinations and recommendations of physicians who have examined the worker and provided written results of such examination to the SOMD, provided the examining physician is qualified to diagnose beryllium-induced conditions.

(iii) The SOMD must obtain the beryllium or beryllium-associated worker's dated signature on a copy of the written opinion and include it in the worker's medical record. If the worker declines to sign the statement, then the SOMD must make a record of that fact, the date on which the information was provided, and that the worker declined to sign the statement.

(iv) Within 15 working days after receiving the results from an exit evaluation performed pursuant to § 850.34(b)(4), the SOMD must provide the worker with:

(A) A written medical opinion containing the purpose and results of all medical tests or procedures;

(B) An explanation of any abnormal findings;

(C) The basis for the SOMD's medical opinion; and

(D) An opportunity to ask, and have answered, questions regarding the information provided.

(2) *Written medical opinion and determination for the employer.* (i) Within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(i) of this section to the beryllium or beryllium-associated worker, the SOMD must provide the employer with a written medical opinion that includes:

(A) The diagnosis of the worker with BeS or CBD, or any other medical condition for which exposure to beryllium at or above the action level would be contraindicated.

(B) A determination of whether:

(*1*) In the case of a beryllium worker, temporary or permanent removal of the worker from beryllium exposure is warranted pursuant to § 850.36 of this part; or

(*2*) A medical restriction pursuant to 10 CFR part 851, appendix A, section 8(h) is appropriate for the worker; and

(C) A statement that the SOMD has clearly explained to the worker the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that requires further evaluations or treatment.

(ii) The SOMD's written medical opinion to the employer must not reveal specific records, findings, and diagnoses that are not related to beryllium-induced conditions or other medical conditions indicating the worker should not perform certain job tasks.

(iii) Within 5 working days after delivering the written medical opinion pursuant to paragraph (d)(1)(iv) of this section, for an exit evaluation performed pursuant to § 850.34(b)(4) of this part, the SOMD must provide the employer with the diagnosis of the worker's condition or indicating the worker should not perform certain job tasks.

(3) [Reserved]

(e) *Multiple physician review process.* (1) The employer must establish a multiple physician review process for beryllium and beryllium-associated workers that allows for the review of initial medical findings, determinations, or recommendations from any medical evaluation conducted pursuant to paragraphs (b)(1) through (3) [*i.e.,* baseline, periodic or emergency evaluation] of this section.

(2) Within 15 working days after the employer receives the written medical determination pursuant to paragraph (d)(2) of this section, the employer must notify a beryllium or beryllium-associated worker in writing of the worker's right to elect the multiple physician review process or alternate physician review process pursuant to this section.

(3) The employer's participation in, and payment for, the multiple physician review process for a beryllium-associated worker is conditioned on the worker's participation in the medical surveillance program pursuant to paragraph (b) of this section.

(4) The beryllium or beryllium-associated worker must:

(i) Notify the employer in writing within 15 working days after receiving the employer's written notification pursuant to paragraph (e)(2) of this section, of the worker's intention to seek a second opinion on the results of any medical evaluation conducted pursuant to paragraphs (b)(1) through (3) of this section;

(ii) Identify in writing to the SOMD within 20 working days after delivering the notice pursuant to paragraph (e)(4)(i) of this section, a physician who is qualified to diagnose beryllium-induced medical conditions to:

(A) Review all findings, determinations, or recommendations of the initial physician;

(B) Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review; and

(C) Provide the employer and the worker with a written medical opinion within 30 working days after completing the review pursuant to paragraphs (e)(4)(ii)(A) and (B).

(5) If the findings, determinations, or recommendations of the two physicians differ significantly, then the employer and the beryllium or beryllium-associated worker must make efforts to encourage and assist the two physicians to resolve the disagreement.

(6) If the two physicians are unable to resolve their disagreement, then the employer and the beryllium or beryllium-associated worker, through their respective physicians, must designate a third physician to:

(i) Review any findings, determinations, or recommendations of the other two physicians;

(ii) Conduct such examinations, consultations, laboratory tests, and consultations with the other two physicians as the third physician deems necessary to resolve the disagreement among them; and

(iii) Provide the employer and the beryllium or beryllium-associated worker with a written medical opinion within 30 working days after completing the review pursuant to paragraphs (e)(6)(i) and (ii) of this section.

(7) The SOMD's written medical opinion must be consistent with the findings, determinations, and recommendations of the third physician, unless the SOMD and the

beryllium or beryllium-associated worker reach an agreement that is consistent with the determinations of at least one of the other two remaining physicians.

(8) The employer must complete the multiple physician review process even in cases where the beryllium or beryllium-associated worker is laid off or his contract ends before the review process is complete, provided the worker:

(i) Elected the multiple physician review while he or she was a current worker and in accordance with the conditions set forth in paragraph (e)(4) of this section; and

(ii) Continues to participate in good faith in the multiple physician review process. If the worker's job is scheduled to end prior to the completion of the multiple physician review process, the employer may elect to place the worker on unpaid leave status until the review process is completed.

(9) The employer is not required to provide the multiple physician review process if the worker had not elected the process in accordance with the conditions set forth in paragraph (e)(4) of this section, before he or she was laid off or contract ended. In this case, the worker may still be eligible for medical screening through DOE's Former Worker Medical Screening Program;

(f) *Alternate physician review.* The employer and the beryllium or beryllium-associated worker, or the worker's designated representative, may agree on the use of an alternate form of physician opinion and recommendation in lieu of the multiple physician review process pursuant to paragraph (e) of this section, as long as the alternative is expeditious and adequately protects the worker.

(g) *Reporting.* (1) When reporting cases of CBD, employers must comply with the reporting requirements in 10 CFR 851.23(a)(2).

(2) When a worker is medically removed in accordance with § 850.36, employers must record the case on the applicable OSHA form.

(3) Employers must enter each medical removal case on the applicable OSHA form as either a case involving days away from work if the worker does not work during the removal period, or a case involving restricted work activity, if the employee continues to work, but in an area where there is no exposure to beryllium.

**§ 850.35 Medical restriction.**

(a) Medical restrictions must be conducted in accordance with 10 CFR part 851, appendix A, section 8(h).

(b) Within 15 working days after receiving the SOMD's written opinion pursuant to § 850.34(d)(2), that it is medically appropriate to restrict a worker, an employer must restrict a worker from a job that involves a beryllium activity.

(c) Employers must provide the medical removal benefits specified in § 850.36 of this part only to beryllium workers who are diagnosed with BeS or CBD.

(d) If the SOMD determines that a beryllium worker should not work with beryllium at or above the action level due to a diagnosis of BeS or CBD, the SOMD must recommend medical removal under § 850.36, not medical restriction.

**§ 850.36 Medical removal and benefits.**

(a) *Medical removal.* (1) The employer must medically remove a beryllium worker from exposure to beryllium at or above the action level, subject to the terms set forth in this section.

(2) Recommendations for medical removal of a beryllium worker from exposure to beryllium at or above the action level may be temporary or permanent, and shall be made by the SOMD in accordance with this section.

(3) The SOMD must recommend temporary removal of a beryllium worker from exposure to beryllium at or above the action level:

(i) Pending the outcome of the medical evaluations conducted pursuant to § 850.34(b), if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the worker's health; or

(ii) Pending the outcome of the multiple physician review process pursuant to § 850.34(e), or alternative physician review process pursuant to § 850.34(f), if the beryllium worker is showing signs or symptoms of BeS or CBD and the SOMD believes that further exposure to beryllium at or above the action level may be harmful to the worker's health.

(4) The SOMD must recommend permanent removal of a beryllium worker from exposure to beryllium at or above the action level if the SOMD makes a final medical determination that the worker should be permanently removed. The SOMD's determination to permanently remove a worker must be based on a diagnosis of BeS or CBD as defined in § 850.3 of this part.

(5) Within 15 working days after a final medical determination has been made, the SOMD must provide the employer with a notice recommending that the employer either:

(i) Return the temporarily removed beryllium worker to his previous job status, identifying any steps to be taken to protect the worker's health including any necessary work restriction pursuant to 10 CFR part 851, appendix A, section 8(h); or

(ii) Permanently remove the beryllium worker.

(6) The SOMD is not required to recommend temporary removal before recommending permanent removal. The SOMD may recommend permanent removal based on a medical evaluation which results in a determination that the worker has BeS or CBD.

(b) *Counseling before temporary or permanent medical removal and notification to the employer*—(1) *Counseling.* If the SOMD recommends that a beryllium worker should be temporarily or permanently removed, the SOMD must do the following when communicating the written medical opinion and determination to the worker pursuant to § 850.34(d)(1).

(i) Advise the beryllium worker diagnosed with or suspected of having BeS or CBD of the determination that medical removal is necessary to protect the worker's health, and specify that the SOMD is recommending either temporary or permanent removal from work that involves exposure to beryllium at or above the action level;

(ii) Provide the beryllium worker with a copy of this part, and any other information on the risks of continued exposure to beryllium at or above the action level, and the benefits of removal.

(2) *Notification to the Employer.* The SOMD, in communicating the written medical opinion and determination to the employer, must comply with § 850.34(d)(2). In the case of a final medical determination regarding permanent removal, the SOMD must provide the employer with a written notice recommending that the employer either:

(i) If the worker has been on temporary removal, return the temporarily removed beryllium worker to his previous job status if the SOMD determines that removal is no longer warranted; or

(ii) Permanently remove the beryllium worker; or

(iii) Medically restrict the worker pursuant to § 850.35.

(c) *Employer responsibility to remove worker.* (1) Within 15 working days after receiving the SOMD's written opinion pursuant to paragraph (b)(2) of this section stating that it is medically appropriate to remove the worker from jobs in areas that are at or above the action level or may potentially be at or above an action level, the employer

must remove a beryllium worker from such a job, regardless of whether, at the time of removal, a job is available into which the removed worker may be transferred.

(2) Prior to, or at the time of the removal, the employer must provide the beryllium worker with a formal written notice of removal that includes the start date of the removal period;

(3) When a beryllium worker is medically removed, the employer must transfer the removed worker to a comparable job, if such a job is available, and provide medical removal benefits in accordance with paragraphs (d)(1) of this section, for temporary removal or (d)(2) of this section, for permanent removal.

(4) The employer may not return a beryllium worker who has been medically removed to his or her former job status unless the SOMD determines in a written medical opinion that continued medical removal is no longer necessary to protect the worker's health.

(d) *Medical removal benefits*—(1) *Temporary removal benefits.* (i) When a beryllium worker has been temporarily removed from a job pursuant to paragraph (c) of this section, the employer must, consistent with any applicable collective bargaining agreement:

(A) Transfer the worker to a comparable job:

(*1*) Where beryllium exposures are below the action level; and

(*2*) For which the worker is qualified or can be trained for in 6 months or less.

(B) Maintain the worker's total normal earnings, seniority, and other rights and benefits as if the worker had not been removed, on each occasion that the worker is temporarily removed.

(ii) If there is no such job available for the beryllium worker meeting the requirements of (d)(1)(i)(A) of this section, the employer must continue to provide the worker's total normal earnings, and other benefits as if the worker had not been removed until:

(A) A comparable job becomes available, and the worker is placed in that job;

(B) The SOMD determines that the worker is not beryllium sensitized and does not have CBD and medical removal is ended;

(C) The worker is permanently medically removed from the job; or

(D) The term of the removal period has expired, as provided in (d)(1)(iii) of this section.

(iii) Each term of temporary removal must not exceed one year, and no term of temporary removal can immediately succeed a prior term of temporary removal in order to extend the term beyond one year.

(iv) Periods of temporary medical removal must not be included in the permanent medical removal benefits period.

(2) *Permanent medical removal benefits.* (i) If a beryllium worker has been permanently removed from a job because of a beryllium-induced medical condition pursuant to paragraph (a)(4) of this section, the employer must consistent with any applicable collective bargaining agreement:

(A) Transfer the beryllium worker to a comparable job:

(*1*) Where beryllium exposures are below the action level, and

(*2*) For which the worker is qualified or can be trained within one year.

(B) If the beryllium worker cannot be transferred to a comparable job meeting the requirements of (d)(2)(ii)(A), maintain the beryllium worker's total normal earnings as if the worker had not been permanently removed for a period of up to two years.

(3) *Additional Conditions of Temporary or Permanent Removal Benefits.* (i) For the purposes of this section, the requirement that an employer provide medical removal benefits is not intended to expand upon, restrict, or change any rights to a specific job classification or position under the terms of an applicable collective bargaining agreement.

(ii) During a temporary or permanent removal period, the employer must continue to provide total normal earnings and benefits as if the worker were not removed for the removal period designated by the SOMD.

(iii) Subject to paragraph (d)(3)(v) of this section, the employer must continue to provide the worker medical removal benefits throughout the term of the removal period, regardless of changes in the worker's job (*e.g.,* worker is laid off, or the worker's contract ends before the removal period ends) or because the worker cannot be transferred into a comparable job because the worker is too sick to work, provided that:

(A) If the worker is on temporary removal, the employer is not required to continue the worker benefits beyond the one-year period, as set forth in paragraph (d)(1) of this section.

(B) If the worker is on permanent removal, the employer is not required to continue the worker benefits beyond the two-year period, as set forth in paragraph (d)(2) of this section.

(iv) If a removed worker files a claim for workers' compensation payments for a beryllium-related disability, the employer must continue to provide benefits pending disposition of the claim, but no longer than a period of two years. The employer must receive no credit for the workers' compensation payments received by the worker for treatment-related expenses.

(v) The employer's obligation to provide medical removal benefits to a removed worker is reduced to the extent that the worker receives compensation for earnings lost during the period of removal from a publicly- or employer-funded compensation program, or from employment with another employer made possible by virtue of the worker's removal.

(vi) The worker may also apply for compensation through the Energy Employee Occupational Illness Compensation Program, for any additional benefits beyond those provided in this section.

**§ 850.37 Medical consent.**

(a) In order to provide each beryllium and beryllium-associated worker with the information necessary to make an informed decision about consenting to a medical evaluation established in § 850.34, the employer must ensure that the SOMD has the worker sign and date the informed consent form in appendix A (for beryllium workers) or appendix B (for beryllium-associated workers) to this part.

(b) Employers must ensure all beryllium workers understand that testing is mandatory to transfer into or remain in a job involving beryllium activities at or above the action level. A beryllium worker who decides not to consent to the testing, will be removed from the beryllium activity and will not receive any of the medical removal benefits.

**§ 850.38 Training and counseling.**

(a) *Training.* (1) The employer must develop and implement a beryllium training program and ensure the participation of beryllium workers, beryllium-associated workers, and all other individuals who work at a site where beryllium activities are conducted.

(2) Beryllium workers' training must include:

(i) The contents of the CBDPP;

(ii) Potential health risks to beryllium workers' family members and others who may come in contact with beryllium on beryllium workers, beryllium workers' clothing, or other personal items as the result of a failure of beryllium control;

(iii) The benefits of medical evaluations for diagnosing BeS and CBD; and

(iv) The contents of this part.

(3) The training provided for beryllium-associated workers and other workers identified in paragraph (a)(1) of this section must consist of general awareness about beryllium hazards and controls and the benefits of medical evaluations for diagnosing BeS and CBD.

(4) The training required by this section must be provided before or at the time of initial assignment and at least every two years thereafter.

(5) Retraining must be provided when the employer has reason to believe that a beryllium worker lacks the proficiency, knowledge, or understanding needed to work safely with beryllium, including, at a minimum, the following situations:

(i) To address any new beryllium hazards resulting from a change to the beryllium inventory, activities, or controls about which the worker was not previously trained; or

(ii) When a worker's performance involving beryllium activities indicates the worker has not retained the requisite proficiency.

(b) *Counseling.* (1) The employer must develop and implement a counseling program to assist beryllium and beryllium-associated workers who are diagnosed by the SOMD as being sensitized to beryllium or having CBD.

(2) For beryllium workers, the counseling program must include communicating with the worker concerning:

(i) The medical surveillance program provisions and procedures;

(ii) Medical treatment options;

(iii) Medical, psychological, and career counseling;

(iv) Medical removal benefits;

(v) Administrative procedures and workers' rights under EEOICPA and other applicable compensation laws and regulations; and

(vi) The risk of continued exposure to levels of beryllium that are not at or above the action level and practices to limit exposures.

(3) For beryllium-associated workers, the counseling program must include communicating with the worker concerning:

(i) The medical surveillance program provisions and procedures;

(ii) Medical treatment options;

(iii) Medical, psychological, and career counseling; and

(iv) Application procedures under the EEOICPA and other applicable compensation laws and regulations.

**§ 850.39 Warning signs and labels.**

(a) *Warning signs.* The employer must post warning signs at each access point to a regulated area with the following information:

BERYLLIUM REGULATED AREA
DANGER
CANCER AND LUNG DISEASE HAZARD
AUTHORIZED PERSONNEL ONLY

(b) *Warning labels.* The employer must affix warning labels to all bags, containers, equipment, or items that have beryllium material on the surface at levels that exceed 0.2 μg/100 $cm^2$ or that will be released and have beryllium material on the surface at levels above the level in soil at the point of release.

(1) Warning labels must contain the following information:

DANGER
CONTAMINATED WITH BERYLLIUM
DO NOT REMOVE DUST BY BLOWING OR SHAKING
CANCER AND LUNG DISEASE HAZARD

(2) The employer must affix warning labels to equipment or items that contain sources of beryllium in normally inaccessible locations or embedded in hard-to-remove substances. These warning labels must contain the following information:

CAUTION
CONTAINS BERYLLIUM IN INACCESSIBLE LOCATIONS OR EMBEDDED IN HARD-TO-REMOVE SUBSTANCES
DO NOT RELEASE AIRBORNE BERYLLIUM DUST
CANCER AND LUNG DISEASE HAZARD

**§ 850.40 Recordkeeping and use of information.**

(a) *Contractor employers must:*

(1) Establish and maintain records in accordance with 10 CFR part 851, *Worker Safety and Health Program,* for the records generated by their CBDPP and include records of beryllium medical surveillance and training;

(2) Maintain employees' medical records in accordance with DOE Systems of Records DOE–33, *Personnel Medical Record;*

(3) Maintain all records required by this part in current and accessible electronic systems; and

(4) Convey all record series required under this part to the appropriate Head of DOE Field Element or designee, if this part ceases to be applicable to the contractor.

(b) *Federal employers must:*

(1) Establish and maintain complete and accurate records of information generated by the CBDPP submitted by DOE offices, including beryllium inventory information, hazard assessments, and Federal employee exposure measurements, exposure controls, medical evaluations and training for operations or activities implemented by the DOE office;

(2) Maintain Federal employees' medical records in accordance with OPM/GOVT–10, *Employee Medical File System Records for Federal Employees;* and

(3) Maintain all records required by this part in current and accessible electronic systems.

(c) Heads of DOE Field Elements and Cognizant Secretarial Officers must designate all record series as required under this part as agency records and ensure retention for a minimum of 75 years.

(d) *Contractor and Federal employers must:*

(1) Ensure the confidentiality of all personally identifiable information in work-related records generated under this part by ensuring that:

(i) All records that are transmitted to other parties are transmitted in compliance with the Privacy Act, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and their implementing regulations; and

(ii) Individual medical information generated by the CBDPP is:

(A) Either included as part of the worker's DOE site medical records and maintained by the SOMD or is maintained by another physician designated by the employer;

(B) Maintained as confidential medical records separate from other records; and

(C) Used or disclosed by the employer only in conformance with any applicable requirements imposed by the Americans with Disabilities Act of 1990 and any other applicable law and regulation.

(2) Maintain all records generated as required by this rule, in current and accessible electronic systems, which include the ability to readily retrieve data in a format that maintains confidentiality.

(3) Transmit all records generated as required by this rule to the Office of Environment, Health, Safety and Security upon request.

(4) Semi-annually transmit to the Office of Environment, Health, Safety and Security an electronic registry of beryllium and beryllium-associated workers that protects the confidentiality, and the registry must include, a unique identifier for each individual, date of birth, gender, site job history, medical screening test results, exposure measurements, surface contamination levels, and results of referrals for specialized medical evaluations. This information should comply with the format for the Beryllium Registry.

**§ 850.41 Performance feedback.**

(a) The employer must conduct semi-annual analyses and assessments of:

(1) Monitoring results;

(2) Hazard assessments;
(3) Medical surveillance; and
(4) Exposure reduction efforts.
(b) The assessments must identify any:
(1) Individuals at risk for beryllium-induced medical conditions and working conditions that may be contributing to that risk; and
(2) Need for additional exposure controls.
(c) The employer must notify, and make the assessments available to the appropriate Head of DOE Field Element, line managers, work planners, worker protection staff, medical staff, workers, and labor organizations representing workers performing beryllium activities.

## Appendix A to Part 850—Beryllium Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

### Part A: Consent

Consistent with and subject to the provisions of 10 CFR part 850, *Chronic Beryllium Disease Prevention Program,* I ____, understand the information the Site Occupational Medical Director (SOMD) explained and discussed with me about the Beryllium-Induced Lymphocyte Proliferation Test (BeLPT), on cells obtained from peripheral blood, and the other medical tests, as specified below. I have had the opportunity to ask and have answered any questions that I may have had concerning these tests and my questions have been adequately answered.

I understand that the beryllium worker medical surveillance program is for jobs in which exposure to levels of beryllium may be at or above the action level. I understand that it is mandatory for me to participate in this medical surveillance program.

I understand the tests are confidential, but not anonymous. If the results of any test suggest a health problem, I understand the examining physician will discuss the matter with me, whether or not the result is related to my work with beryllium. I understand my employer will be notified of my diagnosis *only* if I have beryllium sensitization (BeS), chronic beryllium disease (CBD), or another condition indicating that I should not perform certain job tasks. My employer will not receive the results or diagnoses of any health condition not related to beryllium exposure and my ability to perform my job tasks safely.

For test or examination results pertaining to BeS or CBD, I understand I will have the right to seek a second medical opinion from a physician who is qualified to diagnose beryllium-induced medical conditions. My employer will condition its participation and payment for a second opinion on my informing my employer of my intent to seek a second opinion within 15 working days after receiving the employer's written notification of my right to elect the multiple physician review process or the alternate physician review process.

I understand if the results of one or more of these tests suggest I have a health problem that is related to beryllium or for which exposure to beryllium is contraindicated, additional examinations may be recommended. If I am diagnosed with a condition (other than BeS or CBD) for which exposure to beryllium would be contraindicated, the SOMD may recommend that I be medically restricted from working jobs where exposure to beryllium is at or above the action level. If the tests reveal I have CBD or I am sensitized to beryllium, the SOMD will recommend that I be removed from working in beryllium jobs where exposure to beryllium may be at or above the action level and my employer will remove me from such jobs.

I understand that if I am temporarily removed from a job where exposure to beryllium may be at or above the action level, I may be transferred to another job for which I am qualified (or for which I can be trained within six months), pending the outcome of the medical evaluations, where my beryllium exposures will in no case be at or above the action level, and I will continue to receive my total normal earnings, for up to one year from the date on each occasion that I am temporarily removed, regardless of whether I am transferred to another job.

I understand that if I am permanently removed from a job where exposure to beryllium may be at or above the action level due to a diagnosis of BeS or CBD, I may be transferred to another job for which I am qualified (or for which I can be trained within one year) where my beryllium exposures will in no case be at or above the action level, and I will continue to receive my total normal earnings, for up to two years, regardless of whether I am transferred to another job.

I understand that if I apply for another job or for insurance, there is a possibility that I may be required to release my medical records to a future employer or an insurance company.

I understand my employer will maintain all medical information separate from my personnel files, treat them as confidential medical records, and use or disclose them only as provided by the Americans with Disabilities Act of 1990, the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, or as required by a court order or under other law.

I understand the results of my medical tests for health problems related to exposure to beryllium will be included in the Beryllium Registry maintained by DOE and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the Beryllium Registry. I understand that the results of my test and examinations may be published in reports or presented at meetings, but I will not be identified.

_____
Signature of Employee

_____
Date

### Part B: Medical Evaluation Consent

I, ____, consent to the following medical evaluations:

/ /Physical examination concentrating on my respiratory system, skin and eyes
/ /Chest X-ray or a standard digital chest radiographic image
/ /Spirometry (a breathing test)
/ /Two BeLPTs on peripheral blood
/ /Other test(s). Specify: _____

_____
Signature of Employee

_____
Date

I have explained and discussed any questions the employee asked concerning the medical surveillance program, BeLPT (on peripheral blood), physical examination, and other medical tests as well as the implications of those tests.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

### Part C: Examining Physician Review of the Medical Evaluation Results

I have explained and discussed with, ____, the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that should receive further evaluations or treatment.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

**DOE Form No. 440.1X (*Revised X, 20XX*)**

## Appendix B to Part 850—Beryllium-Associated Worker Chronic Beryllium Disease Prevention Program Consent Form (Mandatory)

### Part A: Consent

Consistent with and subject to the provisions of 10 CFR part 850, *Chronic Beryllium Disease Prevention Program,* I ____, understand the information the Site Occupational Medical Director (SOMD) explained and discussed with me about the Beryllium-Induced Lymphocyte Proliferation Test (BeLPT), on cells obtained from peripheral blood and the other medical tests, as specified below. I have had the opportunity to ask and have answered any questions that I may have had concerning these tests and my questions have been adequately answered.

I understand this medical surveillance program is voluntary, and I can withdraw at any time + from all or any part of the program. I understand the tests are confidential, but not anonymous. If the results of any test suggest a health problem, I understand the examining physician will discuss the matter with me, whether or not the result is related to beryllium. I understand my employer will be notified of my diagnosis *only* if I have beryllium sensitization (BeS), chronic beryllium disease (CBD), or another condition indicating that I should not perform certain job tasks. My employer will not receive the results or diagnoses of any health condition not related to my ability to perform my job tasks safely.

I understand I will have the right to seek a second medical opinion from a physician who is qualified to diagnose beryllium-induced medical conditions. My employer

will condition its participation and payment for a second opinion on my informing my employer of my intent to seek a second opinion within 15 working days after receiving the employer's written notification of my right to elect the multiple physician review process or the alternate physician review process, and provided I continue to participate in the medical surveillance program.

I understand that, if the results of one or more of these tests suggest I have a health problem related to beryllium, additional examinations may be recommended. If I am diagnosed with a condition for which exposure to beryllium would be contraindicated, the SOMD may recommend that I be medically restricted from working in jobs where exposure to airborne beryllium is at or above the action level.

I understand that if I apply for another job or for insurance, there is a possibility that I may be required to release my medical records to a future employer or an insurance company.

I understand my employer will maintain all medical information separate from my personnel files, treat them as confidential medical records, and use or disclose them only as provided by the Americans with Disabilities Act of 1990, the Privacy Act of 1974, the Health Insurance Portability and Accountability Act of 1996, or as required by a court order or under other law.

I understand the results of my medical tests for health problems related to exposure to beryllium will be included in the Beryllium Registry maintained by DOE and that a unique identifier will be used to maintain the confidentiality of my medical information. Personal identifiers will not be included in any reports generated from the Beryllium Registry. I understand that the results of my test and examinations may be published in reports or presented at meetings, but I will not be identified.

I, ____, consent to participating in the medical surveillance program.

**Part B: Medical Evaluation Consent**

I, ____, consent to the following medical evaluations:

/ /Physical examination concentrating on my respiratory system, skin and eyes
/ /Chest X-ray or a standard digital chest radiographic image
/ /Spirometry (a breathing test)
/ /Two BeLPTs on peripheral blood
/ /Other test(s). Specify: _____

Signature of Employee _____

Date _____

I have explained and discussed any questions the employee asked concerning the medical surveillance program, BeLPT (on peripheral blood), physical examination, and other medical tests as well as the implications of those tests.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

**Part C: Examining Physician Review of the Medical Evaluation Results**

I have explained and discussed with, ____, the results of the medical evaluations, including all test results and any medical condition related to beryllium exposure that should receive further evaluations or treatment.

Examining Physician:
Printed Name: _____
Signature of Examining Physician: _____
Date: _____

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Zuni Bluehead Sucker; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2013–0002; 4500030114]**

**RIN 1018–AZ23**

# Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Zuni Bluehead Sucker

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Zuni bluehead sucker (*Catostomus discobolus yarrowi*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 55.7 kilometers (km) (34.6 miles (mi)) in McKinley and Cibola Counties, New Mexico, fall within the boundaries of the critical habitat designation.

**DATES:** This rule is effective on July 7, 2016.

**ADDRESSES:** This final rule is available on the Internet at *http://www.regulations.gov* and at the New Mexico Ecological Services Field Office (address below). Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, on the Service's Web site at *http://www.fws.gov/southwest/es/newmexico,* and at the New Mexico Ecological Services Field Office. Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble of this rule and at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, NM 87113; telephone 505–346–2525; facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

*Why we need to publish a rule.* This final rule designates critical habitat for the Zuni bluehead sucker. Under the Endangered Species Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We listed the Zuni bluehead sucker as an endangered species on July 24, 2014 (79 FR 43132). On January 25, 2013, we published in the **Federal Register** a proposed critical habitat designation for the Zuni bluehead sucker (78 FR 5351). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Zuni bluehead sucker. We are designating approximately 55.7 km (34.6 mi) of the Zuni River Watershed in one unit in in McKinley and Cibola Counties, New Mexico.

*We have prepared an economic analysis of the designation of critical habitat.* In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (80 FR 19941; April 14, 2015). The analysis, dated October 22, 2014, was made available for public review from April 14, 2015, through May 14, 2015 (80 FR 19941). The DEA addressed probable economic impacts of critical habitat designation for the Zuni bluehead sucker. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. We have incorporated the comments into this final determination.

*Peer review and public comment.* We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from three knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information we received from the public during the comment period.

## Previous Federal Actions

On January 25, 2013, we published a proposed rule to list the Zuni bluehead sucker as an endangered species and a proposed rule to designate critical habitat for the Zuni bluehead sucker (78 FR 5369 and 78 FR 5351, respectively). We proposed to designate as critical habitat approximately 475.3 km (291.3 mi) in three units in McKinley, Cibola, and San Juan Counties, New Mexico, and Apache County, Arizona.

After the publication of the proposed rules, we found there was substantial scientific disagreement regarding the taxonomic status of some populations that we considered Zuni bluehead sucker in the proposed listing rule. On January 9, 2014, we published in the **Federal Register** a document that reopened the comment period for the proposed listing rule and extended the final determination of listing status for the Zuni bluehead sucker by 6 months due to substantial disagreement regarding the Zuni bluehead sucker's taxonomic status in some locations (79 FR 1615).

On July 24, 2014, we published in the **Federal Register** a final rule to list the Zuni bluehead sucker as an endangered species (79 FR 43132). In this final listing determination, we revised the Zuni bluehead sucker's range to exclude populations from the previously identified proposed San Juan River critical habitat unit. This change was based on an error in the genetic data evaluated for the proposed listing rule (Schwemm and Dowling 2008, entire); the correct information led to the determination that the bluehead suckers in the Lower San Juan River Watershed (proposed critical habitat Unit 3; San

Juan River Unit) were bluehead suckers (*Catostomus discobolus*), not Zuni bluehead suckers (*Catostomus discobolus yarrowi*). Thus, the San Juan River Unit populations were no longer included in the range estimate provided in the final listing rule.

On April 14, 2015, we published in the **Federal Register** our revised proposed critical habitat designation of 228.4 km (141.9 mi) and reopened the public comment period until May 14, 2015 (80 FR 19941). We also announced the availability of the draft economic analysis and a draft environmental assessment prepared pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) for the proposed critical habitat designation. The draft economic analysis (IEc 2014, entire) was prepared to identify and evaluate the economic impacts of the proposed critical habitat designation.

**Summary of Comments and Recommendations**

We requested written comments from the public on the proposed designation of critical habitat for the Zuni bluehead sucker during two comment periods. The first comment period, associated with the publication of the proposed rule (78 FR 5351), opened on January 25, 2013, and closed on March 26, 2013. We also requested comments on the revised proposed critical habitat designation and associated draft economic analysis during a comment period that opened April 14, 2015, and closed on May 14, 2015 (80 FR 19941). We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, Tribal, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule, draft economic analysis, and draft environmental assessment during these comment periods.

During the first comment period, we received six comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received 13 comment letters addressing the proposed critical habitat designation or the draft economic analysis. All substantive information provided during comment periods is either incorporated directly into this final determination or is addressed below. Comments received are grouped into general issues specifically relating to the proposed critical habitat designation for the Zuni bluehead sucker and are addressed in the following summary and incorporated into the final rule as appropriate.

*Peer Review*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from six knowledgeable individuals with scientific expertise that included familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from four of the peer reviewers.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the Zuni bluehead sucker. The peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

*Peer Reviewer Comments*

(1) *Comment:* Two peer reviewers suggested postponing critical habitat designations in the Kinlichee and San Juan River Units (proposed critical habitat units 2 and 3) until the taxonomic status of the catostomids (suckers) in these areas is resolved.

*Our Response:* In the proposed listing rule, we identified populations in the San Juan Unit (proposed critical habitat Unit 3) as Zuni bluehead sucker because previous genetic analysis (Schwemm and Dowling 2008, entire) provided evidence supporting this conclusion. However, as mentioned in the ''Taxonomy and Genetics'' section of our final listing rule published July 24, 2014 (79 FR 43132), this conclusion was based on inaccurate information. The San Juan River Unit was removed from critical habitat designation due to results from genetics studies, and we made the appropriate changes in this final rule to reflect the updated classifications of populations as bluehead sucker. Kinlichee Creek was retained as a population of Zuni bluehead sucker, based on the morphological evidence and the presence of unique Zuni bluehead sucker genetics in some sites within the watershed; however, we are excluding this unit from final critical habitat designation (see *Exclusions Based on Other Relevant Impacts,* below).

(2) *Comment:* One peer reviewer stated that although Zuni bluehead sucker is closely related to bluehead sucker, caution needs to be taken when assuming bluehead sucker have the same needs or attributes as Zuni bluehead sucker.

*Our Response:* We agree. We have added language throughout this final rule to distinguish which species or subspecies we are referencing. We used information specific to Zuni bluehead sucker whenever possible. However, because there are many information gaps (such as habitat needs for specific life stages of Zuni bluehead sucker), we relied on information available for a closely related and more thoroughly studied species, the bluehead sucker.

(3) *Comment:* One peer reviewer noted that vague terms such as ''appropriate stream velocity,'' ''very,'' and ''recent'' should be avoided.

*Our Response:* We used the most specific characteristics possible when describing the physical and biological features of critical habitat for the Zuni bluehead sucker. Unfortunately, information is not always available to describe these characteristics quantitatively. In these cases, we used qualitative terms to describe the characteristics of critical habitat. We clarified our language where it was appropriate and accurate to do so.

(4) *Comment:* Two peer reviewers noted that 74.2 km (46.1 mi) of proposed critical habitat in the Zuni River Headwaters (Subunit 1a) was stated to be occupied at the time of listing, but the proposed listing stated the subspecies occurs in only 4.8 km (3 mi) of habitat in these headwaters.

*Our Response:* We have revised this discussion and clarified the description of Subunit 1a. The most recent surveys only included the 4.8-km (3-mi) reach referred to in the proposed listing rule. We used the recent survey information in combination with both historical survey records and Geographical Information System (GIS) information indicating 74.2 km (46.1 mi) of the Zuni River Headwaters (Subunit 1a) contained the physical and biological features essential for the subspecies' conservation. We conclude the full reach was occupied based on the presence of suitable habitat and repeated positive survey data since the 1990s; this area has been regularly sampled since 2003 (Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 24).

(5) *Comment:* One peer reviewer was opposed to the exclusion of designated critical habitat of any area that is shown by available scientific information to be important to the conservation and recovery of the subspecies.

*Our Response:* Section 4(b)(2) of the Act (16 U.S.C. 1531 *et seq.*) states that the Secretary shall designate and make

revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

Lands excluded under section 4(b)(2) of the Act may still be considered essential to the conservation of the Zuni bluehead sucker. Such areas were identified as critical habitat because they either provide the essential physical or biological features, if occupied, or were otherwise determined to be essential, if unoccupied. Exclusion should never be interpreted as meaning that such areas are unimportant to the conservation of the subspecies. Exclusion is based upon a determination by the Secretary that the benefit of excluding an area outweighs the benefit of including an area in critical habitat.

In this case, the Secretary has chosen to exercise her discretion to exclude non-Federal lands from the final designation of critical habitat if an existing conservation agreement or partnership is in place that provides benefits that are greater than the benefits that would be provided by the designation of critical habitat. Such exclusions have only been made following a careful weighing of both the benefits of inclusion and the benefits of exclusion. We wish to emphasize that the exclusion of lands from the critical habitat designation should not be construed as a message that these lands are not important or essential for the conservation of the Zuni bluehead sucker, nor should exclusion be interpreted as some indication that these lands are now somehow subject to habitat degradation or destruction because they are not included in critical habitat. Lands excluded on the basis of conservation agreements and the recognition of conservation partnerships are fully expected to continue to make an important contribution to the conservation and recovery of the Zuni bluehead sucker absent the designation of critical habitat. Such lands are excluded only if we have evidence that such expectations for future contributions of the habitat on these lands are well-founded, as evidenced by a conservation easement, habitat conservation plan, safe harbor agreement, or other instrument, or by a proven track record of conservation by the partner in question. The details of our considered analyses of each area under consideration for exclusion are provided in the Consideration of Impacts under Section 4(b)(2) of the Act, below.

*Comments From States*

We received three comments from the Arizona Game and Fish Department (AGFD) and New Mexico Department of Game and Fish (NMDGF) supporting the critical habitat designation. In addition, NMDGF provided their most recent Zuni bluehead sucker annual report that was used to update habitat conditions for the Zuni bluehead sucker in the Zuni River Watershed.

(6) *Comment:* Any critical habitat designation for occupied or unoccupied habitats on private lands should be carefully weighed against the private property interests in the watershed.

*Our Response:* For lands meeting the definition of critical habitat, we have considered each of the potential bases for exclusion from critical habitat designation. In order to do so, we conducted an economic analysis, an environmental assessment to comply with NEPA, and a takings implications assessment. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Zuni bluehead sucker. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation.

The designation of critical habitat does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. In the event of a finding of destruction or adverse modification of critical habitat, the obligation of the Federal action agency is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply. Critical habitat designations do not affect activities by private landowners if there is no Federal nexus—that is, no Federal funding or authorization.

(7) *Comment:* Any exclusion of tribal lands should be supported by sound management plans and sufficient monitoring efforts to track the status of Zuni bluehead sucker in those areas.

*Our Response:* Each of the exclusions is assessed in greater detail and meets the statutory basis that the benefits of exclusion outweigh the benefits of inclusion and will not result in extinction. Navajo Nation has submitted a final fisheries management plan and the Zuni Tribe has submitted a draft fisheries management plan; the plans are described in detail below (see ''Tribal Lands'' under the heading *Exclusions Based on Other Relevant Impacts,* below). In addition, the Service has been assisting Navajo Nation in monitoring Zuni bluehead sucker populations on their lands, and a monitoring component is identified within their Fisheries Management Plan. The Zuni Tribe has also been integral to monitoring Zuni bluehead sucker in the Rio Nutria from the 1960s to early 2000s, and the Zuni Tribe has included a monitoring component within their Fisheries Management Plan that abides by their cultural beliefs. Although the Zuni Fisheries Management Plan is currently draft, its development, and the Tribe's coordination with us, provides evidence of our working relationship with the Zuni Tribe for conservation of the subspecies. We are excluding all tribal lands within Subunits 1a and 1b and

Unit 2 from this final designation under section 4(b)(2) of the Act. We have determined that the benefits of exclusion outweigh the benefits of inclusion and are therefore excluding these areas from the final critical habitat designation (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

(8) *Comment:* AGFD encourages the Service to work closely with Navajo Nation, the Zuni Tribe, the Cibola National Forest, NMDGF, and private landowners to develop and implement effective conservation and recovery efforts for this subspecies and its habitat.

*Our Response:* The Service is actively working with our stakeholders in developing fisheries management plans, developing monitoring populations, and identifying recovery streams and refugia locations. The Service recognizes the vital importance of working with our stakeholders in developing and implementing conservation measures in achieving the recovery of endangered and threatened species. However, the designation of critical habitat does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. If there is not a Federal nexus for activities taking place on private or State lands, then critical habitat designation does not restrict any actions that destroy or adversely modify critical habitat.

*Tribal Comments*

(9) *Comment:* During the public comment period, we met and received comments from Navajo Nation and the Zuni Tribe expressing their opposition to the designation of critical habitat. They stated that exclusion of their lands from critical habitat designation is warranted due to tribal self-governance and would help maintain cooperative working relationships.

*Our Response:* The portions of Subunits 1a and 1b on the Zuni Reservation and all of Unit 2 on the Navajo Nation are excluded from this final designation under section 4(b)(2) of the Act. We have determined that the benefits of exclusion outweigh the benefits of inclusion and that these exclusions will not result in the extinction of the subspecies. Therefore, we are excluding these areas from the final critical habitat designation (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

*Public Comments*

(10) *Comment:* One commenter stated it is unclear from the information provided that the entire proposed critical habitat area has been recently surveyed to assess whether it should be designated.

*Our Response:* As required by the Act, we rely upon the best scientific and commercial data available to assess the current and historical distributions of the Zuni bluehead sucker. We are not required to conduct surveys prior to critical habitat designation. However, much of the designated habitat has been regularly sampled since 2003, by either electrofishing or visual surveys in New Mexico (Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 24) and Arizona (Kitcheyan and Mata 2012, entire; Kitcheyan and Mata 2013, entire). Other sources of information include articles published in peer-reviewed journals and data collected by the Service and NMDGF, and any other data available at the time of the designation. Additional information on our data sources can be found in the final listing rule published in the **Federal Register** on July 24, 2014 (79 FR 43132) under the heading ''Range and Distribution.''

(11) *Comment:* One commenter suggested that if Navajo lands are excluded from the final critical habitat designation, the Service should ensure that the tribe follows through on its conservation commitments.

*Our Response:* We have a productive working relationship with Navajo Nation to promote the conservation of the Zuni bluehead sucker and its habitat. This working relationship provides substantial benefit to the subspecies, as Navajo Nation has submitted a final fisheries management plan, described in detail below (see ''Tribal Lands'' under *Exclusions Based on Other Relevant Impacts,* below). In addition, the Service has been assisting Navajo Nation in monitoring Zuni bluehead sucker populations on their lands, and a monitoring component is identified within their Fisheries Management Plan. Annual work plans in accordance with the Fisheries Management Plan will be developed with full cooperation of the Navajo Nation Department of Fish and Wildlife, Bureau of Indian Affairs (BIA), and the Service. The Fisheries Management Plan will be updated as necessary every 5 years.

(12) *Comment:* One commenter stated Tampico Springs is not native habitat for the Zuni bluehead sucker and should not be designated as critical habitat for this subspecies.

*Our Response:* As mentioned in the ''Taxonomy and Genetics'' discussion in our final listing rule (79 FR 43132; July 24, 2014), the Tampico Springs population was founded through translocation in the mid-1970s. This population is within the general historical range of the subspecies and has been self-sustaining since its founding. We find the population in Tampico Springs is essential to the conservation of the Zuni bluehead sucker.

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we considered the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. Under the first part of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. Tampico Springs was occupied at the time of listing, contains the physical and biological features essential to the conservation of the subspecies, and therefore meets the definition of critical habitat.

(13) *Comment:* Tampico Springs (on private land) should be excluded as a critical habitat for the Zuni bluehead sucker, because exclusion would allow and promote the continuation of strong partnerships with State and Federal agencies, industry, and other entities, resulting in continued habitat protection.

*Our Response:* The area that the commenter requested that the Service exclude from critical habitat is included in the Silva Forestry Management Plan, which we reviewed for evidence of habitat protections undertaken on this portion of land. The Forestry Management Plan is focused on forest management and not conservation of Zuni bluehead sucker and its habitat in this area. We are aware of no specific conservation actions in the submitted plan that would benefit the Zuni bluehead sucker; therefore the Secretary has chosen not to enter into the discretionary 4(b)(2) exclusion analysis in this particular case.

**Summary of Changes From Proposed Rule**

In total, we are designating a total of approximately 55.7 km (34.6 mi) of critical habitat for the Zuni bluehead sucker, which is 172.7 km (107.3 mi) less than our proposed critical habitat designation. Our final designation of

critical habitat reflects the following changes from the proposed rule:

(1) New information resulted in the removal of a portion of the proposed Zuni River Unit (Unit 1). Based upon further investigation, a section of Cebolla Creek (from Pescado Reservoir upstream on Cebolla Creek to Ramah Reservoir) is a dry wash with no running water or stream channel present except during periods of rain; this reach is unlikely to have perennial or intermittent flows. As a result, 7.9 km (4.9 mi) was removed because this section of Cebolla Creek is not essential to the conservation of the subspecies and does not meet the definition of critical habitat.

(2) We carefully considered the benefits of inclusion and the benefits of exclusion, under section 4(b)(2) of the Act, of the specific areas identified in the proposed critical habitat rule, particularly in areas where a management plan specific to the Zuni bluehead sucker are in place, and also where the maintenance and fostering of important conservation partnerships are a consideration. Based on the results of our analysis, we are excluding approximately 38.9 km (24.2 mi) of Subunit 1a, 29.4 km (18.3 mi) of Subunit 1b, and all of Unit 2 (96.5 km (60.0 mi)) from our final critical habitat designation for the Zuni bluehead sucker (see Consideration of Impacts under Section 4(b)(2) of the Act, below).

Exclusion from critical habitat should not be interpreted as a determination that these areas are unimportant, that they do not provide physical or biological features essential to the conservation of the species (for occupied areas), or are not otherwise essential for conservation (for unoccupied areas); exclusion merely reflects the Secretary's determination that the benefits of excluding those particular areas outweigh the benefits of including them in the designation.

(3) We inadvertently omitted language from the Proposed Regulation Promulgation section of the proposed rule, although we discussed it as part of our methodology for designation in the preamble of the proposed rule. Therefore, in this final rule, we add the following language under the Regulation Promulgation section: Critical habitat includes the adjacent floodplains within 91.4 lateral meters (m) (300 lateral feet (ft)) on either side of bankfull discharge, except where bounded by canyon walls. Bankfull discharge is the flow at which water begins to leave the channel and disperse into the floodplain, and generally occurs every 1 to 2 years.

(4) In the proposed rule, we stated that the Zuni bluehead sucker needs clear, cool water with low turbidity and temperatures in the general range of 9.0 to 28.0 degrees Celsius (°C) (48.2 to 82.4 degrees Fahrenheit (°F)). New information has resulted in a change to the temperatures, and in this final rule that primary constituent element is clear, cool water with low turbidity and temperatures in the general range of 2.0 to 23.0 °C (35.6 to 73.4 °F).

(5) We added a general description of the designated critical habitat unit to the Regulation Promulgation section of this rule.

## Critical Habitat

### *Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements (PCEs) are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may disperse from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

On February 11, 2016, we published a final rule in the **Federal Register** (81 FR 7413) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on March 14, 2016, but, as stated in that rule, the amendments it sets forth apply to ''rules for which a proposed rule was published after March 14, 2016.'' We published our proposed critical habitat designation for the Zuni bluehead sucker on January 25, 2013 (78 FR 5351); therefore, the amendments set forth in the February 11, 2016, final rule at 81 FR 7413 do not apply to this final designation of critical habitat for the Zuni bluehead sucker.

*Physical or Biological Features*

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Zuni bluehead sucker from studies of this subspecies' habitat, ecology, and life history as described in the proposed rule to designate critical habitat published in the **Federal Register** on January 25, 2013 (78 FR 5351), in the revisions to the proposed critical habitat designation published in the **Federal Register** on April 14, 2015 (80 FR 19941), and as described below. Habitat needs for specific life stages for the Zuni bluehead sucker have not been described; therefore, when necessary we rely on information available for the bluehead sucker, which is closely related to the Zuni bluehead sucker. Additional information can be found in the final listing rule published in the **Federal Register** on July 24, 2014 (79 FR 43132). We have determined that the Zuni bluehead sucker requires the physical or biological features described below.

Space for Individual and Population Growth and for Normal Behavior

The Zuni bluehead sucker occurs in a variety of stream habitats ranging from no shade to habitats with abundant shade from overhanging vegetation and boulders, in pools, runs, and riffles with water velocities ranging from 0 to 0.35 meters per second (m/sec) (1.15 feet per second (ft/sec)) and average water depths ranging from 0.2–2.0 m (7.9–78.7 inches (in)) (Hanson 1980, pp. 34, 42; Propst and Hobbes 1996, pp. 13, 16; NMDGF 2013, pp. 13–15). Shade provided by the overhanging vegetation buffers water temperature fluctuations in small, headwater streams, such as those occupied by the Zuni bluehead sucker (Whitledge *et al.* 2006, p. 1461). Substrate in Zuni bluehead sucker habitat ranges from silt and pebbles to cobbles, boulders, and bedrock (Hanson 1980, pp. 34, 42; Propst and Hobbes 1996, pp. 13, 16; NMDGF 2013, pp. 13–15; Ulibarri 2015, p. 12). Maddux and Kepner (1988, p. 364), observed that the bluehead sucker needed clean and loosely consolidated substrate, such as gravel, for both spawning and egg development. Similar observations were made for the Zuni bluehead sucker, where females selected spawning sites over loosely consolidated gravel (Service 2015a, entire). Excessive levels of silt can inhibit egg and juvenile fish development through the clogging of the small spaces between substrate particles, which prevents the free flow of oxygenated water. Additionally, siltation can reduce the suitability of the habitat for prey organisms. Juvenile bluehead suckers have been found near shore in slower and shallower habitats, then moving out into deeper water and faster flowing habitat as they age (Childs *et al.* 1998, p. 624).

Water temperatures in occupied habitats in Arizona and New Mexico have ranged from 2.0 to 22.3 °C (35.6 to 72.1 °F) during survey efforts (Propst *et al.* 2001, p. 163; NMDGF 2013, pp. 20–21, Ulibarri 2015, pp. 11–12).

Therefore, based on the information above, we identify the following habitat

characteristics as the physical or biological features for the Zuni bluehead sucker:

• A variety of stream habitats, including riffles, runs, and pools, with appropriate flows and substrates, with low to moderate amounts of fine sediment and substrate embeddedness, as maintained by natural, unregulated flow that allows for periodic flooding or, if flows are modified or regulated, flow patterns that allow the river to mimic natural functions, such as flows capable of transporting sediment.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

*Food.* The Zuni bluehead sucker is a benthic forager (eats food from the stream bottom) that scrapes algae, insects, and other organic and inorganic material from rock surface (NMDGF 2004, p. 8). Stomach content analysis of Zuni bluehead suckers revealed small particulate organic matter, including detritus (nonliving organic material), filamentous algae, small midge (two-winged fly) larvae, caddisfly larvae, mayfly larvae, flatworms, and occasional small terrestrial insects (Smith and Koehn 1979, p. 38). In addition, Smith and Koehn (1979, p. 38) also found fish scales, snails, and insect eggs in Zuni bluehead sucker stomachs.

The primary food source for Zuni bluehead sucker is periphytic algae (algae attached to rocks), which occurs mainly on cobble, boulder, and bedrock substrates with clean flowing water. Only food found in stomach contents of adult Zuni bluehead suckers has been described. Stomach contents of larval bluehead suckers (<25 millimeters (mm) (~1 in) total length) have been analyzed (Muth and Snyder 1995, entire). Larval bluehead suckers feed on diatoms (a type of algae), zooplankton (small floating or swimming organisms that drift with water currents), and dipteran larvae (true fly larvae) in stream areas with low velocity or in backwater habitats (Muth and Snyder 1995, p. 100). Juvenile and adult bluehead suckers are reported primarily to eat a variety of inorganic material, organic material, and bottom-dwelling insects and other small organisms (Childs *et al.* 1998, p. 625; Osmundson 1999, p. 28; Brooks *et al.* 2000, pp. 66–69).

Aquatic invertebrates are a secondary component of the Zuni bluehead sucker's diet. Aquatic invertebrates have specific habitat requirements of their own. Both caddisflies and mayflies occur primarily in a wide variety of standing and running water habitats with the greatest diversity being found in rocky-bottom streams with an abundance of oxygen (Merritt and Cummins 1996, pp. 126, 309). Caddisflies and mayflies feed on a variety of detritus, algae, diatoms, and macrophytes (aquatic plants) (Merritt and Cummins 1996, pp. 126, 309). Habitat that consists of rocky bottoms with periphytic algal growth is not only important to sustain aquatic invertebrate populations, but also serves as a primary food resource of the Zuni bluehead sucker.

*Water.* As a purely aquatic subspecies, Zuni bluehead suckers are entirely dependent on stream habitat for all stages of their life cycle. Therefore, perennial flows are an essential feature with appropriate seasonal flows to maintain habitat conditions that remove excess sediments. Areas with intermittent flows may serve as connective corridors between occupied or seasonally occupied habitat through which the subspecies may disperse when the habitat is wetted.

There is little information on water quality requirements for the Zuni bluehead sucker. However, excessive sedimentation is the primary threat to water quality for the Zuni bluehead sucker (as discussed above), primarily due to its effects on reproduction and food resources. Turbidity (sediment suspended in the water column) can inhibit algae production through reducing sunlight penetration into the water.

Therefore, based on the information above, we identify the following prey base and water quality characteristics as physical or biological features for the Zuni bluehead sucker:

• An abundant source of algae production and an aquatic insect food base consisting of caddisflies, mayflies, midges, and various terrestrial insects;

• Streams with no harmful levels of pollutants;

• Areas with low levels of sediment deposition;

• Perennial flows, or interrupted stream courses that are periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the subspecies may disperse when the habitat is wetted;

• Dynamic flows that allow for periodic changes in channel morphology.

Cover or Shelter

Cover from predation (by nonnative fish and avian predators) may be in the form of deep water or physical structure. Little is known about habitat characteristics specifically relating to cover for the Zuni bluehead sucker. However, during surveys, Zuni bluehead suckers have been found in shaded pools and near boulder outcrops, which may be used for cover (Kitcheyan 2012, pers. comm.). Additionally, mature bluehead suckers are found in deeper water than larvae and in habitats with less woody cover than younger life stages, which are more vulnerable to predation (Childs *et al.* 1998, p. 624). Recent investigations on Navajo Nation have shown that Zuni bluehead suckers use aquatic macrophytes as cover, perhaps due to the lack of riparian vegetation (Ulibarri 2015, p. 12). In contrast, bluehead suckers in an adjacent drainage were found to use branches and woody debris as cover (Ulibarri 2015, p. 12).

Therefore, based on the information above, we identify the following characteristics for cover or shelter as physical or biological features for the Zuni bluehead sucker:

• Streams with large rocks, boulders, undercut banks, woody debris or aquatic macrophytes.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Zuni bluehead sucker spawn from early April to early June when water temperatures are 6 to 15 °C (43 to 59 °F), peaking around 10 °C (50 °F) (Propst 1999, p. 50; Propst *et al.* 2001, p. 164). The Zuni bluehead sucker may have two spawning periods, with the majority of the spawning effort expended early in the season (Propst *et al.* 2001, p. 158). Females in spawning condition have been found over gravel beds (Sublette *et al.* 1990, p. 210; Propst *et al.* 2001, p. 158). Clean substrates free of excessive sedimentation are essential for successful breeding (see the ''Habitat and Life History'' discussion in the final listing rule; 79 FR 43132, July 24, 2014). Periodic flooding removes excess silt and fine sand from the stream bottom, breaks up embedded bottom materials, and rearranges sediments in ways that promote algae production and create suitable habitats with silt-free substrates.

Therefore, based on the information above, we identify the following characteristics for breeding, reproduction, or development of offspring as physical or biological features for the Zuni bluehead sucker:

• Gravel and cobble substrates;

• Pool and run habitats;

• Slower currents along stream margins with appropriate stream velocities for larvae;

• Instream flow velocities that are less than 0.35 m/sec (1.15 ft/sec); and

• Dynamic flows that allow for periodic changes in channel morphology.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

The Zuni bluehead sucker has a restricted geographic distribution. Endemic species (species that are exclusively native to a particular location) whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain both springs and stream systems upon which the Zuni bluehead sucker depends. This means protection from disturbance caused by exposure to land management actions (logging, cattle grazing, and road construction), water contamination, water depletion, or nonnative species. The Zuni bluehead sucker must, at a minimum, sustain its current distribution for the subspecies to continue to persist.

Introduced species are a serious threat to native aquatic species (Miller 1961, pp. 365, 397–398; Lachner *et al.* 1970, p. 21; Ono *et al.* 1983, pp. 90–91; Carlson and Muth 1989, pp. 222, 234; Fuller *et al.* 1999, p. 1; Propst *et al.* 2008, pp. 1246–1251; Pilger *et al.* 2010, pp. 300, 311–312; see both *Factor C: Disease or Predation* and *Factor E: Other Natural or Manmade Factors Affecting Its Continued Existence* discussions in our final listing rule published July 24, 2014 (79 FR 43132)). Because the distribution of the Zuni bluehead sucker is so isolated and its habitat so restricted, introduction of certain nonnative species into its habitat could be devastating. Potentially harmful nonnative species include green sunfish (*Lepomis cyanellus*), northern crayfish (*Orconectes virilis*), fathead minnow (*Pimephales promelas*), and other nonnative fish-eating fishes.

The Zuni bluehead sucker typically inhabits small desert stream systems including isolated headwater springs, small headwater springs, and mainstem river habitats (Gilbert and Carman 2011, p. 2) with clean, hard substrate; flowing water; and abundant riparian vegetation. Degraded habitat consists of silt-laden substrates; high turbidity; and deep, stagnant water (Gilbert and Carman 2011, p. 6). Therefore, based on the information above, we identify the necessary physical or biological features for the Zuni bluehead sucker:

- Nondegraded habitat devoid of nonnative aquatic species, or habitat in which nonnative aquatic species are at levels that allow persistence of the Zuni bluehead sucker.

*Primary Constituent Elements for the Zuni Bluehead Sucker*

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Zuni bluehead sucker in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the subspecies' life-history processes, we determine that the primary constituent elements specific to the Zuni bluehead sucker are:

(1) A riverine system with habitat to support all life stages of the Zuni bluehead sucker (egg, larval, juvenile, and adult), which includes:

a. Dynamic flows that allow for periodic changes in channel morphology and adequate river functions, such as channel reshaping and delivery of coarse sediments;

b. Stream courses with perennial flows or intermittent flows that serve as connective corridors between occupied or seasonally occupied habitat through which the subspecies may disperse when the habitat is wetted;

c. Stream mesohabitat types including runs, riffles, and pools with substrate ranging from gravel, cobble, and bedrock substrates with low or moderate amounts of fine sediment and substrate embeddedness;

d. Streams with depths generally less than 2 m (3.3 ft), and with slow to swift flow velocities less than 0.35 m/sec (1.15 ft/sec);

e. Clear, cool water with low turbidity and temperatures in the general range of 2.0 to 23.0 °C (35.6 to 73.4 °F);

f. No harmful levels of pollutants; and

g. Adequate riparian shading to reduce water temperatures when ambient temperatures are high and provide protective cover from predators.

(2) An abundant aquatic insect food base consisting of fine particulate organic material, filamentous algae, midge larvae, caddisfly larvae, mayfly larvae, flatworms, and small terrestrial insects.

(3) Areas devoid of nonnative aquatic species or areas that are maintained to keep nonnatives at a level that allows the Zuni bluehead sucker to continue to survive and reproduce.

*Special Management Considerations or Protection*

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. We believe each area included in these designations requires special management and protections as described in our unit descriptions.

We need to consider special management considerations or protection for the features essential to the conservation of the species within each critical habitat area. The special management considerations or protections will depend on the threats to the essential features in that critical habitat area. For example, threats requiring special management considerations or protection include the continued spread of nonnative fish species into Zuni bluehead sucker habitat or increasing number of beavers that reduce habitat quality and foster expansion of nonnative fish and crayfish. Other threats requiring special management considerations or protection include the threat of wildfire and excessive ash and sediment following fire. Improper livestock grazing can be a threat to the remaining populations of the Zuni bluehead sucker through trampling of habitat and increasing sedimentation. Inadequate water quantity resulting from drought and water withdrawals affect all life stages of the Zuni bluehead sucker. Additionally, the construction of impoundments and water diversions can cause an increase in water depth behind the structure and a reduction or elimination of stream habitat below.

In our description below for each of the critical habitat areas for the Zuni bluehead sucker, we have included a discussion on the threats occurring in each area and the required special management considerations or protections.

*Criteria Used To Identify Critical Habitat*

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after

identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the subspecies at the time of listing in 2014. We also are designating specific areas outside the geographical area occupied by the subspecies at the time of listing that were historically occupied but are presently unoccupied, because we have determined that such areas are essential for the conservation of the subspecies.

Sources of data for this subspecies include multiple databases maintained by universities and State agencies from Arizona and New Mexico, existing State recovery plans, endangered species reports, and numerous survey reports on streams throughout the subspecies' range (Propst 1999, pp. 49–51; NMDGF 2003, pp. 6–10; NMDGF 2004, pp. 1–40; David 2006, pp. 1–40; NMDGF 2007, pp. 1–27; Douglas *et al.* 2009, p. 67; Navajo Nation Heritage Program 2012, pp. 1–20, NMDGF 2013, entire). We have also reviewed available information that pertains to the habitat requirements of this subspecies. Sources of information on habitat requirements include existing State recovery plans, endangered species reports, studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Propst *et al.* 2001, pp. 159–161; NMDGF 2003, pp. 1–14; NMDGF 2004, pp. 4–7; Kitcheyan and Mata 2013, pp. 5–12).

The current distribution of the Zuni bluehead sucker is much reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as establishing populations in additional streams that more closely approximate its historic distribution in order to ensure there are adequate numbers of fish in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as wildfire, cannot simultaneously affect all known populations.

Areas Occupied at the Time of Listing

The critical habitat designation includes all streams known to have been occupied by the subspecies historically and that have retained the necessary PCEs that will allow for the maintenance and expansion of existing populations. The following streams meet the definition of areas occupied by the subspecies at the time of listing: Agua Remora, Rio Nutria, Tampico Springs, Tampico Draw, Kinlichee Creek, Black Soil Wash, and Scattered Willow Wash. There are no developed areas within the designation except for barriers constructed on streams or road crossings of streams, which do not remove the suitability of these areas for this subspecies.

Areas Outside the Geographical Area Occupied by the Species at the Time of Listing

The Zuni River, Rio Pescado, Cebolla Creek, and Red Clay Wash are within the historical range of the Zuni bluehead sucker but are not within the geographical range occupied by the subspecies at the time of listing. The Zuni River and Rio Pescado experience a high degree of river intermittency, and the Zuni bluehead sucker has not been seen in these streams in approximately 20 years. Additionally, Zuni bluehead suckers have not been observed in Cebolla Creek and Red Clay Wash in over 30 years. We consider these sites to be extirpated. For areas not occupied by the subspecies at the time of listing, we must demonstrate that these areas are essential to the conservation of the subspecies in order to include them in our critical habitat designation. To determine if these areas are essential for the conservation of the Zuni bluehead sucker, we considered: (1) The importance of the site to the overall status of the subspecies to prevent extinction and contribute to future recovery of the Zuni bluehead sucker; (2) whether special management could cause the site to contain the necessary habitat to support the Zuni bluehead sucker; (3) whether the site provides connectivity between occupied sites for genetic exchange; and (4) whether a population of the subspecies could be reestablished in the area.

Of the unoccupied streams, the Zuni River, Rio Pescado and Cebolla Creek exhibit varying degrees of intermittency; the Zuni River and Rio Pescado are generally only continuous after heavy flows in the spring (NMDGF 2004, p. 13; New Mexico Environment Department (NMED) 2004, p. 1). However, when the Zuni River, Rio Pescado, and portions of Cebolla Creek do exhibit flow, and if special management were to occur, they could allow for important population expansion in this watershed. These sites include habitat for connectivity and dispersal opportunities between occupied and occupied areas. Such opportunities for dispersal assist in maintaining the population structure and distribution of the subspecies. The current amount of habitat that is occupied is not sufficient for the recovery of the subspecies. Therefore, the unoccupied areas are essential for the conservation of the Zuni bluehead sucker.

In summary, for areas within the geographic area occupied by the subspecies at the time of listing, we delineated critical habitat unit boundaries by evaluating habitat suitability of stream segments within the geographic area occupied at the time of listing, and retaining those segments that contain some or all of the PCEs to support life-history functions essential for conservation of the subspecies.

For areas outside the geographic area occupied by the subspecies at the time of listing, we delineated critical habitat unit boundaries by evaluating stream segments not known to have been occupied at listing but that are within the historical range of the subspecies (outside of the geographic area occupied by the subspecies) to determine if they are essential to the conservation of the subspecies. Essential areas are those that:

(1) Are important to the overall status of the subspecies to prevent extinction and contribute to future recovery;

(2) Expand the geographic distribution within areas not occupied at the time of listing across the historical range of the subspecies;

(3) Serve as an extension of habitat within the geographic area of an occupied unit; and

(4) Are connected to other occupied areas, which will enhance genetic exchange between populations.

In conclusion, based on the best available information, we determined that the areas within the historical range are essential to provide for the conservation of the Zuni bluehead sucker because they include habitat for all extant populations, and they include habitat for connectivity and dispersal opportunities between the unit and occupied areas. Such opportunities for dispersal assist in maintaining the population structure and distribution of the subspecies. The current amount of habitat that is occupied is not sufficient for the recovery of the subspecies; therefore, we include unoccupied habitat in this critical habitat designation.

As a final step, we evaluated the occupied stream segments and refined the starting and ending points by evaluating the presence or absence of appropriate PCEs. We selected upstream and downstream cutoff points to omit areas that are highly degraded and are

not likely to be able to support the Zuni bluehead sucker in the future. For example, permanently dewatered areas, or areas in which there was a change to unsuitable characteristics (*e.g.,* water quality, bedrock substrate), were used to mark the start or endpoint of a stream segment proposed for designation. Critical habitat stream segments were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a Geographic Information Systems program.

Areas designated as critical habitat provide sufficient stream and spring habitat for breeding, nonbreeding, and dispersing adult Zuni bluehead suckers, as well as for the habitat needs for juvenile and larval stages of this fish. In general, the PCEs of critical habitat are contained within the riverine ecosystem formed by the wetted channel and the adjacent floodplains within 91.4 lateral m (300 lateral ft) on either side of bankfull discharge, except where bounded by canyon walls. Bankfull discharge is the flow at which water begins to leave the channel and disperse into the floodplain and generally occurs every 1 to 2 years. Areas within the lateral extent also contribute to the PCEs, including water quality and intermittent areas through which fish may disperse when wetted.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the Zuni bluehead sucker. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultations with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, on our Internet site at *http://www.fws.gov/southwest/es/NewMexico/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

We are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient physical or biological features to support life-history processes essential to the conservation of the subspecies, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of the Zuni bluehead sucker.

Units are designated based on sufficient elements of physical or biological features being present to support the Zuni bluehead sucker's life processes. Some units contain all of the identified elements of physical or biological features and support multiple life processes. Some segments contain only some elements of the physical or biological features necessary to support the Zuni bluehead sucker's particular use of that habitat.

**Final Critical Habitat Designation**

We are designating one unit, the Zuni River Unit, as critical habitat for the Zuni bluehead sucker. Following our evaluation and analysis under section 4(b)(2) of the Act, Unit 2 (Kinlichee Creek Unit) is excluded in its entirety (see Consideration of Impacts under Section 4(b)(2) of the Act, below). The critical habitat areas described below constitute our best assessment at this time of areas that meet the definition of critical habitat. Table 1 shows the occupied subunits.

TABLE 1—DESIGNATED CRITICAL HABITAT UNIT FOR ZUNI BLUEHEAD SUCKER

[Area estimates reflect all land within critical habitat unit boundaries]

| Stream segment | Occupied at the time of listing | Land ownership | Length of unit in kilometers (miles) |
|---|---|---|---|
| **Unit 1—Zuni River Unit** | | | |
| **Subunit 1a—Zuni River Headwaters** | | | |
| Agua Remora | Yes | Forest Service | 6.6 (4.1) |
| | | Private | 2.4 (1.5) |
| Rio Nutria | Yes | Forest Service | 4.1 (2.6) |
| | | State of New Mexico | 1.8 (1.1) |
| | | Private | 14.2 (8.8) |
| Tampico Draw | Yes | Forest Service | 2.3 (1.4) |
| | | Private | 3.7 (2.3) |
| Tampico Spring | Yes | Private | 0.2 (0.1) |
| Total | | | 35.4 (22.0) |
| **Subunit 1b—Zuni River Mainstem** | | | |
| Cebolla Creek | No | State of New Mexico | 0.4 (0.2) |
| | | Forest Service | 6.4 (4.0) |
| | | Private | 13.5 (8.4) |
| Total | | | 20.3 (12.6) |

**Note:** Area sizes may not sum due to rounding.

Below we present brief descriptions of the unit and reasons why it meets the definition of critical habitat for the Zuni bluehead sucker.

*Unit 1: Zuni River Unit*

*Subunit 1a—Zuni River Headwaters:* Subunit 1a consists of 35.4 km (22.0 mi) along Agua Remora, Rio Nutria, Tampico Draw, and Tampico Springs in McKinley County, New Mexico. We exclude approximately 38.9 km (24.2 mi) of Subunit 1a, which was primary along the Rio Nutria on the Zuni Reservation. The land in this subunit is primarily owned by Forest Service, and private landowners with a small amount of State inholdings. At the time of listing, the Zuni bluehead sucker occupied all stream reaches in this subunit, and the subunit contains all of the physical or biological features essential to the conservation of the Zuni bluehead sucker. This unit represents the only remaining headwater spring habitats occupied by Zuni bluehead sucker.

Activities in the watershed include livestock grazing, water withdrawals, and impoundments. Livestock grazing is primarily regulated by the Forest Service in this subunit; however, trespass livestock grazing may occur. Additional special management considerations or protection may be required within Subunit 1a to address low water levels as a result of water withdrawals and drought, predation from nonnative green sunfish (*Lepomis cyanellus),* and the upstream and downstream effects of impoundments. Such special management or protection may include maintaining instream flows, nonnative species removal, and reservoir management that improves upstream and downstream habitat to benefit the Zuni bluehead sucker.

*Subunit 1b—Zuni River Mainstem:* Subunit 1b consists of 20.3 km (12.6 mi) of potential Zuni bluehead sucker habitat along Cebolla Creek in McKinley and Cibola Counties, New Mexico. Land within this subunit is primarily owned by private landowners, with a small amount owned by Forest Service and the State of New Mexico. We removed 7.9 km (4.9 mi) of Cebolla Creek that had been included in the proposed designation because it does not meet the definition of critical habitat. Based upon further investigation, a section of Cebolla Creek (from Pescado Reservoir upstream on Cebolla Creek to Ramah Reservoir) lacks certain morphological features of suitable Zuni bluehead sucker habitat with no running water present except during periods of rain; this reach is unlikely to have perennial or intermittent flows due to agricultural practices in the area. This section of Cebolla Creek is not essential to the conservation of the subspecies and does not meet the definition of critical habitat. Therefore, critical habitat in Cebolla Creek is the reach from Ramah Reservoir upstream for approximately 23.2 km (14.4 mi) of stream habitat.

This unit was unoccupied at the time of listing. Zuni bluehead sucker historically occupied streams (Zuni River and Rio Pescado) adjacent to Cebolla Creek but has not been found in the Zuni River or Rio Pescado since the mid-1990s (NMDGF 2004, p. 5). In addition, the Zuni bluehead sucker has been extirpated from Cebolla Creek since at least 1979 (Hanson 1980, pp. 29, 34). Cebolla Creek upstream of Ramah Reservoir has been identified as containing suitable habitat and could provide for significant population expansion. Therefore, this subunit is essential for the conservation of the Zuni bluehead sucker because it provides growth and expansion of the subspecies in this portion of its historical range.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule that sets forth a new definition of ''destruction or adverse modification'' on February 11, 2016 (81 FR 7214); that final rule became effective on March 14, 2016. ''Destruction or adverse modification'' means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate

consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

*Application of the ''Adverse Modification'' Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Zuni bluehead sucker. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of this subspecies or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Zuni bluehead sucker. These activities include, but are not limited to:

(1) Actions that could diminish flows within the active stream channel. Such activities could include, but are not limited to: Water diversion, water withdrawal, channelization, construction of any barriers or impediments within the active stream channel, construction of permanent or temporary diversion structures, and groundwater pumping within aquifers associated with the stream or springs. These activities could affect water depth, velocity, and flow patterns, all of which are essential to the different life stages of the Zuni bluehead sucker.

(2) Actions that could significantly increase sediment deposition within a stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, commercial or urban development, channel alteration, timber harvest, or other watershed and floodplain disturbances. These activities could adversely affect reproduction of the subspecies by preventing hatching of eggs through suffocation, or by eliminating suitable habitat for egg placement by the Zuni bluehead sucker. In addition, excessive levels of sedimentation reduce or eliminate algae production and can make it difficult for the Zuni bluehead sucker to locate prey.

(3) Actions that could result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, even if those segments are occasionally intermittent, or introduction of other species that compete with or prey on the Zuni bluehead sucker. Possible actions could include, but are not limited to: Stocking of nonnative fishes, stocking of sport fish, or other related actions. These activities can introduce parasites or disease, or affect the growth, reproduction, and survival of the Zuni bluehead sucker.

(4) Actions that could significantly alter channel morphology. Such activities could include, but are not limited to: Channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the Zuni bluehead, their habitats, or both. These actions can also lead to increased sedimentation and degradation of the water.

(5) Actions that could significantly alter the water chemistry of the active channel. Such activities could include release of chemicals, biological pollutants, or other substances into the surface water or connected groundwater at a point source or by dispersed release (nonpoint source), and storage of chemicals or pollutants that can be transmitted, via surface water, groundwater, or air, into critical habitat. These actions can affect water chemistry and the prey base of the Zuni bluehead sucker.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the critical habitat designation for the Zuni bluehead sucker; therefore, we are not exempting any areas under section 4(a)(3)(B)(i) of the Act.

**Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State, Tribal, or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more

conservation than a critical habitat designation would provide.

In the case of the Zuni bluehead sucker, the benefits of critical habitat include promotion of public awareness of the presence of the Zuni bluehead sucker and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for the Zuni bluehead sucker due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the Zuni bluehead sucker:

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

| Subunit | Specific area | Land ownership | Areas meeting the definition of critical habitat, in kilometers (miles) | Areas excluded from critical habitat, in kilometers (miles) |
|---|---|---|---|---|
| 1a | Rio Nutria | Zuni Tribe | 38.9 (24.2) | 38.9 (24.2) |
| 1b | Zuni River | Zuni Tribe | 7.4 (4.6) | 7.4 (4.6) |
| 1b | Rio Pescado | Zuni Tribe | 18.3 (11.4) | 18.3 (11.4) |
| 1b | Cebolla Creek | Zuni Tribe | 3.7 (2.3) | 3.7 (2.3) |
| 2a | Black Soil Wash | Navajo Nation | 21.6 (13.4) | 21.6 (13.4) |
| 2a | Kinlichee Creek | Navajo Nation | 47.1 (29.3) | 47.1 (29.3) |
| 2a | Scattered Willow Wash | Navajo Nation | 18.2 (11.3) | 18.2 (11.3) |
| 2b | Red Clay Wash | Navajo Nation | 9.6 (6.0) | 9.6 (6.0) |

**Consideration of Economic Impacts**

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which together with our narrative and interpretation of effects we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2014, entire).

The analysis, dated October 22, 2014, was made available for public review from April 14, 2015, through May 14, 2015 (80 FR 19941). The DEA addressed probable economic impacts of critical habitat designation for the Zuni bluehead sucker. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Zuni bluehead sucker is summarized below and available in the screening analysis for the Zuni bluehead sucker (IEc 2014, entire), at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0002.

We prepared an incremental effects memorandum (IEM) and screening analysis which, together, we consider our draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2014, entire). As required by Executive Order 12866, any rule that results in costs that exceed $100 million is considered a significant regulatory action. The purpose of the economic analysis is to provide us with the information on the potential for the proposed critical habitat rule to result in costs or benefits exceeding $100 million in any given year. The economic analysis addressed potential economic impacts of critical habitat designation for the Zuni bluehead sucker. The analysis estimates impacts to activities, including Federal lands management, roadway and bridge construction, agriculture, grazing, groundwater pumping, and instream dams and diversions, that may experience the greatest impacts in compliance with section 4(b)(2) of the Act. The economic impacts will most likely be limited to additional administrative effort resulting from a small number of future section 7 consultations, as well as minor costs of conservation efforts. This finding is based on the following information:

1. Approximately 70 percent (161.1 km (100.1 mi)) of proposed critical habitat stream reaches are considered to be occupied by the subspecies. Critical habitat designation is unlikely to result in incremental changes to conservation actions in currently occupied areas over and above those necessary to avoid jeopardizing of the subspecies. As such, only administrative costs are expected in those areas.

2. In proposed areas that are not occupied by Zuni bluehead sucker (30 percent of proposed critical habitat), few actions are expected to result in section 7 consultation or associated project modifications. In particular, Subunit 2b (9.6 km (6.0 mi)) occurs entirely on Navajo Nation lands. Our outreach efforts to Navajo Nation indicate that there would be no projects that would result in section 7 consultation within the proposed critical habitat areas on these lands. Subunit 1b (57.6 km (35.8 mi)) includes U.S. Forest Service, private, State, and Zuni Pueblo lands. Communications with affected entities indicate that critical habitat designation is unlikely to result in more than just a few consultations in this unit, with

minor conservation efforts that would result in relatively low costs.

3. We are excluding 164.8 km (102.4 mi) and removing 7.9 km (4.9 mi) of critical habitat from the final designation; therefore, the economic impacts of critical habitat designation are expected to be less than the economic analysis anticipated.

Entities most likely to incur costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities potentially subject to consultations that may involve private entities as third parties are primarily limited to residential and commercial development. The cost to private entities within these sectors is expected to be relatively minor (administrative costs of less than $10,000 per consultation effort). Therefore, we conclude that these future costs are unknown, but appear unlikely to exceed $100 million in any single year. Therefore, we conclude that critical habitat designation for the Zuni bluehead sucker is unlikely to generate costs exceeding $100 million in a single year.

*Exclusions Based on Economic Impacts*

The Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Zuni bluehead sucker based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

*Exclusions Based on National Security Impacts*

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that there were no lands identified to have a national security impact. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

*Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Tribal Lands

There are several Executive Orders, Secretarial Orders, and policies that relate to working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS), Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: ''Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.'' In light of this instruction, when we undertake a discretionary section 4(b)(2) exclusion analysis, we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat, nor does it state that Tribal lands or waters cannot meet the Act's definition of ''critical habitat.'' We are directed by the Act to identify areas that meet the definition of ''critical habitat'' (*i.e.,* areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the statutory authority of the Secretary of the Interior and the Secretary of Commerce.

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(1) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(3) The demonstrated implementation and success of the chosen conservation measures;

(4) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(5) The extent of public participation in the development of the conservation plan;

(6) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

(7) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(8) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

We believe that the Navajo Nation Fisheries Management Plan and Zuni Tribe's draft Fisheries Management Plan fulfill the above criteria, and, as discussed below, are excluding non-Federal lands covered by these plans that provide for the conservation of the Zuni bluehead sucker.

I. Navajo Nation

On Navajo Nation (Unit 2 in the proposed rule), we proposed 96.5 km (60.0 mi) of critical habitat along the stream channels within Apache County, Arizona. Much of the habitat was historically occupied by the subspecies with individuals detected as recently as 2015 (Crabtree and Buth 1987, p. 851; Kitcheyan and Mata 2013, p. 10; Service 2015b, entire). Subunit 2 was considered occupied at the time of listing, except for Subunit 2b (Red Clay Wash).

A. Navajo Nation Fisheries Management Plan

Navajo Nation has developed a Fisheries Management Plan (FMP), which is a joint effort between Navajo Nation Department of Fish and Wildlife (NNDFW), the Service, and the Bureau of Indian Affairs (BIA). The FMP is designed for the purpose of long-term planning and implementation of fisheries-related issues on Navajo Nation and is part of an integrated, interagency cooperative effort to manage its fisheries resources based on sound ecological management practices. The FMP serves as a guide for accomplishing the goals outlined in the management plan for managing, maintaining, enhancing, and conserving the fisheries resources on the Navajo Nation. One objective in the FMP is to identify and protect existing Zuni bluehead sucker populations and their habitats, and expand their distribution to suitable streams. This would be accomplished by the following actions:

(1) Monitoring populations of Zuni bluehead sucker and their habitat conditions to evaluate population structure, distribution, and dynamics, and to implement adaptive management programs and habitat restoration where needed.

(2) Re-establishing the Zuni bluehead sucker in reclaimed streams using existing Zuni bluehead suckers from Federal hatchery facilities, or from a donor stream.

(3) Reducing or eliminating threats from nonnative fishes and other nonnative aquatic biota (*e.g.,* crayfish), if present within recovery portions of streams using mechanical, chemical, or other effective methods.

(4) When possible, constructing fencing exclosures to minimize and/or prevent domestic livestock overgrazing and encroachment into riparian areas.

(5) Improving and restoring habitat conditions as needed to provide suitable habitat for the Zuni bluehead sucker.

(6) Evaluating the feasibility of constructing and maintaining artificial fish barriers to prevent upstream movement of nonnative fishes into protected areas.

(7) Monitoring for presence of diseases and/or causative agents, parasites, and pathogens through wild fish health surveys.

(8) Identifying facilities or refugium sites (*i.e.,* natural or hatchery) with capacity to maintain isolated populations of Zuni bluehead sucker, and establishing a broodstock program to act as a refugia population.

(9) Developing and implementing fire and drought contingency plans to formalize rescue and refugia strategy for the protection of temporarily vulnerable populations.

(10) Participating in a Zuni bluehead sucker Recovery Team, if established, or recovery planning, when initiated by the Service.

(11) Coordinating annual meetings to evaluate the subspecies' status, distribution, and potential impacts, and to inform and update agency partners of recovery actions and progress (NNDFW 2015, pp. 26–27).

In addition, NNDFW has authority over endangered and threatened species protection, and all temporary and permanent developments (*i.e.,* draining, dredging, filling, excavating, building, grazing, and pollution) within designated sensitive areas must receive a permit or other formal authorization from NNDFW. Navajo Nation evaluates a project's potential impact on protected fish and wildlife and their habitats by using their Natural Heritage Database and various tribal and Federal wildlife protection regulations (refer to the discussion under *Factor D. The Inadequacy of Existing Regulatory Mechanisms* in our final listing rule published July 24, 2014 (79 FR 43132)). Navajo Nation's regulatory process divides their land into six separate land status categories to manage actions in a way that minimize impacts to sensitive species and habitats.

The Zuni bluehead sucker critical habitat that was proposed within the Kinlichee Creek Watershed falls into areas that Navajo Nation has delineated as a highly sensitive area. Highly Sensitive Areas are areas that are the most protected on Navajo Nation and contain a high degree of habitat or resource importance for one or more protected species; these areas have been relatively undisturbed by development. Permanent development is not prohibited, but those developments must demonstrate that impacts to protected species will be minimal, and if possible, NNDFW strongly urges relocating projects to less sensitive habitats.

In the FMP, Navajo Nation recognizes that management is needed to address impacts that grazing has on riparian areas near Zuni bluehead sucker habitat. Navajo Nation can withdraw riparian habitat from grazing use and has previously worked with other Navajo agencies to reduce and eliminate grazing in important habitats along the San Juan River. Efforts are underway by Navajo policy makers and agencies to address past grazing impacts on Navajo Nation lands and to improve protection and enforcement of Navajo resources and ecosystems. For example, in 2012, the Navajo Departments of Resource Enforcement and Agriculture conducted roundups to reduce overgrazing by stray, feral, and unpermitted livestock.

Additionally, Navajo Nation and BIA conducted public outreach regarding grazing impacts and the necessity of immediate and proactive steps to be taken to reduce grazing pressure and restore productivity of Navajo Nation rangelands. More recently, Navajo Nation has developed a draft Navajo Rangeland Improvement Act of 2014 to improve the ecological health and productivity of Navajo rangelands in order to protect the interests of present and future generations of Navajo people (Navajo Nation 2014, entire). One purpose is to mandate the implementation of sound grazing management and conservation techniques and practices on Navajo rangelands (Navajo Nation 2014, p. 4). Although the Navajo Rangeland Improvement Act of 2014 is currently draft, it provides evidence of the Navajo Nation's interest in conserving habitat and minimizing impacts of grazing, a result of our positive working relationship.

B. Benefits of Inclusion

As discussed above under *Section 7 Consultation,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat.

Unit 2 of the proposed critical habitat for Zuni bluehead sucker is the Kinlichee Creek Unit, which contains Subunits 2a (occupied) and 2b (unoccupied). If there are Federal actions or if Federal permitting occurs in Subunit 2a, these actions would undergo section 7 consultation under the jeopardy standard, because the subunit is occupied by the subspecies. Critical habitat along Subunit 2a (Kinlichee Creek, Black Soil Wash, and Scattered Willow Wash) may not provide an additional regulatory benefit for the Zuni bluehead sucker under section 7 of the Act when there is a Federal nexus present for a project that might adversely modify critical habitat. Because the subspecies is so closely tied to its habitat, the results of consultation under the adverse modification standard are not likely to differ from the results of consultation under the jeopardy standard. It is unlikely that additional project modification would be required above and beyond those to avoid jeopardy in order to avoid adverse modification or destruction of critical habitat. However, Subunit 2b (Red Clay Wash) is unoccupied by the Zuni bluehead sucker; therefore, if a Federal action or permitting occurs, there may not be a consultation under section 7 of the Act unless critical habitat is designated. Our coordination with the Navajo Nation indicates that it is unlikely that any project will result in section 7 consultation within the areas proposed as critical habitat within Subunit 2b. Our Incremental Effects Memo provides further description of this (Service 2013, entire).

Our economic analysis found that incremental costs would mainly occur in unoccupied areas of critical habitat, specifically Subunit 2b. Based on communications with Navajo Nation, we do not anticipate a significant number of consultations in this subunit, resulting in relatively low cost. We do not anticipate that any formal consultations from urban development or recreation would occur if critical habitat were designated, primarily because there would be no Federal nexus. The types of projects we might anticipate that may have a Federal nexus (riparian habitat restoration, forest management plans, and livestock grazing activities) would all provide long-term benefits to Zuni bluehead sucker habitat, suggesting that effects to the Zuni bluehead sucker from Federal projects would likely result in insignificant and discountable impacts because conservation measures would be focused on habitat improvement and management. Because of how Navajo Nation manages and conserves their lands through establishment of policies, rules, and regulation (such as the Navajo Nation Endangered Species List, Biological Resources Land Use Clearance Policies and Procedures, Navajo Nation Water Quality Standards of 2007, Navajo Nation Aquatic Resources Protection Program, and Navajo Nation's 10-Year Forest Management Plan), and active conservation of the Zuni bluehead sucker and other imperiled species, we do not anticipate that Navajo Nation's actions would considerably change in the future. Therefore, the regulatory benefit of critical habitat designation on these lands is minimized.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, tribes, and the public regarding the potential conservation value of an area and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Zuni bluehead sucker that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also strengthen or reinforce some Federal laws such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

The educational benefits that might follow critical habitat designation, such as providing information to Navajo Nation on areas that are important for the long-term survival and conservation of the subspecies, have already been achieved. Navajo Nation is fully aware of the Zuni bluehead sucker and its habitat needs, and has demonstrated commitment to address management and recovery of other endangered and threatened species (*i.e.,* southwestern willow flycatcher (flycatcher) (*Empidonax traillii extimus*), Colorado pikeminnow (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*)). Navajo Nation was an integral partner in identifying which bluehead sucker populations were in fact Zuni bluehead sucker. Since 2013, Navajo Nation has been actively monitoring their Zuni bluehead sucker populations (Kitcheyan and Mata 2012, entire; Kitcheyan and Mata 2013, entire) and have identified additional occupied sites within the proposed critical habitat area, as well as potential new locations for population replication (NNDFW 2015, entire). Navajo Nation is also a partner on a habitat suitability study on the Zuni bluehead sucker with the University of Arizona and has actively been seeking funds for several fish passage projects on Navajo Nation. Additionally, the NNDFW has authority with regard to endangered and threatened species protection and is in the process of listing the Zuni bluehead sucker as an endangered species for added protection, which is a tribal designation by Navajo Nation different from the endangered designation under the Act. Finally, Navajo Nation has incorporated outreach and educational components regarding native fishes, including the Zuni bluehead sucker, within their FMP. The FMP provides guidance and oversight on the management of both recreational and native fish, including the Zuni bluehead sucker. We find that the Navajo Nation Fisheries Management Plan is complete, and the commitment to implement conservation activities described provides significant conservation benefit to the Zuni bluehead sucker. The FMP specifically provides periodic updates as appropriate. The assurances, protections, and conservation actions for the Zuni bluehead sucker within the Kinlichee Creek watershed on Navajo Nation lands provide extensive benefit to the subspecies. These baseline conservation efforts would minimize any regulatory benefit of critical habitat designation on these lands. For these reasons, we believe there is little educational benefit or support for other laws and regulations attributable to critical habitat beyond those benefits already achieved from listing the Zuni bluehead sucker under the Act on July 24, 2014 (79 FR 43132).

C. Benefits of Exclusion

The benefits of excluding Navajo Nation from designated critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the Zuni bluehead sucker; and

(2) the maintenance of effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat, and other species and their habitats.

We have an effective working relationship with Navajo Nation, which was reinforced when we proposed critical habitat for four endemic Colorado River basin fishes: Razorback sucker (*Xyrauchen texanus*), Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*) (59 FR 13374; March 21, 1994)) and has evolved through consultations on the flycatcher (69 FR 60706; October 12, 2004). The designation of critical habitat on Navajo Nation would be expected to adversely impact our working relationship. During our discussions with Navajo Nation, they informed us that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. We believe that continuing our positive working relationships with Navajo Nation would provide more conservation for the Zuni bluehead sucker than the regulatory designation of critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship with Navajo Nation for the mutual benefit of Zuni bluehead sucker conservation and the conservation of other endangered and threatened species.

During the development of the Zuni bluehead sucker critical habitat proposal, we met with Navajo Nation to discuss how they might be affected by the regulations associated with endangered species management, recovery, the designation of critical habitat, and measures to minimize any impacts from planned projects. As such, we established cooperative relationships for the management and conservation of endangered species and their habitats. As part of our relationship, we provided technical assistance to develop measures to conserve endangered and threatened species such as the Colorado pikeminnow, razorback sucker, humpback chub, bonytail chub, and flycatcher and their habitats. Navajo Nation has already requested similar assistance for the Zuni bluehead sucker, and we anticipate providing further assistance in their efforts to conserve the subspecies.

All of these proactive actions were conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and Secretarial Order 3317, ''Department of Interior Policy on Consultation with Indian Tribes'' (December 1, 2011). We believe Navajo Nation should be the governmental entity to manage and promote the Zuni bluehead sucker conservation on their lands.

D. Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of including Navajo Nation in the critical habitat designation are limited to educational awareness and projects that may result in section 7 consultation. It is unlikely that many projects will result in section 7 consultation within the proposed critical habitat areas on Navajo Nation based on section 7 consultations for other listed species and lack of a Federal nexus. However, as discussed in detail above, we believe these benefits are minimized because Navajo Nation is familiar with the Zuni bluehead sucker and its habitat needs, and has demonstrated commitment to address management and recovery for this subspecies and others (*e.g.,* flycatcher, Colorado pikeminnow, and razorback sucker).

The benefits of excluding Navajo Nation from designation as Zuni bluehead sucker critical habitat are: (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to Zuni bluehead sucker, riparian habitats, and other native species from implementation of conservation actions under the FMP; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat. Overall, these conservation actions accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. Excluding Navajo Nation from critical habitat will allow them to manage their natural resources to benefit the Zuni bluehead sucker without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to other listed species that would not otherwise be available without the Service's maintenance of a cooperative working relationship. In conclusion, we find that the benefits of excluding Navajo Nation from critical habitat designation outweigh the benefits of including these areas.

E. Exclusion Will Not Result in Extinction of the Species

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned. There is a small portion of proposed critical habitat on Navajo Nation that is considered to be unoccupied; Subunit 2b (Red Clay Wash) is approximately 9.6 km (6.0 mi). The remaining 86.9 km (54.0 mi) of critical habitat on Navajo Nation is considered to be occupied. Therefore, Federal activities in these areas that may affect the Zuni bluehead sucker will still require consultation under section 7(a)(2) of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on these lands, activities that occur on these lands cannot jeopardize the continued existence of the Zuni bluehead sucker. Even so, our record demonstrates that formal section 7 consultations rarely occur on tribal lands, which is likely a result of existing conservation planning by both Navajo Nation and BIA. Second, Navajo Nation has committed to protecting and managing Zuni bluehead sucker habitat according to their management plans and natural resource management objectives. We believe this commitment accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the implementation of their natural resource management objectives, based upon strategies developed in the Fisheries management plan, we have concluded that this exclusion from critical habitat will not result in the extinction of the Zuni bluehead sucker. Accordingly, under section 4(b)(2) of the Act, we have determined that the benefit of exclusion of Navajo Nation lands in Unit 2 outweigh the benefits of their inclusion; the exclusion of these lands from the designation will not result in the extinction of the species; and therefore, we are excluding these lands from critical habitat designation for the Zuni bluehead sucker.

II. Zuni Tribe

The Zuni Tribe is a federally recognized Indian Tribe with reservation lands totaling nearly 463,271 acres. The Zuni Reservation is

located in western New Mexico, approximately 150 miles west of Albuquerque in McKinley County. On the Zuni Reservation (within Unit 1 in the proposed rule), we proposed 68.3 km (42.4 mi) of stream habitat. Much of the habitat was historically occupied, with individuals detected as recently as 1990 (Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 26); however, many areas have not been surveyed for Zuni bluehead sucker due to drought conditions or complexity of sampling due to access, variety of habitat, and visibility due to increase turbidity. We consider all portions of Subunit 1a to be occupied.

As analyzed below, we are excluding the Zuni Tribe's lands from critical habitat based on our ongoing conservation partnership where the benefits of exclusion from critical habitat outweigh the benefits of including an area in critical habitat. We believe the Zuni Tribe has demonstrated a productive working relationship on a Government-to-Government basis with us. The designation of critical habitat on the Zuni Reservation would be expected to adversely impact our working relationship with the Tribe.

Zuni Tribe has worked cooperatively with the Service on a draft Fisheries Management Plan (draft FMP), which includes the Zuni bluehead sucker. The draft FMP is a joint effort between Zuni Fish and Wildlife Department, the Service, and BIA. The draft FMP is designed for the purpose of long-term planning and implementation of fisheries-related issues on Zuni Reservation and is part of an integrated, interagency cooperative effort to manage its fisheries resources based on sound ecological management practices. The draft FMP serves as a guide for accomplishing goals outlined in the Management Plan for managing, maintaining, enhancing, and conserving the fisheries resources on Zuni Reservation. Two objectives in the draft FMP are to identify and protect existing Zuni bluehead sucker populations and their habitats and to expand distribution to suitable streams. These objectives would be accomplished by actions similar to those described in the Navajo Nation FMP. The Zuni Tribe draft FMP was based on the Navajo Nation FMP, with a few differences. The main difference in the Zuni Tribe draft FMP is that consultation is needed with the Zuni Cultural Resource Advisory Team to ensure that implementation of the Fisheries Management Plan does not affect Zuni Tribe's cultural beliefs. In addition, the Zuni Tribe identifies responsible parties that can aid in the improvement of grazing management along streams containing Zuni bluehead sucker habitat. Although this plan is currently in draft, it serves as evidence of our cooperative working relationship with Zuni Tribe.

In addition, Zuni Tribe has established conservation partnerships with the Service, NMDGF, Cibola National Forest, The Nature Conservancy, and private landowners. Zuni Tribe has participated in and implemented conservation and recovery actions for the Zuni bluehead sucker. Zuni Tribe, NMDGF, and the Service continue to work together to monitor, conserve, and protect known occupied Zuni bluehead sucker habitat on Tribal property and upstream habitat on The Nature Conservancy's lands.

A. Benefits of Inclusion

On Zuni Reservation, we proposed as critical habitat 38.9 km (24.2 mi) within Subunit 1a (Zuni River Headwaters), which is occupied by the Zuni bluehead sucker. Therefore, if a Federal action or permitting occurs, there is a section 7 nexus, and the incremental impacts due to critical habitat would be limited to administrative cost. We also proposed as critical habitat 29.4 km (18.3 mi) on Zuni Reservation within Subunit 1b (Zuni River Mainstem), which is unoccupied by the Zuni bluehead sucker; therefore, if a Federal action or permitting occurs, there may not be a consultation under section 7 of the Act unless critical habitat is designated. Our draft economic analysis found that if we designate critical habitat on Zuni Reservation, it is expected that there will be a small number of informal consultations that would incur limited administrative costs only and that no Zuni Tribe activities are expected to result in formal consultation; however, future impacts are possible.

Our section 7 consultation history for another riparian species, the flycatcher, shows that since listing in 1995, we have conducted informal consultations on the flycatcher with agencies implementing actions or providing funding. However, since listing in 1995, no formal section 7 consultations have occurred on Zuni Reservation. Effects to the flycatcher from Federal projects have all resulted in insignificant and discountable impacts because conservation measures have focused on habitat improvement and management for the flycatcher and its habitat. We anticipate a similar scenario for the Zuni bluehead sucker.

If we designate critical habitat on the Zuni Reservation, our previous section 7 consultation history for the flycatcher in riparian habitat indicates that there could be a few regulatory benefits to the Zuni bluehead sucker on Subunit 1b, which is currently unoccupied.

Formal consultation for Zuni bluehead sucker on the Zuni Reservation is unlikely. There are no projects planned within the proposed critical habitat units, and future projects that we might anticipate (riparian habitat restoration, establishment of refugia populations, construction of fish barriers and livestock exclosure fencing) are actions that provide long-term benefits to the Zuni bluehead sucker and its habitat. Therefore, effects to the Zuni bluehead sucker from Federal projects would likely result in insignificant and discountable impacts because conservation measures would be focused on habitat improvement and management. Because of how Zuni Tribe manages and conserves its lands through establishment of fish regulation, livestock grazing exclosures, and establishment of management plans and active conservation of the Zuni bluehead sucker and other imperiled species, we do not anticipate that Zuni Tribe's actions would considerably change in the future. These baseline conservation efforts would minimize any regulatory benefit of critical habitat designation on these lands. Therefore, the benefits of inclusion of the lands are minimized by the continuing conservation efforts on the Zuni Tribe lands.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Zuni bluehead sucker that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also strengthen or reinforce some Federal laws such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

The educational benefits that might follow critical habitat designation, such as providing information to Zuni Tribe on areas that are important for the long-term survival and conservation of the subspecies, have already been achieved. Zuni Tribe is familiar with the Zuni bluehead sucker and its habitat needs and has successfully worked with the Service to address Zuni bluehead sucker

management and recovery. The Zuni bluehead sucker population has been widely known since the 1960s (Merkel 1979, entire; Hanson 1980, entire; Propst and Hobbes 1996, p. 13; Carman 2010, pp. 13–15; Gilbert and Carman 2011, p. 23; NMDGF 2013, p. 24). Thus, the educational benefits that might follow critical habitat designation, such as providing information to Zuni Tribe on areas that are important for the long-term survival and conservation of the subspecies, have already been provided by decades of partnerships with NMDGF and the Service. For these reasons, we believe there is little educational benefit or support for other laws and regulations attributable to critical habitat beyond those benefits already achieved.

B. Benefits of Exclusion

The benefits of excluding the Zuni Tribe from designated critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the Zuni bluehead sucker; and (2) the fostering of our partnership with Zuni Tribe, which results in effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat, and other species and their habitats.

We have an effective working relationship with Zuni Tribe, which has evolved through consultations on the flycatcher (69 FR 60706; October 12, 2004) and through cooperative fisheries management. As part of our relationship, we have provided technical assistance to develop measures to conserve the Zuni bluehead and its habitat on the Tribe's lands, as well as conducting surveys and research investigations regarding the subspecies' needs (*e.g.,* habitat and spawning). These proactive actions were conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and Secretarial Order 3317, ''Department of Interior Policy on Consultation with Indian Tribes'' (December 1, 2011). We believe Zuni Tribe should be the governmental entity to manage and promote Zuni bluehead sucker conservation on their lands. During our communication with Zuni Tribe, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian habitat and fishing regulation restrictions.

During the comment periods, we received input from Zuni Tribe expressing the view that designating Zuni bluehead sucker critical habitat on tribal land would adversely affect our working relationship. They noted that the beneficial cooperative working relationship has assisted in the conservation of listed species and other natural resources. During our discussions with Zuni Tribe, they informed us that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. For this reason, we believe that our working relationships with Zuni Tribe would be better maintained if we exclude their lands from the designation of Zuni bluehead sucker critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship with Zuni Tribe for the mutual benefit of Zuni bluehead sucker conservation and the conservation of other endangered and threatened species.

We have coordinated and collaborated with Zuni Tribe on the management and recovery of the endangered species and their habitats by establishing conservation partnerships. Many tribes and pueblos recognize that their management of riparian habitat and conservation of the flycatcher and the Zuni bluehead sucker are common goals they share with the Service. Zuni Tribe's management actions are evidence of their commitment toward measures to improve riparian habitat for endangered and threatened species. Some of the common management strategies are maintaining riparian conservation areas, preserving habitat, improving habitat, protecting the species under Zuni Tribe Game and Fish Codes starting in 1968 (Zuni Tribe 1989, entire), and conducting surveys with Service since 1954.

Zuni Tribe will continue to work cooperatively with us and others to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if these lands are designated as critical habitat for the Zuni bluehead sucker.

C. Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of including Zuni Tribe in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, and educational awareness. However, as discussed in detail above, we believe these benefits are minimized because they are provided for through other mechanisms, such as (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to the Zuni bluehead sucker from implementation of baseline conservation actions through our partnership; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the Zuni bluehead sucker and its habitat.

The benefits of excluding Zuni Tribe's lands from designation as Zuni bluehead sucker critical habitat are more significant and include encouraging the continued implementation of tribal management and conservation measures such as monitoring, surveying, habitat management and protection, and recovery activities that are planned for the future or are currently being implemented. Overall, these conservation actions and management of the subspecies and its habitat likely accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis (especially when formal section 7 consultations are rare) and implementation of the draft Zuni Fisheries Management Plan. These programs will allow Zuni Tribe to manage their natural resources to benefit riparian habitat for the Zuni bluehead sucker, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to other listed species that would not otherwise be available without the Service's maintenance of a cooperative working relationship. In conclusion, we find that the benefits of excluding Zuni Tribe's lands from critical habitat designation outweigh the benefits of including these areas.

D. Exclusion Will Not Result in Extinction of the Species

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical

habitat will result in the extinction of the species concerned.

First, Federal activities on these areas that may affect the Zuni bluehead sucker will still require consultation under section 7 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species. Therefore, even without critical habitat designation on these lands, activities that occur on these lands cannot jeopardize the continued existence of the Zuni bluehead sucker. Even so, our record demonstrates that formal section 7 consultations rarely occur on tribal lands, which is likely the result of existing conservation planning. Second, Zuni Tribe is committed to protecting and managing the Zuni bluehead sucker's habitat according to the Tribe's management plans and natural resource management objectives. We believe this commitment accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. With the implementation of their natural resource management objectives, based upon strategies developed in the Fisheries Management Plan, we have concluded that this exclusion from critical habitat will not result in the extinction of the Zuni bluehead sucker. Accordingly, under section 4(b)(2) of the Act, we have determined the benefits of exclusion of Zuni Tribe lands in Unit 1 outweigh the benefits of their inclusion; the exclusion of these lands from the designation will not result in the extinction of the species; and, therefore, we are excluding these lands from critical habitat designation for the Zuni bluehead sucker.

## Required Determinations

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

### *Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in

the economic analysis, energy-related impacts associated with Zuni bluehead sucker conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will 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, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands within the designated critical habitat do not occur within the jurisdiction of small governments. This rule will not produce a Federal mandate of $100 million or greater in any year. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Zuni bluehead sucker in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Zuni bluehead sucker. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis and described within this document, economic impacts to a property owner are unlikely to be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the Zuni bluehead sucker does not pose significant takings implications for lands within or affected by the designation. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the Zuni bluehead sucker does not pose significant takings implications.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Arizona and New Mexico. We received comments from Arizona and New Mexico, and have addressed them under Summary of Comments and Recommendations, above. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation

under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, the rule identifies the elements of physical or biological features essential to the conservation of the Zuni bluehead sucker. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

*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 recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Zuni bluehead sucker, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for a proposal when it is finished.

We performed the NEPA analysis, and the draft environmental assessment was made available for public comment on April 14, 2015 (80 FR 19941). The final environmental assessment has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment online at *http://www.regulations.gov,* by mail from the New Mexico Ecological Services Field Office (see **ADDRESSES**), or by visiting our Web site at *http://www.fws.gov/southwest/es/newmexico.*

*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 (Consultation and Coordination With Indian Tribal Governments), 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.

Navajo Nation and the Zuni Tribe are the only tribes affected by this final rule. We sent notification letters in July 2012 to each tribe describing the exclusion process under section 4(b)(2) of the Act, and we have engaged in conversations with both tribes about the proposal to the extent possible without disclosing predecisional information. We sent out notification letters on April 12, 2013, notifying the tribes that the proposed rule had published in the **Federal Register** to allow for the maximum time to submit comments. On April 14, 2015, we also sent letters notifying the tribes that we had made available the draft environmental assessment and draft economic analysis in the **Federal Register**.

We had a government-to-government coordination meeting with Navajo Nation in March 2013. Additionally, we worked closely with the Zuni Tribe to develop a draft fisheries management plan for their respective land. We met on May 7, 2015, to discuss the proposed rule and their draft fisheries management plan. We considered these tribal areas for exclusion from final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act, and, subsequently, excluded the lands of Navajo Nation and the Zuni Tribe from this final designation.

**References Cited**

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this rulemaking are the staff members of the New Mexico Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Sucker, Zuni bluehead'' under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| FISHES | ..... | ..... | ..... | | ..... | ..... | ..... |
| * | * | * | * | * | * | | * |
| Sucker, Zuni bluehead. | *Catostomus discobolus yarrowi.* | U.S.A. (AZ, NM) ..... | Entire ..... | E | 839 | 17.95(e) | NA |
| * | * | * | * | * | * | | * |

■ 3. In § 17.95, amend paragraph (e) by adding an entry for ''Zuni bluehead sucker (*Catostomus discobolus yarrowi*)'' after the entry for ''Warner Sucker (*Catostomus warnerensis*)'' to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(e) *Fishes.*

* * * * *

Zuni bluehead sucker (Catostomus discobolus yarrowi)

(1) Critical habitat unit is depicted for Cibola and McKinley Counties, New Mexico, on the map below.

(2) Critical habitat includes the adjacent floodplains within 91.4 lateral meters (m) (300 lateral feet (ft)) on either side of bankfull discharge, except where bounded by canyon walls. Bankfull discharge is the flow at which water begins to leave the channel and disperse into the floodplain, and generally occurs every 1 to 2 years.

(3) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Zuni bluehead sucker consist of three components:

(i) A riverine system with habitat to support all life stages of the Zuni bluehead sucker, which includes:

(A) Dynamic flows that allow for periodic changes in channel morphology and adequate river functions, such as channel reshaping and delivery of coarse sediments.

(B) Stream courses with perennial flows or intermittent flows that serve as connective corridors between occupied or seasonally occupied habitat through which the subspecies may disperse when the habitat is wetted.

(C) Stream mesohabitat types including runs, riffles, and pools with substrate ranging from gravel, cobble, and bedrock substrates with low or moderate amounts of fine sediment and substrate embeddedness.

(D) Streams with depths generally less than 2 meters (3.3 feet), and with slow to swift flow velocities less than 0.35 meters per second (1.15 feet per second).

(E) Clear, cool water with low turbidity and temperatures in the general range of 2.0 to 23.0 °C (35.6 to 73.4 °F).

(F) No harmful levels of pollutants.

(G) Adequate riparian shading to reduce water temperatures when ambient temperatures are high and provide protective cover from predators.

(ii) An abundant aquatic insect food base consisting of fine particulate organic material, filamentous algae, midge larvae, caddisfly larvae, mayfly larvae, flatworms, and small terrestrial insects.

(iii) Areas devoid of nonnative aquatic species or areas that are maintained to keep nonnatives at a level that allows the Zuni bluehead sucker to continue to survive and reproduce.

(4) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on July 7, 2016.

(5) *Critical habitat map units.* Data layers defining map unit were developed using ESRI ArcGIS mapping software along with various spatial layers. Data layers defining map units were created with U.S. Geological Survey National Hydrography Dataset (NHD) Medium Flowline data. ArcGIS was also used to calculate river kilometers and river miles from the NHD dataset, and it was used to determine longitude and latitude coordinates in decimal degrees. Critical habitat upstream limits were delineated based on the upper limits identified in the NHD dataset for each stream. The projection used in mapping and calculating distances and locations within the unit was North American Equidistant Conic, NAD 83. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site (*http://www.fws.gov/southwest/es/newmexico*), at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0002, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(6) Unit 1: Zuni River Unit, McKinley and Cibola Counties, New Mexico.

(i) *General description:* Unit 1 consists of approximately 55.7 kilometers (km) (34.6 miles (mi)) of the Zuni River watershed and the adjacent floodplains within 91.4 lateral meters (300 lateral feet) on either side of bankfull discharge, except where bounded by canyon walls in McKinley and Cibola Counties, and is composed of land ownership by the State (2.1 km (1.3 mi)), Forest Service (19.5 km (12.1 mi)) and private landowners (34.0 km (21.1 mi)).

(ii) Map of Unit 1 follows:

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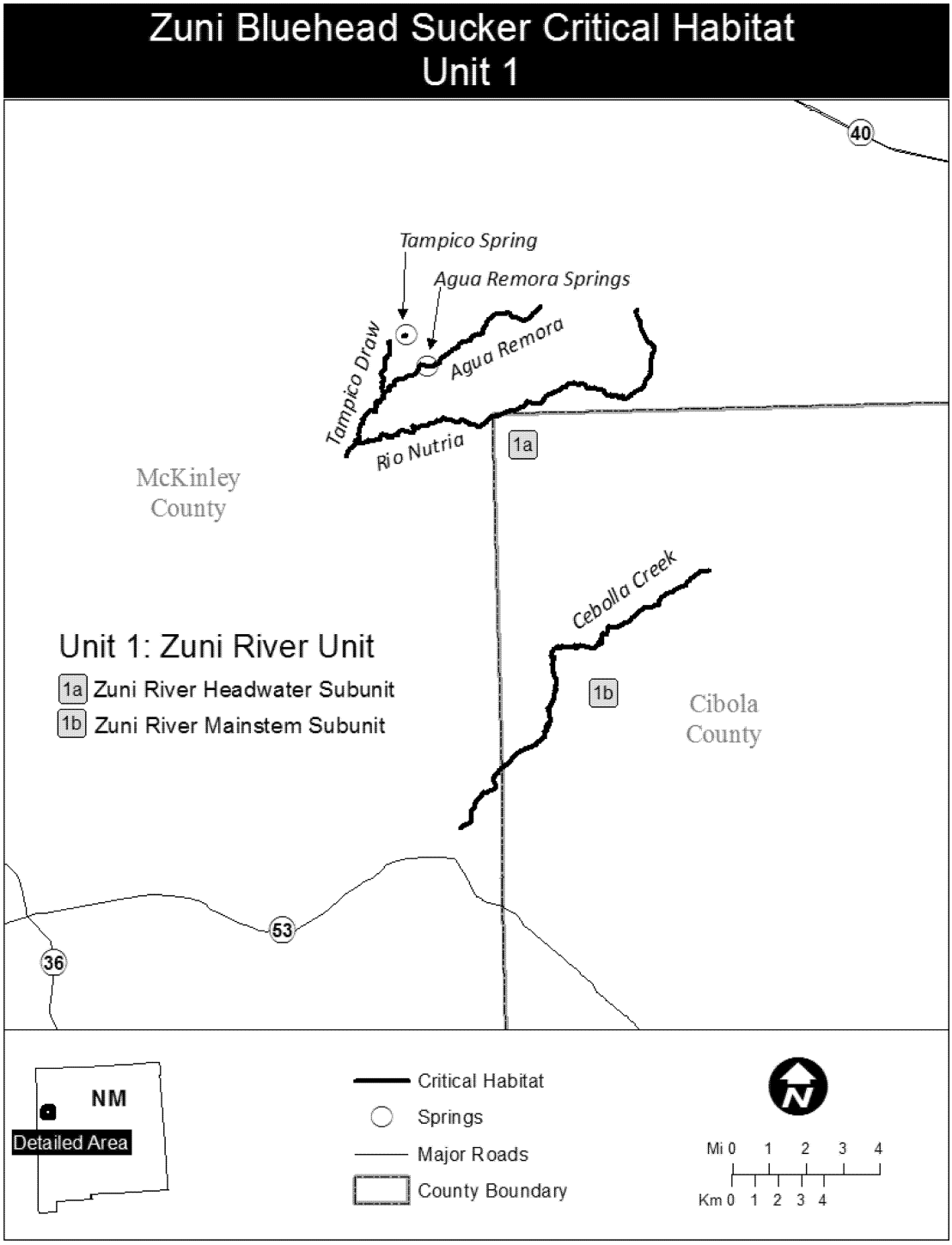


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* * * * *

Dated: May 24, 2016.

**Karen Hyun,**

*Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–13246 Filed 6–6–16; 8:45 am]

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